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Research Assessment & Safeguarding of the Heritage of Iraq in Danger



The Implementation of Cultural Rights in Iraq

Submission for the United Nations Special Rapporteur
in the field of cultural rights on occasion
of the 10th anniversary of the mandate

About us

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

Much of Iraq's heritage has been lost forever. Militant groups have destroyed mosques, churches and shrines, smashed artifacts, bulldozed archaeological sites and illegally trafficked antiquities on an almost industrial scale. Iraqi cultural heritage has suffered grievous and in many cases irreversible harm.

To assist our Iraqi colleagues, we collect and share information, research and expert knowledge, work to raise public awareness, and both develop and execute strategies to protect heritage sites and other cultural property through international cooperation, advocacy and technical assistance.

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Cover image

Photo of the Temple of Hani and Nisaba, Shaduppum (Iraq)

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I) Specific issues highlighted by the mandate's work

1) The right to access and enjoy cultural heritage

a) 1999 Second Protocol to the 1954 Hague Convention and the Enhanced Protection system¹

RASHID International has identified the 1999 Second Protocol to the 1954 Hague Convention as a key instrument to address the vulnerability of important heritage during times of war. The major strengths of the Second Protocol are its clear definition of the military necessity exception to the general protection of cultural property, its creation of an international fund for the protection of cultural heritage in armed conflict and its inclusion of a workable system to protect outstanding heritage, called *Enhanced Protection*.

Developing nations such as Iraq - despite their undeniable wealth of heritage sites and artifacts - face great difficulties in elevating their cultural heritage to the World Heritage List due to administrative barriers and the significant financial burden associated with bringing successful nominations. The Enhanced Protection system provides an alternative with stronger legal protection (the World Heritage List itself confers no additional legal protection in wartime), easier access and potentially the same political visibility.

Iraq has not yet ratified the Second Protocol, though it is a State Party to the 1954 Hague Convention and its First Protocol. RASHID International has made it a priority to provide key policymakers in Iraq with reliable information on the Second Protocol and to advocate for ratification. An official statement summarizing our position is available.² We have seen many positive responses to our efforts and are hopeful that ratification will occur in the foreseeable future.

b) Technical assistance with cultural heritage matters³

A core component of RASHID International's mission is to assist local cultural heritage organizations and universities with developing cultural heritage projects and securing the necessary funds. The availability of local, regional and national funding sources for

1 Implementing recommendations: A/HRC/17/38, para 80 m); A/HRC/31/59, para 91 b), c), para 92 a); A/71/317, para 78 b), c), j).

2 <https://rashid-international.org/downloads/RASHID%20Statement%202nd%20Protocol-final.pdf>

3 Implementing recommendations: A/HRC/17/38, para 80 g), h); A/71/317, para 78 m); A/HRC/37/55, para 88 d), para 89 c).

cultural heritage protection measures is very limited in Iraq and international assistance is vital to even the most basic projects.

Cultural Heritage Network

In partnering with local and international universities, Dr. Rozhen Mohammed-Amin and Professor Roger Matthews developed a concept and secured over GBP 93,000 from UCL's Nahrein Network⁴ to establish a Cultural Heritage Network⁵ in the Kurdistan Region of Iraq. The project brings together cultural heritage stakeholders and experts from different sectors and decision-making levels in the Kurdistan Region of Iraq and aims to cover the rest of Iraq after the grant ends. In addition to regular networking, capacity building, training activities, public lectures on cultural heritage protection and management best practices and research, the project team engages in systematic data collection and research on the state of cultural heritage in the Kurdistan Region and, to a certain extent, the rest of Iraq. The project will also involve youth capacity building in cultural heritage research and networking through recruiting three qualified, unemployed graduates of related disciplines from local universities as paid interns. The project team will share the project's processes and outcomes with other local and international institutions aiming at replicating the network's objectives and activities in the rest of Iraq and/or other developing countries.

