



## CULTURE AND LANGUAGE RIGHTS – MOTHER-TONGUE EDUCATION IN THE KURDISH REGIONS

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### I. SUMMARY

The use of mother-tongue languages is a crucial means for minority groups to express their cultural identity. The use of mother-tongue languages in education, both as the language of instruction and as an academic discipline, is a basic right which serves to protect and promote this aim. Iran, Iraq, Syria and Turkey (hereinafter referred to as the “States”) are obliged under international human rights law and standards to guarantee this right. However, to varying degrees, these States are failing to fulfil their international legal obligations in this regard, resulting in many individuals from minority groups being denied the enjoyment of this and various other fundamental rights.

This Briefing Paper provides an overview of the use of mother-tongue education in the States mentioned above and provides some key recommendations on how to tackle language right issues which hinder conflict resolution in that region. The Briefing Paper is divided into five main parts: (i) an overview of the relevant obligations under international law; (ii) an overview of the national legal framework in each of the States; (iii) a discussion of the importance of the right to mother-tongue education; (iv) an analysis of the current status of the use of mother-tongue education in the States; and (v) key recommendations for governments, civil society organisations and the international community on how to resolve the language rights issues discussed in this Briefing Paper.

### II. INTERNATIONAL LEGAL OBLIGATIONS AND STANDARDS<sup>1</sup>

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<sup>1</sup> Please note that this Part II is not intended to be exhaustive.

The States are party to various international conventions and instruments which oblige them to protect and promote minority language rights. When read in conjunction with the universal right to education, mother-tongue education can be read as a right under international law. Without this, the rights to access education and to protect minority cultural identities would be severely restricted. The key provisions may be categorised under the following groups:

- Explicit provisions which expressly guarantee the universal right to education and minority language rights;
- Specific requirements to protect and promote the expression of minority cultures more generally;
- General non-discrimination provisions;
- Provisions which guarantee the right to freedom of expression; and
- Permissible limitations to the rights above.

### **The universal right to education and minority language rights**

The Universal Declaration of Human Rights 1948 (UDHR)<sup>2</sup> guarantees the right to education and recognises it as a tool in promoting understanding, tolerance and friendship amongst nations, racial or religious groups.<sup>3</sup> This fundamental right is reflected in several key international instruments to which the States are party.

The International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) is one such instrument as it guarantees the universal right to education and, in particular, recognises it as a medium which should be directed to strengthening respect for other fundamental rights and freedoms.<sup>4</sup> It demands that the education systems within the States meet a certain standard – namely that they must be available, acceptable, accessible and adaptable.<sup>5</sup> This effectively means, *inter alia*,

that: the States must take positive measures to ensure that education is culturally appropriate for minorities and is of a good quality;<sup>6</sup> educational institutions and programmes must be accessible to everyone within the State's jurisdiction without discrimination (including to the most vulnerable groups), in theory and in practice and both physically and economically;<sup>7</sup> education must be flexible so it can adapt to the needs of changing societies and communities;<sup>8</sup> and education must respond to the needs of students within their diverse social and cultural settings.<sup>9</sup> In applying these "*interrelated and essential features*", the student's best interests are the primary consideration.<sup>10</sup> The standards set by the ICESCR and the Committee on Economic, Social and Cultural Rights (CESCR)<sup>11</sup> therefore provide a strong case for mother-tongue education.

Article 13 of the ICESCR guarantees the right to academic freedom in that the States are obliged to respect the liberty of individuals to choose private schools for their children<sup>12</sup> or to establish and direct educational institutions<sup>13</sup>. Minority groups therefore have, at the very least, the right to private mother-tongue education. The States *may* lay down *minimum* standards for such schools or institutions.<sup>14</sup> However, this does not mean that the States may prohibit education in minority languages. Because the ICESCR and the opening paragraphs of Article 13 stress the principles of non-discrimination, and specifically highlight that the right to education should '*enable all persons to participate effectively in a free society*'<sup>15</sup> and promote understanding amongst all *ethnic* groups, as well as nations, racial and religious groups, States must ensure that the educational institutions do not lead to extreme disparities

<sup>2</sup> Although the UDHR has recommendatory status, it may be seen as evidence of state practice and therefore of customary international law.

<sup>3</sup> Article 26 UDHR

<sup>4</sup> Article 13(1) ICESCR

<sup>5</sup> CESCR, *General Comment 13: the right to education* (1999), E/C.12/1999/10, paragraph 6

<sup>6</sup> *Ibid*, paragraph 50

<sup>7</sup> *Ibid*, paragraph 6(b)(i)

<sup>8</sup> *Ibid*, paragraph 6(d)

<sup>9</sup> *Ibid*.

<sup>10</sup> CESCR, *General Comment 13: the right to education* (1999), E/C.12/1999/10, paragraph 7

<sup>11</sup> The CESCR is the independent body of experts which monitors the implementation of the ICESCR.

