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Research Assessment & Safeguarding of the Heritage of Iraq in Danger

Third Cycle of the Universal Periodic Review

Concerning the Republic of Iraq

March 2019

RASHID International is a worldwide network of archaeologists, cultural heritage experts and professionals dedicated to safeguarding and promoting the cultural heritage of Iraq. We are committed to developing the history and archaeology of ancient Mesopotamian cultures, for we believe that knowledge of the past is key to understanding the present and to building a prosperous future.

RASHID International is a non-profit organization registered in Germany in 2016 and holds special tax-privileged charitable status. Charitable tax-privileged status is only granted to those select organizations which dedicate all their funds to charitable causes and submit to regular audits.

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Background

1. Conflict in Iraq, including the occupation of Iraqi territory by Daesh, 2014-2017, has had far-reaching consequences in terms of the escalation in human rights violations and has left the country facing enormous challenges to build a sustainable and inclusive peace. With the resolution of conflict in 2018, now is a critical moment for the country to reflect on the role heritage can play in building and maintaining peace.
2. The depredations of Daesh not only caused the loss of thousands of lives, but also heralded the return of practices long since outlawed, including (sexual) slavery, torture, large-scale destruction of cultural heritage and the systematic persecution and genocide of minorities. The cultural human rights of women have been disproportionately affected.
3. RASHID International has issued several reports documenting issues, providing analysis and recommending solutions, addressed to the UN Special Rapporteur in the field of cultural rights and to the UN Human Rights Council. They focus on the following areas of concern:
 1. *The Intentional Destruction of Cultural Heritage in Iraq*¹
 2. *The Impact of Fundamentalism and Extremism on the Cultural Rights of Women in Iraq*²
 3. *Advancing Cultural Rights and the Protection of Cultural Heritage in Iraq*³
 4. *The Implementation of Cultural Rights in Iraq*⁴

Cultural Rights in the Universal Periodic Review

4. During the Universal Periodic Review of Iraq, States, the United Nations and civil society have so far focused on the more mainstream categories of civil and political rights and economic and social rights. Cultural rights have been neglected. Cultural diversity and the access to and enjoyment of cultural heritage play a significant role in the maintenance of societal cohesion and must be taken into account to ensure the indivisibility, interdependence and universality of human rights.
5. Cultural rights in the narrow sense include the right to participate in cultural life (Article 27 UDHR, Article 15 (1)(a) ICESCR) and in the wider sense, at a minimum, the right to freedom of religion, the right to education and the right to self-determination.⁵
6. The Second Cycle's thematic list of recommendations, made by States to Iraq, does not contain a single recommendation specifically referencing cultural rights, cultural heritage or cultural property.⁶ Cultural rights are only mentioned as part of the

formulaic "economic, social and cultural rights". The same is true for the report of the working group.⁷

7. The Second Cycle's Stakeholder Report concerning Iraq only included three unspecific comments, one recommending additional funding for archaeologists and two on minority issues in education.⁸
8. **Recommendations**
 - Give special attention to cultural rights in the national report submitted by Iraq in future cycles of the Universal Periodic Review
 - Allow civil society organizations, experts and the general public the opportunity to comment during the drafting process of the national reports in subsequent cycles

Areas of Concern

Death Penalty for Property Crimes in Federal Antiquities Law

9. RASHID International advocates that cultural heritage should be protected by strong legal and institutional measures. However, some features of Iraqi heritage law impact human rights in a way that is incompatible with international standards.
10. The federal antiquities law in force is Law No. 55 of 2002.⁹ Certain crimes relating to antiquities carry the death penalty or life imprisonment, a response which is extreme, considering the severity of responses to property crimes in most jurisdictions' criminal law frameworks. The exportation of or intent to export an antiquity is punishable by *execution* as per Article 41 (1) of Law No. 55 of 2002. The theft of an antiquity by one of its guardians is punishable by imprisonment for life, or, in aggravating circumstances, by *execution*, see Article 40 (1) of Law No. 55 of 2002.
11. RASHID considers the death penalty for property crimes to be incompatible with international human rights law, being a disproportionate restriction on the right to life. Officials in the Kurdistan Region of Iraq have informally voiced similar concerns. The authorities in the Region therefore, in practice, apply the older Law No. 59 of 1936, as amended in 1974 and 1975.¹⁰
12. The duty to protect cultural heritage under Article 15 (1)(a) ICESCR must be weighed against the duty to respect the right to life (Article 6 ICCPR), which in the present case carries the greater value. Cultural heritage exists to enhance and

nurture human life, not to destroy it. RASHID has raised this issue with the Special Rapporteur in the field of cultural rights.¹¹

