

**Michael Youash**  
**Project Director, Iraq Sustainable Democracy Project**

Much of what will determine the future of ChaldoAssyrians in Iraq will be decided with the adoption of a new constitution. Of course this is true for all Iraq's peoples, but it is most significant for the indigenous Christian ChaldoAssyrian population. Shi'a, Sunni and Kurd communities will weather the storm and adapt. ChaldoAssyrians do not have the demographics and political wherewithal to suffer at the ongoing rate, regrettably. The first part of this short article lays the context and thinking behind the events and processes of constitution drafting in Iraq. The second part addresses the basic elements of what ChaldoAssyrians must aspire towards constitutionally for their sake and that of all Iraq's people.

If present trends are allowed to continue, the marginalization of ChaldoAssyrians politically, economically and potentially in Iraq's social fabric will turn the stream of refugees into a flood. Hope is not lost, but being completely forthright about present conditions is vital. Over a month ago the ChaldoAssyrian National Council of America gave the same warning in ZINDA and its words are just as true today and being reaffirmed by events in Iraq in the build-up to finalizing a draft constitution for August 15<sup>th</sup>, 2005.

Defining fundamentally clear constitutional principles and instruments has been an ongoing area of work among ChaldoAssyrians, Iraqis and the international community. It is a strange twist of fate that ChaldoAssyrians find themselves as they do presently. After making some of the greatest contributions to mankind's civilizing project millennia ago as a sovereign society, they now have the chance to contribute to reestablishing prosperity and harmony in Iraq as its most vulnerable and indigenous community.

The conundrum for ChaldoAssyrians is overcoming popular perceptions of being negligible variables in Iraq's transition to democracy. The theoretical driver of the Iraq Sustainable Democracy Project's (ISDP) research is that to the contrary, ChaldoAssyrians and Iraq's other, real minorities (e.g. Turkmens, Shabaks, Yezidis, Mandaean and others) are potentially the best variable for leveraging the development of a genuine and sustainable democracy in Iraq. ChaldoAssyrians are, effectively, the lowest human rights common denominator of Iraq. ChaldoAssyrians endured ethnic cleansing, cultural genocide and religious-based targeting since Iraq's creation. If their most fundamental rights and basic needs receive redress constitutionally, those of all Iraqis will be guaranteed.

Constitution drafting in post-conflict societies is never easy. It sits on a continuum between two imperatives: devising a legal code with long-term stability-oriented calculations in mind on the one hand and resolving the more immediate sources of the ongoing conflict on the other. The actions of terrorists and Saddam's former henchmen are driving a process that biases the Coalition towards drafting a constitution rapidly with a view to undermining the pace of the insurgency. This means designing a constitution to resolve the sources of conflict and not laying the foundation for democratic sustainability.

It is with this cursory background in mind that attention can turn to necessary solutions.

Three pillars constitute the basis for securing the fundamental needs of ChaldoAssyrians. These are in the areas of: territorial federalism, legislative representation, and of course, religious and minority rights. These are treated sequentially below.

Territorial federalism literally means the redrawing of Iraq's internal political boundaries between states and then municipalities. Attention for now remains on the redefinition of Iraq's state boundaries. There are two extremes in this vociferous debate. One end of the continuum has those espousing a five to six state model (along with the preposterous model of the Kurdish Regional Government of a two-state confederation of Kurdistan and Arabistan). On the other, are proposals to retain the eighteen state arrangement if only to avoid the clear ethnic and sectarian tensions aroused by the redrawing of these lines.

ISDP research finds the best solution to be an eleven state model. The proposal here for eleven states acknowledges the 'tacit' ethnic and sectarian concerns of the Shi'a majority and the Sunni and Kurd super-minorities. It provides a modicum of justice in that it mitigates the effect of eighteen governorates used to divide peoples. It also reduces the cost ineffectiveness of sustaining eighteen governorates (with their requisite administrative and political apparatuses). Eleven states offers greater efficiency but accounts much more for mitigating the potential of ethnic ossification and subsequent secessionism (a certain outcome of the two, five and six state models). In this way it meets the three requirements of justice and feasibility that balance with satisfying historically grounded ethnic and sectarian concerns.

Four new states can be created from the nine in the southern swathe of land just below Baghdad. Baghdad would remain one state. The land just north of Baghdad from east to west can become three new states. Lastly, three new states can be carved from the territories in the far north. One of these must be delineated from the north and north eastern lands of modern Nineveh Province. This would sit astride the city of Mosul and sit against the southern boundaries of two states dominated by Kurdish populations. This new state is likely to be called Ashur.

This state of Ashur genuinely transcends all ethnic and sectarian divides. It surpasses Baghdad in that despite the capitol's heterogeneity, it will always be predominantly Arab. In this state, roughly north of the 36<sup>th</sup> parallel, is a land that consists of Shi'a and Sunni Arabs, Kurds, Turkmens, Shabaks, Yezidis, and ChaldoAssyrians with no group nakedly dominating the others (as would be the case in every other state). Ashur can be the only non-ethnically, non-religiously determined state and serve as a model for the rest of the country.