Restoration of Slemani Museum, Mutabchi and Azad Noori Bak

Dr. Simone Mühl, on behalf of the heritage authorities of Sulaimaniyah Province, successfully acquired EUR 100,000 in private institutional funding to conduct emergency renovations of the Slemani Museum, Mutabchi, and Azad Noori Bak, which were damaged during earthquakes in autumn 2017. Absent immediate measures, these significant cultural heritage sites would have suffered irreparable damage from the coming winter rains. Due to severe budgetary constraints, heritage authorities were unable to muster the funds on their own.

Refurbishment of pre-history exhibit in Slemani Museum

Dr. Rozhen Mohammed-Amin worked with Slemani Museum⁶ — the second largest museum dedicated to archaeology in Iraq — in order to acquire funding to refurbish the pre-history exhibit and undertake a visitor research to identify the underlying

4 <https://www.ucl.ac.uk/nahrein/>

5 <https://www.ucl.ac.uk/history/news/2018/aug/nahrein-network-announces-first-funded-research-projects>

6 <http://slemanimuseum.org/>

reasons for its low attendance, despite its significant collections. The project received a total of USD 50,000 in government assistance.

c) Educational measures⁷

Furthermore, RASHID International experts travel widely to raise awareness of Iraq's cultural heritage at local and international events. Dr. Rozhen Mohammed-Amin recently spoke about the state of Iraq's museums at the BRISMES 2018. She further presented a paper on historic preservation challenges and opportunities in Iraq, with focus on its Kurdistan Region, at the 11th International Conference on Inclusive Museums in Spain. Chief Legal Officer Seán Fobbe presented RASHID International's activities within the field of cultural rights and the wider international law framework during the 11th International Congress on the Archaeology of the Ancient Near East (2018) in Germany.

Professor Luca Peyronel is currently carrying out activities of public engagement, education and museum storytelling to promote the Erbil province cultural heritage, including the planning of a forthcoming project on public archaeology.

2) Equal enjoyment of cultural rights by women⁸

RASHID International places a special emphasis on engaging local Iraqi women in its cultural heritage projects and as active members of the organization.

Consequently, the members elected an Iraqi female academic to join the Board in April 2018, to serve in addition to her role as Chief Iraq Liaison Officer. With the addition of Dr. Rozhen Mohammed-Amin, RASHID International's Board achieved gender parity for the term 2018-2020 and recognized an Iraqi cultural rights champion for her work.

Through her research and cultural heritage projects, Dr. Mohammed-Amin strives to engage more women with accessing, participating in, and contributing to cultural life and cultural heritage protection and management. She founded and heads the Digital Cultural Heritage Research Group and has gathered a total of three female faculty members and young graduates to work on its projects.

Professor Roger Matthews secured an Erasmus+ Mobility Program Fund to train Iraqi cultural heritage academics and professionals in Reading. So far, the mobility program

7 Implementing recommendations: A/71/317, para 78 p); A/HRC/34/56, para 96 b).

8 Implementing recommendations: A/71/317, para 78 q); A/HRC/34/56, para 97 d), o); A/72/155, para 97 a), f), para 98 b), d), n).

is training a total of two female faculty members from the Digital Cultural Heritage Research Group at the Sulaimani Polytechnic University.

3) Writing and teaching of history and memorialization processes⁹

a) MENTICA

Funded by the European Research Council Advanced Grant scheme, the project MENTICA — Middle East Neolithic Transition: Integrated Community Approaches¹⁰ hosted at the University of Reading, UK, 2018-2023, involves high-level collaborative research into the early transition of human communities from mobile hunter-forager to settled farmer-villager, a process that happened first in the upland regions of Iraq and Iran from 10,000 BC. The project involves a significant component of community engagement in Iran and Iraq through activities such as collaborative planning and implementation of archaeological and heritage projects, including new museum galleries, visitor centres and programs of public outreach involving local, national and international stakeholder communities. Such engagement has the potential to contribute towards mutual appreciation of cultural diversity through providing deep-time perspectives rooted in the rich heritage and archaeology of the region.

b) Cultural Heritage Network

The Cultural Heritage Network project mentioned above will include awareness-raising public lectures and seminars on the role of cultural heritage in promoting respect, understanding, diversity, and inclusiveness in Iraq's societies to achieve sustainable peace and co-living.

c) Creating a mobile phone-based experience for Slemani Museum

Through the BISI-Nahrein joint visiting scholarship and the research support of the EU funded EMOTIVE project team members at the University of Glasgow, Dr. Rozhen Mohammed-Amin is working on developing and evaluating a mobile phone-based experience for the Slemani Museum that uses emotional storytelling for promoting

⁹ Implementing recommendation: A/HRC/37/55, para 88 e).