13. **Recommendation**

At a minimum, abolish the death penalty for property crimes, inter alia in the context of Law No. 55 of 2002, and replace it with a penalty in conformity with international human rights law, such as prison sentences of appropriate length to deter potential perpetrators

Protection of Cultural Property during Armed Conflict

14. International humanitarian law is a key instrument in the protection of cultural property during armed conflict. Legal norms provide clarity in drafting rules of engagement, limit destruction of property to what is absolutely necessary and generally have a disciplinary effect on military forces.

15. Iraq is State Party to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict ('1954 Hague Convention') and its First Protocol, which it ratified on 21 December 1967. However, Iraq has not ratified the 1999 Second Protocol to the 1954 Hague Convention ('1999 Second Protocol').

16. The Second Protocol would strengthen Iraq's ability to protect heritage in three key areas: it provides clarity on the concept of military necessity under the original Hague Convention, gives access to the Second Protocol Fund and would permit Iraq to register sites under Enhanced Protection. An official statement summarizing our position is available.¹²

17. Enhanced Protection under the 1999 Second Protocol is a critical systemic advance in cultural heritage protection law, which combines strong legal protection, ease of access and enhanced visibility. It is the humanitarian law-analogue to World Heritage status.

18. Furthermore, institutional cooperation between government agencies, the military, academia and civil society regarding cultural property protection during wartime is still in its infancy in Iraq. Blue Shield International and its National Blue Shield Committees are an ideal forum to address these issues. Currently no National Blue Shield Committee exists in Iraq.

19. **Recommendations**

- Accede at the earliest opportunity to the 1999 Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
- Nominate cultural property for inscription on the List of Cultural Property under Enhanced Protection; World Heritage sites are automatically eligible and should be nominated immediately

- Request financial assistance from the Fund for the Protection of Cultural Property in the Event of Armed Conflict
- Create a National Blue Shield Committee in Iraq, drawing on all sectors of society, especially civil society, academia, the military and government agencies

Illicit Trade in Antiquities

20. The rising internet trade in antiquities is a global challenge that goes far beyond the ability of source countries, such as Iraq, to address on their own.¹³ Source countries must join international networks of cooperation and work with market countries, especially advanced economies, to develop strategies to combat the illegal trade in antiquities. Multisectoral measures are more effective than single, symbolic actions. A significant percentage of antiquities currently unaccounted for or available on the market originated in Iraq, sometimes via the large-scale pillaging of Daesh, sometimes on the orders of organized crime syndicates and sometimes through opportunistic theft and looting.¹⁴ Many of the treasures stolen during the 2003 looting of the Iraq Museum in Baghdad have never resurfaced.
21. The 1970 UNESCO Convention and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects form the key framework in international law to combat the illicit trade in antiquities. While the 1970 Convention has received reasonable uptake, the much stronger 1995 UNIDROIT Convention is largely neglected. The 1995 Convention includes a much more encompassing definition of protected cultural property which does not rely on prior designation and institutes a useful restitution mechanism.
22. Iraq is State Party to the 1970 UNESCO Convention, but not the 1995 UNIDROIT Convention.
23. Furthermore, modern technological measures can greatly enhance the effectiveness of anti-trafficking initiatives. All cultural property held in public collections should be inventoried to comply with the obligation to take preparatory steps under Article 5 of the 1954 Hague Convention. Inventories should be created digitally, and where this is not the case, digitized, for ease of reference and protection from destruction, ideally stored as a backup with a neutral third party and/or international police agencies, Europol and Interpol. Projects such as the Digital Library of the Middle East should be taken into account.¹⁵

24. Until 2003 a government-funded national system of site guards existed, who effectively protected archaeological sites from casual looters. The system collapsed during the 2003 Iraq War and has not been fully re-established to date.