<sup>12</sup> Article 13(3) ICESCR

<sup>13</sup> Article 13(4) ICESCR

<sup>14</sup> Articles 13(3) and 13(4) ICESCR

<sup>15</sup> Article 13(1) ICESCR

of educational opportunities for minority groups<sup>16</sup>.

More specifically in relation to the Kurdish regions, although Turkey is a signatory to the ICESCR, it has reserved the right to interpret and apply the provisions relating to academic freedom in accordance with certain key provisions of its Constitution<sup>17</sup>. In practice, this has meant that, since Turkey's Constitution states that Turkish is the only official language of the State, no other language has been allowed to be used to deliver education, except for tuition in a foreign language. The CESCR has expressed its concern over this reservation and has recommended Turkey to withdraw it with a view to applying the provisions of the ICESCR and interpreting them in light of the jurisprudence of the CESCR.<sup>18</sup>

The Convention on the Rights of the Child 1989 (ICRC), another key instrument in this analysis, contains more explicit provisions on language rights in education. It requires the States to direct education to, *inter alia*, the development of respect for the child's parents, his or her own cultural identity, language and values, the national values of the country in which the child is living, the country from which he or she may originate and for civilisations different from his or her own.<sup>19</sup> In essence, the States must adopt a balanced approach to education, "*bridging many of the differences that have historically separated groups of people from one another*".<sup>20</sup>

Both Iran and Syria have made vague general reservations to the ICRC which may dramatically weaken the efficacy of the ICRC in each of these States. Iran has reserved the right to not apply any provision of the ICRC which is incompatible with "Islamic Laws". Similarly, Syria has reserved the right to not apply any provision of the ICRC which is

incompatible with "Syrian Arab legislation" and "Islamic Shariah principles".

Of particular importance is the International Covenant on Civil and Political Rights 1966 (ICCPR) which guarantees individuals from minority groups culture and language rights *in addition* to the other rights they are already entitled to as individuals.<sup>21</sup> However, Turkey has reserved its right to interpret this in accordance with its Constitution and the Treaty of Lausanne 1923, the latter of which only recognises non-Muslim minorities present in Turkey in 1923 and hence excludes Muslim minority groups, such as the majority of Kurds.

It should be noted at this stage that although Iran, Syria and Turkey have made reservations to certain provisions discussed in this Part II, such reservations would only apply to the rights contained in the relevant treaty provisions and not to those same rights which also form part of customary international law, the latter of which remain binding on the States.

Several other provisions and instruments also guarantee minority language rights and/or the universal right to education which, when read together, provide a strong case for mother-tongue education as a standalone human right: the ICRC<sup>22</sup>; the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD)<sup>23</sup>; and the UNESCO Convention against Discrimination in Education 1960 (CDE)<sup>24</sup>.

### **Protection and promotion of minority cultures generally**

The UDHR guarantees free participation in the cultural life of the community.<sup>25</sup> The ICESCR reflects this and guarantees the universal right

<sup>16</sup> CESCR, *General Comment 13: the right to education* (1999), E/C.12/1999/10, paragraph 30

<sup>17</sup> Articles 3, 14 and 42 of the Turkish Constitution, discussed in more detail in Part III.

<sup>18</sup> CESCR, *Concluding Observations: consideration of reports submitted by States parties under Article 16 and 17 of the Covenant* (2011), E/C.12/TUR/CO/1, paragraph 6(c)

<sup>19</sup> Article 29(1)(c) ICRC

<sup>20</sup> CRC, *General Comment No. 1: The Aims of Education* (2001), CRC/GC/2001/1, paragraph 4

<sup>21</sup> Article 27 ICCPR, *General Comment No. 23: the Rights of Minorities (Article 27)*, 8 April 1994, paragraph 1

<sup>22</sup> Articles 28 (universal right to education) and 30 (right of children from ethnic or linguistic minorities to enjoy his/her culture or use own language)

<sup>23</sup> Article 5 (right to education and training without distinction and prohibition/elimination of racial discrimination in all its forms) and Article 7 (obligation of States to adopt effective measures in teaching and education to combat racial discrimination and promote understanding, tolerance and friendship amongst racial or ethnic groups).

<sup>24</sup> Article 5(1)(c). Iraq and Iran are the only States out of those under consideration which have ratified/accepted this treaty.