¹⁰ <http://www.czap.org/mentica>

protection and appreciation of local cultural heritage as well as respect and understanding for diversity and inclusiveness.¹¹

4) Obstacles to preventing the respect, protection and realisation of cultural rights¹²

Of major concern is the practice of non-transparent tendering procedures for building, conservation and renovation projects in Iraq, which enables companies without certificates and quality standards to work in this field. Together with lack of professional supervision this situation often causes serious damage to the architectural heritage, as recently seen with Madrasa Qubahan at Amedi.

Further obstacles to realizing cultural rights are caused by grand architectural plans in major cities which are subject to great pressure from developers. These developments sacrifice, without relevant professional discussion and negotiation with all stakeholders, complete historical neighborhoods to transform the city according to commercial interests, as the recent and ongoing destruction of the Arab and Khanaqa districts in Erbil show.

The construction of dams is a similar area of concern, due to their impact on great swathes of land and the ensuing loss of memory and perception of territory as a historic and natural landscape in which people found their roots. New dam projects should incorporate plans to minimize the risk of eradicating local communities and archaeological sites. Research on this issue has been carried out by the JPI project "Heritage and Threat" (HeAT), coordinated by Ingolf Thuesen.¹³

The problem of uncontrolled development of heritage resources is a major global challenge which we would like to see addressed by the Special Rapporteur.

11 <https://www.ucl.ac.uk/history/news/2018/may/nahrein-network-announces-first-visiting-iraqi-scholarships>

12 Relating to recommendations: A/HRC/17/38, para 80 b), c), e).

13 <https://ccrs.ku.dk/research/centres-and-projects/heat/projectoutline/>

II) Lessons learned and the way forward

1) Assessment of the implementation of laws and policies which address cultural rights¹⁴

RASHID International is currently analyzing Iraqi heritage laws and will publish an easy-to-read guidebook in the foreseeable future.

One of our findings has been that the current federal Antiquities Law in force, Law No. 55 of 2002,¹⁵ pursues the laudable goal of protecting cultural heritage with strong measures, but the impact on human rights goes too far in some respects. Certain crimes relating to antiquities carry the death penalty or life imprisonment, a response which is extreme, considering the severity of 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. Article 4 (7) of Law No. 55 of 2002 defines antiquities as movable and immovable property made by man and older than 200 years, as well as skeletons and remains of vegetation. Younger artifacts are referred to as 'heritage material' in the translation of Article 4 (8) of Law No. 55 of 2002.

While we greatly appreciate and encourage strong protection for antiquities, we consider 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 1975.¹⁶

2) Cooperation with other stakeholders¹⁷

RASHID International's membership includes representatives of many of the major universities of the West involved in researching the heritage and archaeology of Iraq. We are working to raise awareness within and across these powerful institutions of

14 Relating to recommendation: A/73/227, para 75 b).

15 The text of Law No 55 of 2002 is available in English here: <https://www.cemml.colostate.edu/cultural/09476/pdf/iraq-antiquities-law-2002.pdf>

16 The text of Law No 59 of 1936, as amended in 1974 and 1975, is available in English here: <https://www.cemml.colostate.edu/cultural/09476/pdf/Iraq-Antiquities-Law-1936-amend.rtf>

17 Implementing recommendations: A/HRC/37/55, para 88 a).

the importance of incorporating a cultural rights approach within all collaborative activity.

Our close cooperation with small and medium enterprises (SME) working at the cutting edge of heritage protection technology also contributes towards knowledge of and respect for an evolving cultural rights agenda in Iraq at local, national and international levels.