The proposed state of Ashur also affords entirely marginalized minorities such as Turkmens, Yezidis, Shabaks, and ChaldoAssyrians some degree of justice and comfort in having territorial representation that balances reasonably with their proportion of the

population. Federalism as a principle will then be fulfilled because it will reach all peoples – even on a territorial basis. This overturns the effort of previous Iraqi regimes to decimate these peoples, while not fundamentally prejudicing the needs of the three major groups (Shi'a, Sunni, and Kurd).

Legislative representation for ChaldoAssyrians does not just mean having a voice; but ensuring that the voice is legitimate and meaningful. Presently, the electoral system provides for a situation where five of the six ChaldoAssyrians in the National Assembly are elected on the list of other parties. This means they have no demonstrable constituency. Only one ChaldoAssyrian in the National Assembly can assert a legitimate electoral mandate because they can say who elected them and in what degree relative to the population. This is true despite the fact that well over one hundred thousand ChaldoAssyrians were systematically disenfranchised in Iraq and thousands more in Diaspora through the *ad hoc*, last minute planning in the out-of-country voting process.

The main source of illegitimate ChaldoAssyrian representation comes from parties who made their way to the National Assembly by aligning themselves with the Kurdish parties (four of the six to be exact). Without a demonstrable constituency, it is most likely that these parties are nothing more than mouthpieces for Kurdish interests. Indeed one of them, Mr. Ablahad Afram Sawa, has already publicly declared that he would be supportive of the creation of a new country called Kurdistan.

To ensure legitimate and meaningful representation, Iraq requires reserved seats for its most vulnerable minorities: ChaldoAssyrians, Turkmens, Yezidis, Shabaks and Mandaean, among others. These reserved seats can only be filled by parties elected to the National Assembly independently. This will ensure that ChaldoAssyrian members of parliament have a credible electoral mandate and guarantee ChaldoAssyrians a role in the political discourse in the parliamentary arena. Those filling reserved seats and/or elected to the National Assembly through parties that ran independently, must be seen as legitimate spokespersons for ChaldoAssyrians nationally.

Religious and minority freedoms are the most basic and fundamental of rights. As ChaldoAssyrians we have never enjoyed such rights in Iraq. The Transitional Administrative Law was extraordinarily successful in the promulgation of individual human rights and freedoms. It also went a great way to ensure group rights and freedoms. At the time of writing, it appears that neither of these rights will attain the same stature. Drafts of an Iraqi bill of rights are in circulation and have been translated. Analysis of these drafts indicate that the freedom of religion, thought, conscience, gender rights, expression, opinion, press, assembly and association are all diminished to one degree or another.

The new Iraqi constitution must maintain the human rights provisions in the TAL and explicitly seek adherence to the international human rights instruments to which the Iraqi state is a signatory. These basic rights are enunciated particularly in the International Covenant on Civil and Political Rights, as well as various other conventions and treaties.

Nonetheless, these rights were given effective articulation in the TAL and deviation from that standard is worrisome for sustainable democratic development in Iraq.

If Iraq becomes an Islamic state with Shari'a law a primary source of legislation, the constitution must develop means to protect ethnic and religious groups. Territorial and non-territorial protections/exemptions of non-Muslims and state and local spheres of government should be provided for constitutionally through opt-out clauses. There is precedent for territorial and non-territorial exemptions of religious and ethnic minorities from the laws governing a majority of the population and these must serve as paradigms for exempting ChaldoAssyrians and others from Shari'a law.

Constitutional guarantees for minorities must be that their ethnic, religious, cultural, and language rights will be respected and given robust enforcement. This means demanding that any act of government (at any level) prejudicial to the basic interests of ChaldoAssyrians, Turkmens, Mandaeans and others be counted as a human rights violation and subject to adjudication by a human rights court and then a constitutional court if necessary.

Minority and indigenous peoples' rights require allowances for education, language development and the use of language officially in areas where a group predominates. It also means ensuring that the constitutional provisions outlined under subjects such as territorial federalism and legislative representation are not undermined. Such provisions effectively guard against the marginalization of Iraq's most vulnerable minorities. Clarifying the importance of this in a bill of rights will reinforce the inviolability of these rights and make all Iraqis feel safer and a part of the national fabric.

Clearly the issues raised above do not exhaust the litany of constitutional considerations for ChaldoAssyrians. They are the most critical, however. It is important to retain perspective of what it means to design a political system in a post-conflict society. There are innumerable challenges to overcome and a population demanding government delivery. The government must be allowed to govern, and Shi'a and others will dominate such a government naturally. It is in everyone's interest to let government get on with the business of governing. It must, however, be accountable and respect the rights of minorities at the same time. This also offers a chance to lay the bedrock of a sustainable democratic transition in Iraq, with all the benefits to be had for its citizens, and those in neighboring countries.

*(This article arises from the research of the ISDP produced over the last few months. This culminated in the paper, "Constituting Democracy in Iraq: ChaldoAssyrians a Determinant for Sustainable Iraqi Constitutionalism." This can be accessed in the near future at the ISDP website.)*