<sup>25</sup> Article 27(1) UDHR

to take part in cultural life.<sup>26</sup> According to the CESCR, this right is “*intrinsically linked*” to the right to education through which individuals and communities may pass on their language and other cultural references.<sup>27</sup> It includes the right to express oneself in the language of one’s choice<sup>28</sup> and to seek, receive and share information on all manifestations of culture in the language of the person’s choice<sup>29</sup>. In particular, the States are required to adopt measures and “*spare no effort*” to ensure that educational programmes for minorities are conducted on or in their own language.<sup>30</sup> This ultimately stems from the obligation of the States to recognise, respect and protect minority cultures as an essential component of the identity of the States themselves.<sup>31</sup>

In addition, the ICCPR and the ICESCR guarantee the right to self-determination, namely the freedom to determine political status and economic, social and cultural development.<sup>32</sup> The States are required to promote the realisation of this right and respect it in conformity with the provisions of the UN Charter.<sup>33</sup> These are fundamental provisions which empower minority groups to determine how they are governed. The use of mother-tongue education may be seen as a part of self-determination.

The ICRC also provides some important guarantees which may be used in addition to the above to advocate for mother-tongue language rights.<sup>34</sup>

### Right to freedom of expression

The right to free expression is a separate category of rights which directly impacts on the right to mother-tongue education and it must be considered in conjunction with the above-mentioned minority rights.

<sup>26</sup> Article 15 ICESCR

<sup>27</sup> CCPR, *General Comment No. 21*, E/C.12/GC/21, paragraph 2

<sup>28</sup> *Ibid*, paragraph 15(a)

<sup>29</sup> *Ibid*, paragraph 16(b)

<sup>30</sup> *Ibid*, paragraph 27

<sup>31</sup> *Ibid*, paragraph 32

<sup>32</sup> Article 1 ICCPR and Article 1 ICESCR

<sup>33</sup> Article 1(3) ICCPR

<sup>34</sup> Article 8 (right to preserve identity without unlawful interference) and Article 31(1) (right to participate freely in cultural life)

The UDHR guarantees the right to freedom of expression, including seeking, receiving and imparting information and ideas through any media.<sup>35</sup> The ICCPR echoes this.<sup>36</sup> The right to freedom of expression includes teaching.<sup>37</sup> It also protects the means of publication for the expression, including books and pamphlets.<sup>38</sup> These are important clarifications as they permit the expression of minority language rights in academic literature. Crucially, each State may choose one or more national or official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one’s own choice.<sup>39</sup> It will later become apparent when considering the States’ constitutional laws that this clarification is significantly important.

The right to freedom of expression may be restricted, provided that such restrictions are lawful, proportionate and necessary for the respect of the rights or reputations of others or for the protection of national security, public order, public health or morals.<sup>40</sup> Disproportionate interference by a state is often the subject of legal cases before international bodies, such as the UN Human Rights Committee (CCPR)<sup>41</sup>. In *Ballantyne v Canada*, the CCPR considered that banning commercial advertising in one language to protect the language of a particular community was not “necessary” if the protection can be achieved in another way which does not hinder the right to freedom of expression.<sup>42</sup> Similar arguments may be used to challenge prohibitions against mother-tongue education.

The ICRC<sup>43</sup> contains similar provisions to the ICCPR on the freedom of expression.

<sup>35</sup> Article 19 UDHR

<sup>36</sup> Article 19 ICCPR

<sup>37</sup> CCPR, *Draft General Comment No. 34: freedom of opinion and expression* (2011), CCPR/C/GC/34/CRP.6, paragraph 10 (replacing CCPR General Comment 10). **As this guidance is a draft, it may be subject to change and therefore should be treated with appropriate caution.**

<sup>38</sup> *Ibid*, paragraph 11

<sup>39</sup> *Ballantyne v. Canada*, CCPR/C/47/D/359/1989 and 385/1989, 31 March 1993, paragraph 11.4

<sup>40</sup> Article 19(3) ICCPR and Draft General Comment No. 34: freedom of opinion and expression (2011), CCPR/C/GC/34/CRP.6, paragraph 38

<sup>41</sup> The CCPR is an independent body of experts which monitors the implementation of the ICCPR.

<sup>42</sup> *Ballantyne v. Canada*, CCPR/C/47/D/359/1989 and 385/1989, 31 March 1993, paragraph 11.4

<sup>43</sup> Article 13 ICRC

## **Anti-Discrimination Provisions**

The ICERD requires the States to take positive steps to eliminate racial discrimination in all forms and promote understanding between all races.<sup>44</sup> Racial discrimination includes distinctions based on race, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in any field of public life.<sup>45</sup>

In fact, where the circumstances so warrant, the States must take special and concrete measures in the social, economic, cultural and other fields to ensure adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.<sup>46</sup> In addition, the States must adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating racial discrimination.<sup>47</sup> Such provisions may be used to challenge discriminatory policies which deny minorities language rights in education.