RASHID International further engages in constructive dialogue with the Iraqi Permanent Missions and Embassies in the UK, Geneva, and New York, in order to address cultural rights implementation, in particular through providing advice, knowledge and evidence relevant to Iraq's upcoming Universal Periodic Review of its human rights, with the aim of foregrounding the cultural rights agenda.

3) Emerging issue: the internet trade in antiquities¹⁸

The rising internet trade in antiquities is a global challenge that goes far beyond the ability of source countries to address on their own. Market countries, especially advanced economies, must develop strategies to combat the illegal trade in antiquities, many of which were illegally sourced in Iraq.

The specialist international legal framework comprises the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ('1970 UNESCO Convention') and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ('1995 UNIDROIT Convention'). The 1970 UNESCO Convention has found reasonable uptake,¹⁹ but the much stronger 1995 UNIDROIT Convention — which contains detailed provisions for the return of stolen and illegally exported cultural objects — is in desperate need of additional acceptance²⁰ among State Parties.

To combat the illegal trade in antiquities, RASHID International is spearheading an initiative called TIAMAT (Tracing Iraqi Antiquities to prevent Market Acquisition and Trading) to locate and identify Iraqi antiquities, as well as remove them from market circulation. We employ cutting-edge technological measures, provide assistance with creating public policy and undertake tailored legal measures.

Research projects in this area include MANTIS, a multidisciplinary study of archaeological looting in Iraq and Syria headquartered at the University of Chicago.²¹

18 Relating to recommendations: A/HRC/31/59, para 92 c); A/71/317, para 78 e); para 79 d).

19 Ratified by 134 States, see <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/states-parties/>

20 Only ratified by 45 States as of 18 October 2018, see <https://www.unidroit.org/status-cp>

21 <https://oi.uchicago.edu/research/projects/mantis/our-work>

Policy Briefs are available from the Antiquities Coalition on the problem of the internet trade in antiquities²² and promoting the idea of a 'pollution tax'²³ for market actors to counteract the cost of antiquity trafficking.

4) Recommendations for the Special Rapporteur to improve follow-up, implementation and effectiveness

a) Prioritize the Enhanced Protection system

We recommend that the Special Rapporteur make the promotion of the Enhanced Protection system and the ratification of the Second Protocol to the 1954 Hague Convention a priority of her mandate. The Second Protocol contains key legal advances in international humanitarian law and the Enhanced Protection system has the potential to be as significant as the World Heritage system, if it gains enough traction.

b) Country visit to Iraq

On 16 February 2010 Iraq issued a standing invitation to all thematic Special Procedures to visit the country.²⁴ As of October 2018, the Special Rapporteur in the field of cultural rights has not visited Iraq and no visits are scheduled.²⁵ A country visit would greatly strengthen the morale of the many individuals and institutions working to maintain, restore and promote the globally significant history and heritage of Iraq. It would further raise awareness of the importance of cultural rights, lack of knowledge being one of the major challenges to promoting cultural rights.

The unsettled security situation remains an obstacle to easy visiting and monitoring of human rights in Iraq, but RASHID International personnel regularly visit Iraq and would be pleased to facilitate a visit of the Special Rapporteur. RASHID International would like to issue a standing offer to the Special Rapporteur to provide logistical assistance, host a platform for meeting cultural rights defenders and enrich the Rapporteur's visit with our expert knowledge of the country, its heritage and its people.

22 <http://thinktank.theantiquitiescoalition.org/how-to-control-the-internet-market-in-antiquities-the-need-for-regulation-and-monitoring/>

23 <http://thinktank.theantiquitiescoalition.org/how-can-we-fight-against-antiquities-looting-and-trafficking/>

24 https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx#iraq

25 https://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=IRQ

c) Raise awareness of communication procedure in Iraq

Please note that only a single communication was ever sent to Iraq by the mandate.²⁶ The communication of 30 April 2014 was confidential, therefore no follow-up is possible.

We recommend that the Special Rapporteur, working with local and international stakeholders, take steps to make the communication procedure more widely known in Iraq, for example during a country visit. We further recommend the Special Rapporteur and OHCHR maintain adequate human resources to process and consider communications in a timely fashion.

²⁶ <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>