

A Constitutional Challenge to Iraq's Treatment of Iraqi Jews

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Brief Analysis

As a lawyer who has specialized in defending minorities right, religious freedom, and civil rights in Iraq, I have come to the conviction that giving justice to Iraq's Jews is impossible under Iraq's current legal system, as it must include restoring their stolen rights under a new, democratic Iraq.

Like Jewish communities in other Arab countries, Iraqi Jews have faced injustices conducted in the name of Pan-Arabism that are, in reality, driven by anti-Semitism and an attempt to take revenge on Israel. In Iraq, these efforts displaced most of Iraq's Jewish population of 160,000. Today, Iraqi Jews are attempting to regain citizenship and possessions seized from them by the government, but decades-old discriminatory laws still stand in their way. These are crimes against humanity that are outlawed on an international scale and banned by international organizations as per the founding charters of the United Nations and its Security Council.

Currently, I work to represent the cases of Iraqi Jews seeking to gain equal representation under the law. I do this work pro-bono out of a sense of duty to my country. In order to retain their privacy, I shall not mention the names of those Iraqi Jews who have authorized me to defend them before the politically-driven Iraqi judicial system.

The general situation is clearly visible within Iraq's laws. Enacted in the early 1950s, these inhumane laws aimed to legalize the actions of the Iraqi government, which was engaged in pushing out Iraqi Jews, stealing their possessions, and removing their Iraqi citizenship.

The unfair legal structures which revoked Iraqi citizenship from Iraqi Jews were enacted during the Iraqi Hashemite monarchy, which passed law no. 1 in the year 1950 and law no. 12 in 1951. When these laws came into effect, many of Iraq's Jews were forced into exile and their property and money were confiscated by the state as an additional form of punishment. What is disturbing is the fact that these two pieces of legislation are still in effect today. This is despite the political change that took place in Iraq in 2003, and despite the enactment of a new Iraqi constitution in 2005—which gave some hopes of change for Iraqi Jews in a democratic, federal, and multicultural Iraq.

Those who call themselves Iraq's current leaders claim the new constitution respects all religions, values

multiculturalism, and supports the rights of religious minorities and the equality of all Iraqis under the law.

Nonetheless, the current constitution has never outlawed the aforementioned, unfair acts—despite their contravention to the second section of article 18, part A of Iraq's current constitution. This section states, “an Iraqi citizen by birth may not have his citizenship withdrawn for any reason. Any person who had his citizenship withdrawn shall have the right to demand its reinstatement.” The constitution defines anyone born to an Iraqi father or an Iraqi mother as an Iraqi entitled to citizenship, and states that any Iraqi who has lost his citizenship for either political, racist or sectarian reasons has the right to request restoration of citizenship.

The two acts in question likewise breach the [Iraqi citizenship act no. 26](https://www.refworld.org/pdfid/4b1e364c2.pdf)

(<https://www.refworld.org/pdfid/4b1e364c2.pdf>) of 2006, which secures the right of restoration of citizenship to all of those who have lost it for the reasons detailed above. However, this act excluded Iraqi Jews—who should have been included just like the rest of Iraqis. It is striking that the 1950 and 1951 acts against Iraqi Jews have remained, while other laws that been amended to conform to the 2005 constitution's article 18. Nonetheless, Iraq Jews remain deprived of justice under the new Iraq, in clear violation of the constitution.

As for the issue of the property and wealth that the government forcibly confiscated, and which the Iraqi government and Iran-affiliated militias and parties have continued to make use of, the new constitution's article 23 stipulates that “private property is protected,” and that “the owner shall have the right to benefit, exploit and dispose of private property within the limits of the law.” Article 2, parts A and C, additionally confirms that “no law may be enacted that contradicts the principles of democracy... [or] the rights and basic freedoms” stipulated in the Iraqi Constitution. Likewise, articles 3 and 7 of the constitution dictate that “any entity or program that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing... shall be prohibited,” and that “such entities may not be part of political pluralism in Iraq.”

What is most puzzling is that while the Constitution explicitly confirms the freedom of belief and religious practice of Muslims, Christians, Yezidis, and Sabeen Mandeans, it does *not* address the Jews of Iraq as a basic religious group. This is another example of the legal inequality and injustice facing the Jews of Iraq. The denial of constitutional rights has been a general policy with Jews when it comes to their rights to citizenship and other measures. Those affected by these laws have the right to bring the case before the Administrative Court, which is supposed to be linked to the Iraqi Supreme Judicial Council and independent of the executive authority.

In reality, however, the Administrative Court is officially connected to the executive authority and the government, as one of the joints of the Iraqi Ministry of Justice. This is in contrast to all other Iraqi courts, which are linked to the Supreme Judicial Council under the Iraqi constitution. Most courts are in accordance with the principle of separation of powers—whereas the Administrative Court acts as the judicial authority while being representative of the defendants. This is all the more so the case as the ministries involved are the Ministries of Finance and Interior, which implement the Nationality Law and therefore evaluate the complaints and grievances against the Minister of the Interior. It is only reasonable to conclude that this court is biased towards favoring the decisions of this ministry given its association with the government, while remaining indifferent to the interests of those affected. Many Iraqi lawyers have lost hope when it comes to realizing Iraqis' rights and applying principles of justice given the politicized nature of the court.

It is unclear why the Iraqi legal system believes that the Administrative Court and the Supreme Administrative Court are competent to hear cases related to discrimination and appeals against the decisions of the Administrative Court. Its decision is binding on all parties involved, which are related to the executive authority (the government).

Returning again to the text of the constitution, there is a clear lack of legality regarding the Administrative Court's

relationship with the executive authority. Article 19 of the Iraqi Constitution stipulates that the judiciary is independent and has no authority other than the law. No authority may interfere in the judiciary and in the affairs of justice. Therefore, any lawyer who tries to trust and defend the Jews of Iraq before these two government-controlled courts will be threatened with blackmail and intimidation; with an opponent who is also the judge, lawyers cannot take the liberty of defending their clients. Therefore, issues remain floating in the court, because lawyers fear following-up.

The situation extends to the president of Iraq, as he has failed to exercise certain parts of the Constitution as detailed above. Responsibility also falls on the President of the Supreme Judiciary Council, President of the Federal Court, President of the House of Parliament, as well as parliament members themselves, due to their silence regarding the legal and constitutional violations against Iraqi Jews.

Given the lack of legal options within the Iraqi legal system, Iraqi Jews' rights should become a universal matter adopted by international courts and organizations. This would generate international pressure towards the Iraqi government, which could force it to provide justice to the honorable Iraqi Jewish sect, and to restore all of their rights, like all sects of Iraqi people.

I hope that this issue gains the attention of international and humanitarian organizations as well as the international community. I personally will continue to support the rights of my Jewish brother.

Finally, I call for the conclusion of a peace agreement between Iraq and Israel, which will lead to the abolition of unjust laws against the Jews of Iraq, and which will enable Iraqi Jews to return to their country (Iraq) and regain their citizenship, rights and property. ❖

RECOMMENDED



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