In addition to the positive obligation to eradicate racial discrimination, the States are bound by: general anti-discrimination provisions which may be used in conjunction with other rights, such as the universal right to education or the right to freedom of expression; and the right to the protection of the law without discrimination. The UDHR, for example, guarantees the universal entitlement to the rights and freedoms set out in the UDHR without distinction of any kind, such as on the grounds of race, language, national origins or birth.<sup>48</sup> It also provides for the right to equality before the law, equal protection of the law and equal protection against discrimination in violation of the UDHR and against incitement to discrimination.<sup>49</sup>

<sup>44</sup> Article 2 ICERD

<sup>45</sup> Article 1(1) ICERD

<sup>46</sup> Article 2(2) ICERD

<sup>47</sup> Article 7 ICERD

<sup>48</sup> Article 2 UDHR

<sup>49</sup> Article 7 UDHR

Similar guarantees may be found in the ICRC<sup>50</sup>, ICCPR<sup>51</sup>, ICESCR<sup>52</sup> and CDE<sup>53</sup>.

## **Restrictions on the Rights Above**

The rights above may be subject to general restrictions. However, the UDHR makes it clear that limitations on human rights must be determined by law solely for the purpose of securing recognition and respect for rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.<sup>54</sup> Most importantly, however, nothing in the UDHR may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms in the UDHR.<sup>55</sup>

The ICESCR broadly follows this theme<sup>56</sup>. The ICCPR also makes it clear that limitations on the civil and political rights found in the ICCPR must be consistent with the State's other obligations under international law and must not involve discrimination solely on grounds of race, colour, sex, language, religion or social origin.<sup>57</sup>

These are key provisions as it will be discovered later in this Briefing Paper that several of the States restrict the enjoyment of minority language rights on the basis of preserving national unity and the territorial integrity of the State in question.

## **Non-legally binding instruments**

In addition to the above-mentioned treaties, the States are subject to various international non-legally binding instruments, the provisions of which elaborate on the obligations above. These include:

<sup>50</sup> Article 2(1) ICRC

<sup>51</sup> Articles 2 and 26 ICCPR

<sup>52</sup> Article 2(2) ICESCR

<sup>53</sup> Article 1(1) CDE

<sup>54</sup> Article 29(2) UDHR

<sup>55</sup> Article 30 UDHR

<sup>56</sup> Articles 4 and 5 ICESCR

<sup>57</sup> Article 4 ICCPR

1. the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992);<sup>58</sup>
2. the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003);<sup>59</sup>
3. the UN Declaration on the Rights of Indigenous People (2007);<sup>60</sup>
4. the 2000 Dakar Framework for Action: Education for All; and
5. the 2000 UN Millennium Development Goals.

### Regional Legal Obligations

Turkey entered into the **Treaty of Lausanne 1923** with **Britain, France, Italy, Japan, Greece, Romania and Serbia**. It is a fundamental regional instrument which governs the recognition of minorities in Turkey. Part III of the Treaty guarantees some fundamental minority language rights. These include: the full and complete protection of life and liberty without distinction of birth, nationality, language, race or religion;<sup>61</sup> the free use by any Turkish national of any language in private intercourse, commerce, religion, the press, publications of any kind or at public meetings;<sup>62</sup> and notwithstanding the existence of the official language (Turkish), the provision of adequate facilities to Turkish nationals of non-Turkish speech for the oral use of their own language before the courts.

With regards to language rights in primary schools more specifically, the Treaty also requires Turkey 'to grant in those towns and districts where a considerable proportion of non-Moslem nationals are resident, adequate facilities to ensure mother-tongue instruction'.<sup>63</sup>

A fundamental flaw with this Treaty is that it only recognises non-Muslim minority groups that were present in Turkey in 1923 and makes no mention of cultural, linguistic or ethnic minorities. For instance, as mentioned

previously, the majority of Kurds in Turkey, being Sunni Muslim, do not benefit from these important guarantees.

Turkey is also a party to the European Convention on Human Rights 1950 (**ECHR**). This instrument is highly significant as individuals subject to Turkey's jurisdiction have direct recourse (subject to meeting certain conditions) to the European Court of Human Rights (**ECtHR**) if they wish to complain of a breach of a convention right. However, the ECHR does not contain the same extensive guarantees for minority language rights as may be found in the international legal instruments discussed above.

The main provisions which may serve to protect mother-tongue education are: Article 10 (right to freedom of expression), Article 14 (prohibition against discrimination) and Article 2 of Protocol 1 (universal right to education). Article 14 is not a stand-alone right but may apply in conjunction with another article of the ECHR. Protocol 12 to the ECHR contains a free standing non-discrimination provision which supplements Article 14. Turkey signed this Protocol on 18 April 2001 but has not yet ratified it.

Practically speaking, the ECHR has had a limited impact on protecting minority language rights in education. The European Commission of Human Rights<sup>64</sup> had ruled that the right to freedom of expression does not '*guarantee linguistic freedom as such*' and does not guarantee the right to use the language of one's choice specifically in relation to administrative matters.<sup>65</sup> The ECtHR has also held that the universal right to education (enshrined in Article 2 of Protocol No. 1), read in conjunction with the prohibition against discrimination (enshrined in Article 14), does not guarantee the right to obtain instruction in a language of one's choice but rather secures the more limited right to education without

<sup>58</sup> The use of linguistic rights in education is enshrined in Article 4.