25. Recommendations

- Create digital inventories for all museums in Iraq and make these available to international police forces, Europol and Interpol
- Accede to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
- Seek assistance in implementing high-tech measures to trace antiquities in the marketplace and assist with international prosecutions
- Re-establish the system of sites guards that effectively protected archaeological sites until 2003; seek out financial and technical assistance from other States to do so

The Right to Cultural Heritage in Iraq

26. The UN Special Rapporteurs in the field of cultural rights have highlighted the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage. Human Rights Council Resolution 33/20 was unanimously adopted on 6 October 2016 and was reaffirmed by Resolution 37/17 of 22 March 2018, which reiterated the obligation of States to respect, protect and fulfill cultural rights in the field of cultural heritage. This latter resolution built on the conclusions of the one-day seminar convened in July 2017, in which RASHID International actively participated.¹⁶

27. The impact of conflict and the occupation by Daesh curtailed many human rights, including cultural rights and the right to cultural heritage. Experts from RASHID International have assessed the extent of the intentional destruction of cultural heritage by Daesh in Iraq generally and Mosul specifically, submitting key findings to the UN Special Rapporteur in the field of cultural rights.¹⁷ The RASHID-associated project *Monuments of Mosul in Danger* continues to produce up-to-date information on the destruction of cultural heritage in and around Mosul, publicly available on the project's website.¹⁸

28. Following the defeat of Daesh and the end of conflict, national and international stakeholders have begun to repair and rebuild the damaged cultural heritage of Iraq. UNESCO is a significant stakeholder, spearheading the efforts with its flagship project 'Revive the Spirit of Mosul', which focuses on the reconstruction of cultural landmarks in the city.¹⁹ However, concerns have been raised that such flagship

projects primarily engage heritage ‘elites’, who give greater weight to the opinions of foreign experts and technocrats and create few opportunities for participation of local populations.²⁰

29. Cultural rights are held by every human being and are inclusive by design. The right to participate in cultural life requires that cultural heritage, including its creation, interpretation, re-interpretation and modification, be open and accessible to all, not just elites. The process of healing and reconstruction is a prime opportunity to involve wider sections of the population and prevent heritage from becoming an object of sectarian or elite interests alone. Grassroots initiatives can strengthen the involvement of the population at large but can only flourish in a permissive environment.
30. International partnerships are an important tool for the development of cultural rights in Iraq, as evidenced by the results obtained through the British Council’s Cultural Protection Fund or the AHRC-funded Nahrein Network based at University College London.²¹ These schemes foster partnerships between international and local stakeholders with a focus on sustainable development, education, and capacity building of heritage projects in conflict regions, including Iraq. Some of these efforts may meet difficulty in navigating the landscape of vested interests in the Iraqi government, which has developed on the back of the system of sectarian ‘quotas’ based on ethnic and religious identity that was introduced in the aftermath of the 2003 Iraq War.²²
31. More transparency and openness in reconstruction projects, as well as the incorporation of multi-stakeholder teams can avert the negative impact of these structural obstacles to ensuring access and enjoyment of cultural heritage.
32. The organization of conferences and workshops on Iraq’s heritage can be a vehicle for bringing together stakeholders with national and international expertise, advice and support, as well as for raising and sustaining public awareness. One such example is the 2016 Protecting the Past conference, held in Sulaimaniyah, Iraq.²³
33. **Recommendations**
 - Create opportunities for wider sections of the population to engage in the reconstruction and healing process, inter alia by conducting surveys, opening up planning processes for comment, ensuring low barriers to participation and securing freedom of expression in public spaces, including the media
 - Seek out and welcome international partnerships, but guard against disenfranchising the local population; local views should be taken into account and given significant weight

- Incorporate the recommendations contained in Human Rights Council resolutions 33/20 and 37/17 into the national framework for cultural heritage management
- Facilitate the planning and organization of international conferences in Iraq and ensure that Iraqis can freely travel to international events and conferences to present their views
- Ensure that female researchers face no barriers in exiting or entering the country; under no circumstances must visas be contingent upon a male guardian's approval