<sup>59</sup> Under Article 14, education is understood as a means of safeguarding cultural heritage. In this sense, language rights are used as both a tool and an aim in preserving cultural and linguistic heritage.

<sup>60</sup> Linguistic rights are enshrined in Articles 13 and 14.

<sup>61</sup> Article 38 Treaty of Lausanne

<sup>62</sup> Article 39 Treaty of Lausanne

<sup>63</sup> Article 41 Treaty of Lausanne

<sup>64</sup> From 1953 to 1998, individuals did not have direct access to the ECtHR. Instead, they would apply to the European Commission of Human Rights which would consider whether the application was admissible to the court. If the application was admissible and could not be settled in a friendly manner, the Commission would issue an opinion on whether a violation of a Convention right had occurred.

<sup>65</sup> *Fryske Nasjonale Partij and other v. Netherlands* (11100/84), 12 December 1985

discrimination on the grounds of, for example, language.<sup>66</sup>

However, there have been some signs of progress with regards to Article 10 (freedom of expression). The ECtHR found Turkey in breach of Article 10 for banning the production of a play conducted in Kurdish.<sup>67</sup> The ECtHR has also held that, having assumed responsibility for the provision of Greek primary schooling, the failure of the Turkish authorities in northern Cyprus to continue such schooling at secondary level violated the right to education under Article 2 of Protocol No. 1.<sup>68</sup> A similar judgment was held in *Irfan Temel and Others v. Turkey*<sup>69</sup> where Turkey was found in breach of the same provision for suspending 18 students from university for requesting the introduction of Kurdish language lessons. All these cases may suggest a willingness on the part of the ECtHR to extend the ambit of these provisions and guarantee mother-tongue education in the future.

The cases above which relate to Article 2 of Protocol No. 1 were decided before the conclusion of the Framework Convention for the Protection of National Minorities, the European Charter for Regional and Minority Languages<sup>70</sup> and the above judgments on Article 10. As the ECHR is a “living” instrument which evolves with the times, it may be argued that different conclusions might have been reached had those decisions on the right to education been delivered today.<sup>71</sup>

### III. NATIONAL LEGAL FRAMEWORK

As will be seen from this Part III, Iran, Syria and Turkey are failing to fulfil their international human rights obligations in guaranteeing language rights in education under their national legal frameworks. This is

<sup>66</sup> Case “relating to certain aspects of the laws on the use of languages in education in Belgium” (1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64), 23 July 1968, paragraph 11

<sup>67</sup> *Ulusoy and Others v. Turkey* (34797/03), 3 May 2007

<sup>68</sup> *Cyprus v. Turkey* (25781/94), 10 May 2001

<sup>69</sup> (36458/02), 3 June 2009

<sup>70</sup> Please note that Turkey has not signed either of these instruments.

<sup>71</sup> Kerim Yildiz and Georgina Fryer, *The Kurds, Culture and Language Rights*, August 2004, page 120

broadly due to their failure to formally recognise minority rights, rendering the weak guarantees in their domestic constitutions ineffective. This is further aggravated by wide restrictions entrenched in their constitutions based on the need to preserve the indivisibility and unity of these States, a tool which could be used by the respective authorities to suppress anything they regards as a sign of separatist intention.

Although Iraq’s constitutional framework is more in line with international human rights standards, Part V of this Briefing Paper will demonstrate that the right to mother-tongue education is not always applied in practice and that additional protections may need to be included in Iraq’s national legal framework to address some of those practical concerns.

### Turkey

Turkey’s 1924 Constitution was based on Ataturk’s vision of a new nationalism and a unified, centralised and ethnically homogenous State. Within this vision, Kurds in Turkey became the primary target of a campaign to assimilate minority groups with the Turkish ethnic majority. Article 3 of the Turkish Constitution therefore recognises Turkish as the country’s only official language. This is despite the fact that Kurds make up an estimated 23 per cent of its population.

Dominance of the Turkish language is echoed in Article 42 of the Constitution, which renders primary education compulsory for all citizens. It specifies that no language other than Turkish may be taught as a mother-tongue to Turkish citizens in any training or education institution. The scope of the right to education and the education of “foreign languages” (both as the language of instruction and as an academic discipline) is left to be determined by the State, effectively placing these rights within the discretion of the ruling government of the time. The requirement in Article 42 for training and education to be conducted along the lines of the principles and reforms of Ataturk under the supervision and control of the State demonstrates that even a reformist government which wants to promote the use of mother-tongue education is restricted constitutionally to the vision of a centralised, nationalist Turkish State.

As required by international standards, Article 10 includes a general prohibition against discrimination on the grounds of, inter alia, language, race, sect or any other consideration. However, read in conjunction with the Treaty of Lausanne, the provision is theoretically rendered ineffective in respect of Muslim minority groups, such as the majority of Kurds, who are not recognised by the Treaty.

Article 26 of the Turkish Constitution provides for the right to freedom of expression, subject to wide, vague restrictions such as the protection of **national security, public order and public safety, the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation.**

Articles 5 and 14 of the Constitution regard the unity of the Turkish State as a priority. Article 5 provides that the fundamental aims and duties of the State are to “safeguard the independence and integrity of the Turkish nation” and the “indivisibility of the country”. Further, Article 14 provides that none of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State within its territory and nation. Historically, for example, the use of the Kurdish language has been regarded by the State as a sign of separatist intention. Such provisions are therefore fundamental hurdles to securing minority language rights in education.

The absence of basic and general legislation against discrimination has not gone unnoticed by UN monitoring bodies. The CESCR has called on Turkey to adopt a general law on non-discrimination in line with the ICESCR and its General Comment on non-discrimination.<sup>72</sup> The CESCR has also expressed its concern about the absence of a broad legislative framework for the recognition of all minorities, including Kurds, and the protection of their rights. The CESCR formally urged Turkey to recognise all minorities in its territory and provide full opportunities for them to enjoy economic,

<sup>72</sup> CESCR, *Concluding Observations: consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant* (2011), E/C.12/TUR/CO/1, pages 2-3

social and cultural rights and adopt necessary plans of action for this purpose.<sup>73</sup>

## Iran

Farsi is the only official language of the Iranian State, despite its 6.5 million-strong Kurdish population. Official documents, correspondence, texts and textbooks must therefore be written in the Farsi language and script<sup>74</sup>.

There are several provisions in the Constitution which guarantee, to a limited degree, language rights in education. Article 30 guarantees the right to free education up to the completion of secondary education. Article 15 expressly permits the use of regional and tribal languages in the press and mass media, as well as for the teaching of such literature in schools, in addition to Farsi.

The Iranian Constitution contains a general prohibition against discrimination in Article 19 which provides that, “[a]ll people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights and colour, race, language and the like, do not bestow any privilege.” However, like Turkey, Iran does not formally recognise Muslim minorities<sup>75</sup> meaning that the guarantees above, which ostensibly appear to give Kurds certain language rights in education, theoretically have no effect. However, the Iranian government defends its position by stating that although minority groups are not named explicitly, they are implied in Articles 15 and 19 of the Constitution such that their existence is not denied.<sup>76</sup>

Article 24 of the Iranian Constitution protects the right to freedom of expression but is subject to undefined limitations which are left to be decided by the ruling government of the time: ‘...except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law’.

<sup>73</sup> CESCR, *Concluding Observations: consideration of reports submitted by States parties under Article 16 and 17 of the Covenant* (2011), E/C.12/TUR/CO/1, page 3

<sup>74</sup> Article 15 of the Iranian Constitution

<sup>75</sup> Article 13 of the Iranian Constitution

<sup>76</sup> Paragraph 1001, *Iranian State Report to the Human Rights Committee*, CCPR/C/IRN/3, 31 May 2010

Like Turkey, Iran regards the unity of the State as of fundamental importance. Article 9 of the Constitution provides that the freedom, independence, unity, and territorial integrity of the country are inseparable from one another and that their preservation is the duty of the government and all individual citizens. It also provides that no individual, group or authority, has the right to infringe the cultural independence or the territorial integrity of Iran under the pretext of exercising freedom. It is effectively left to the authorities to decide what constitutes a threat to the "territorial integrity" of the State.

Unlike the Turkish Constitution which was drafted on secular grounds, the Iranian Constitution is said to be based on "Islamic Principles". Article 20 provides that all citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria. In the absence of a definition for the term "Islamic criteria", which even in its normal sense is subject to interpretation, the Iranian authorities have a wide discretion in deciding whether the exercise of minority language rights is in accordance with Islamic principles.

## Syria

Arabic is the only official language of the State.<sup>77</sup> There are an estimated 1.5-2 million Kurds in Syria, which has a total population of around 18.2 million people.

The Constitution guarantees a right to education, including compulsory, free elementary education.<sup>78</sup> There are also some weak protections which may serve to guarantee minority language rights in education. Article 22 provides that the Syrian education system must ensure the continued progress of the people and shall meet the needs of their continued social, economic and cultural development. However, this does not in any way entrench minority language rights

<sup>77</sup> Article 4 of the Syrian Constitution

<sup>78</sup> Article 37 of the Syrian Constitution

or require that minority languages be taught or used in schools.

Article 25 provides that citizens are equal before the law in their rights and duties and that the State ensures the principle of equal opportunities for citizens. Article 45 also guarantees women all opportunities enabling them to fully and effectively participate in the political, social, cultural and economic life.