Equal Enjoyment of Cultural Rights by Women

34. The impact of conflict in Iraq has disproportionately affected the rights of women. In addition to the crimes perpetrated by Daesh, a number of cultural issues persist that threaten the full enjoyment of human rights by women. RASHID International assessed the impact of these issues on cultural human rights in a report submitted to the UN Special Rapporteur in the field of cultural rights.²⁴
35. RASHID International's report highlighted the impact of cultural infraction-based violence, such as 'honor' killings, on individual human rights, such as Article 6 (1) ICCPR, and the female freedom of access to cultural life, Article 15 (1)(a) ICESCR.
36. Self-immolation, female genital mutilation and sexual slavery are among the further culturally-motivated issues that threaten the human rights of women. The threat and persistence of sexual slavery was especially acute during Daesh's occupation. Minority groups suffered especially. Yazidi women were captured, enslaved, raped and sexually abused by Daesh militants.²⁵ While the crimes were terrible, Yazidi women did not just passively endure them, but actively drew on their intangible cultural heritage to blunt the effects of trauma.²⁶ In recuperating and healing it is critical to view victims not just as the objects of crimes, but to hear their voices and allow them to draw on their own cultural capital to choose the healing which is best suited to their individual and cultural context.
37. The strength of women's cultural rights is intimately linked with their visibility and representation in society. A report by the UN Assistance Mission for Iraq during the run-up to the May 2018 Presidential campaign stated that female candidates had been the target of "defamation campaigns" and faced pressure to withdraw from the race.²⁷

38. Recommendations

- Aim for gender parity in governance, especially among influential positions, at all levels
- Establish clear, achievable objectives to enhance the representation and employment of women in governance and cultural heritage projects at all levels
- Encourage and support employment of women in cultural heritage projects

Uncontrolled Development

39. The uncontrolled development of land is a significant challenge threatening the cultural heritage of Iraq. Tendering procedures for building, conservation and renovation projects in Iraq are often non-transparent. Companies lacking certifications and quality standards are permitted to work in the field without sufficient oversight. Serious damage has been done, for example at Madrasa Qubahan in Amedi.

40. Grand architectural visions in cities are associated with strong pressure from developers. Lack of relevant professional discussion and negotiation are common when complete historical neighborhoods are sacrificed in order to satisfy commercial interests, as witnessed in the destruction of the Arab and Khanaqa districts in Erbil.²⁸

41. The construction of dams presents similar challenges with significant impact on swathes of land leading to the loss of memory and perception of territory as a historic and natural landscape.

42. Recommendations

- Define and enforce certification and quality standards for building contractors
- Ensure that non-commercial interests, such as the preservation of cultural heritage, are given sufficient weight during planning and construction processes
- Ensure that even greater care is taken during the planning and construction of dams

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- 3 https://rashid-international.org/downloads/RASHID_Advancing_Cultural_Rights_In_Iraq.pdf
- 4 https://www.rashid-international.org/downloads/RASHID_SR_10th_Anniversary_Report-final.pdf
- 5 Donders, Y. 2002. *Towards a Right to Cultural Identity?* Antwerpen: Intersentia, page 3.
- 6 <https://lib.ohchr.org/HRBodies/UPR/Documents/Session20/IQ/IraqMatriceRecommendations.doc>
- 7 A/HRC/28/14.
- 8 A/HRC/WG.6/20/IRQ/3 paras 63-64.
- 9 <https://www.cemml.colostate.edu/cultural/09476/pdf/iraq-antiquities-law-2002.pdf>
- 10 <https://www.cemml.colostate.edu/cultural/09476/pdf/Iraq-Antiquities-Law-1936-amend.rtf>
- 11 https://www.rashid-international.org/downloads/RASHID_SR_10th_Anniversary_Report-final.pdf, page 10.
- 12 <https://rashid-international.org/downloads/RASHID%20Statement%202nd%20Protocol-final.pdf>
- 13 On the internet trade in antiquities, see <http://thinktank.theantiquitiescoalition.org/wp-content/uploads/2017/07/Policy-Brief-3-2017-07-20.pdf>
- 14 On the motivation of the thieves during the 2003 looting of the National Museum of Iraq, see Bogdanos, M. 2005. *Thieves of Baghdad*. Bloomsbury.
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- 16 <https://rashid-international.org/rashid-un-human-rights-council-inter-sessional-seminar-destruction-cultural-heritage/>
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- 24 https://rashid-international.org/downloads/RASHID_Fundamentalism_Women_Cultural_Rights.pdf
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- 27 <https://reliefweb.int/report/iraq/un-s-kubi-rejects-and-denounces-malicious-acts-against-election-integrity-particular>
- 28 Almkhtar, A. 2016. Conflict and urban displacement: the impact on Kurdish place-identity in Erbil, Iraq. In D. Sanderson, J.S. Kayden, and J. Leis, eds., *Urban Disaster Resilience: New Dimensions from International Practice in the Built Environment*. New York: Routledge, chapter 8.