However, like Iran and Turkey, the guarantees above appear to have limited effect in light of Syria's policy towards its Kurdish population. A 1962 census stripped more than 120,000 Kurds of their nationality and continues to effect up to 360,000 Kurds today. In response to the Syrian uprising, Syrian President, Bashar Al-Assad, issued Decree No. 49 granting "foreigners" in the Kurdish region of Hasaka "Syrian Arab nationality" although there have been reports that this is not being implemented in practice.<sup>79</sup>

The Syrian Constitution fails to entrench the right to freedom of expression as it requires that the expression amounts to '*...constructive criticism in a manner that safeguards the soundness of the domestic and nationalist structure and strengthens the socialist system...'*. These conditions may be used by the Syrian authorities to suppress any Kurdish language rights which they regard as a threat to the State.

Also like Turkey and Iran, the Syrian Constitution contains restrictions based on the unity of the State. In fact, such restricts are explicitly applied to the education system. Article 21 provides that the educational and cultural system aims at creating a socialist, nationalist, Arab generation which is scientifically minded and attached to its history and land. Once again, the protection of minority language rights in education depends on the will of the State and whether it regards the expression of minority cultures as a sign of separatist intention.

## Iraq

<sup>79</sup> Support Kurds in Syria, *Delay in Implementing Citizenship Decree 49*, <http://supportkurds.org/news/delay-in-implementing-citizenship-decree-49/>, 21 April 2011, accessed 22 June 2011

Unlike Iran, Syria and Turkey, the Iraqi Constitution goes much further in guaranteeing mother-tongue education. This is partly due to the political history of the country and, put simply, the general approach taken by past governments of wanting to be seen as recognising minority rights, although this was not always translated in practice. For instance, rather than assimilate Kurds with a national Arab identity, which the Ba'ath Regime attempted in the 1980s and 1990s, Kurds in the Kurdish Autonomous Region enjoy a wide degree of independence, facilitating the enjoyment of their culture rights.

Following the US-led invasion of 2003, the Iraqi Constitution was adopted on 15 October 2005 in a national referendum. It is the only Constitution amongst the States which recognises a minority language (in this case, Kurdish) as an official language of the State.<sup>80</sup> The benefits of this are entrenched in the constitution and include: Kurdish and Arabic speech, conversation and expression in official domains, such as the Council of Representatives, the Council of Ministers, courts and official conferences<sup>81</sup>; and opening schools that teach the two languages, in accordance with educational guidelines.<sup>82</sup>

In addition, the Constitution recognises Turkomen and Syriac as official regional languages.<sup>83</sup> Further, each region or governorate in Iraq may also adopt any other local language as an additional official language if the majority of its population so decides in a general referendum.<sup>84</sup>

Article 34 guarantees the right to education. Primary education is mandatory. Free education in all its stages is also a right for all Iraqis. More specifically in respect of language rights, Article 4 expressly recognises the right to educate children in their mother-tongues in government educational institutions according to educational regulations or in any other language in private educational institutions. The implementation of this right is therefore partly left within the discretion of the

government of the time. As will be seen in Part V, this right is not exercised consistently throughout the State.

As required by international human rights standards, the Constitution includes a general anti-discrimination provision which states that Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, colour, religion, sect, belief or opinion, or economic or social status.<sup>85</sup> Article 125 also guarantees the administrative, political, cultural and educational rights of the various nationalities of Iraq.

Unlike Iran, Syria and Turkey, Iraq clearly recognises that it is made up of various minority groups. It does this by explicitly affording them certain rights, such as recognising Kurdish, Syriac and Turkoman as official languages (albeit the latter two are regional official languages), but also by using more pluralist rhetoric, such as, "*Iraq is a country of multiple nationalities, religions and sects*".

Article 38 requires the State to guarantee the right to freedom of expression in a way that does not violate public order and morality. This right is left to be regulated by law. The scope of the right to freedom of expression is therefore not clearly defined in the Constitution, leaving it to be determined by the ruling government of the time.

A fundamental difference between the Iraqi Constitution and that of the other three States is that the restriction or limitation of any of the rights or liberties stipulated in the Constitution is prohibited, except by a law or on the basis of a law, provided that the limitation or restriction does not violate the essence of the right or freedom. Although the unity of the State is important, this principle does not act as the main guide for the document.<sup>86</sup>

#### IV. IMPORTANCE OF MOTHER-TONGUE EDUCATION

##### Academic considerations

<sup>80</sup> Article 4 of the Iraqi Constitution

<sup>81</sup> Article 4(2)(B) of the Iraqi Constitution

<sup>82</sup> Article 4(2)(D) of the Iraqi Constitution

<sup>83</sup> Article 4(4) of the Iraqi Constitution

<sup>84</sup> Article 4(5) of the Iraqi Constitution

<sup>85</sup> Article 14 of the Iraqi Constitution

<sup>86</sup> Article 1 of the Iraqi Constitution

The beginning of a child's education is evidently a crucial moment in his/her development. As discussed in Part II of this Briefing Paper, both the language of instruction and the content of curricula should therefore meet certain international standards. As UNESCO claimed in 1953, "it is axiomatic that the best medium for teaching a child is his mother-tongue".<sup>87</sup>

Mother-tongue education confers several benefits: children are more likely to enrol and succeed in school, particularly in academic studies, and usually outperform children educated in a second language medium; literacy in a native minority language is a prelude for full literacy in the majority language; and a child's ability to learn additional languages increases and is more likely to emerge as a multilingual learner.<sup>88</sup>

When children receive instructions in their mother-tongue, their formative and cognitive skills improve.<sup>89</sup> Research conclusions show that the length of mother-tongue education is more decisive than any other factor in predicting the educational success of students.<sup>90</sup> On the other hand, when their linguistic rights are violated, their first language skills may be attenuated or even lost, causing direct and indirect consequences such as the loss of self-confidence and interest in learning and failure at school, which could lead to leaving school early.<sup>91</sup>

### Cultural considerations

Personal identity is often associated with speaking one's mother-tongue. Cultural and technical knowledge is embodied in language and so are the senses of belonging and affiliation. Suppressing the expression of mother-tongue languages means endangering both personal and community identities, losing connections with ancestors and

<sup>87</sup> UNESCO, *The use of vernacular languages in education* (1953), page 6

<sup>88</sup> Ball, *Enhancing learning of children from diverse language backgrounds: mother tongue-based bilingual or multilingual education in the early years* (2010), page 45

<sup>89</sup> Read, *Is younger better?* (2003)

<sup>90</sup> Magga et al, *Indigenous children's education and Indigenous Languages* (2004)

<sup>91</sup> Ball, *Promoting children's right to use their mother tongue in early education* (2008), page 2

dissipating cultural heritage.<sup>92</sup> Minority and indigenous languages preserve cultural, biological and medical diversity as they codify habits, customs and abilities that relate specifically to their communities.<sup>93</sup>

Teaching minority languages helps to prevent the forced linguistic and cultural assimilation of minority groups; cultural and linguistic pluralism can be seen as enriching society as a whole.<sup>94</sup>

### Political considerations

The use of mother-tongue languages is often a reflection of power. Decisions about which language(s) should be the medium of instruction and the treatment of children's home languages in schools carry significant responsibilities which contribute to determining conditions of socio-economic marginalisation and minoritisation.<sup>95</sup>

A lack of linguistic rights in education is responsible for the extinction of languages and people who disappear by virtue of forced assimilation.<sup>96</sup> Forced homogeneity, uniformity and homologation are worse responses to a political and economic crisis than pluralism and diversity, which are the best methods of problem-solving.<sup>97</sup>

### Economic considerations

Linguistic diversity has an economic value which the market rules of supply and demand usually fail to explain and fully address.<sup>98</sup> Cultural and linguistic services are a unique public good, which are usually undersupplied and therefore need specific intervention by the state to increase its level. Several studies confirm there are considerable advantages to

<sup>92</sup> *Ibid*, page 3

<sup>93</sup> Skutnabb-Kangas, *The stakes: linguistic diversity, linguistic human rights and mother-tongue based multilingual education or linguistic genocide, crimes against humanity and an even faster destruction of biodiversity and our planet'* (2009), p.19

<sup>94</sup> National Folklore Support Centre, *Mother-tongue Education* (2009)

<sup>95</sup> Universal Esperanto Association, *Report on Linguistic Right in the World: the Current Situation* (2008)

<sup>96</sup> *Ibid*

<sup>97</sup> Minority Groups International, *Report on Education Rights and Minorities* (1994)

<sup>98</sup> Mohanty et al, *Multilingual Education for Social Justice. Globalising the Local* (2009)

maintaining mother-tongue education for socio-economic mobility through psycho-educational development and for the social integration of linguistic minorities.<sup>99</sup> Moreover, school curricula based on bilingual programmes result in enhancing those human capabilities, such as cognitive and intellectual skills, which people resort to when addressing or facing poverty.<sup>100</sup>

Academics like Amartya Sen claim that the protection of linguistic rights in education represents a long-term asset for future investment, although this has been disputed.<sup>101</sup> Accordingly, linguistic skills trigger economic values like creativity, divergent and alternative thinking, flexibility and innovation.<sup>102</sup> States, however, usually claim that the costs exceed the benefits of language maintenance. On the contrary, solid studies and data prove exactly the opposite: related costs are usually modest and the benefits that are generated from linguistic promotion affect society as a whole.<sup>103</sup> It is precisely for this reason why linguistic diversity is fully accepted and fostered within a welfare rationale.<sup>104</sup>

### Impact on other human rights

**Right to peace and conflict prevention:** There is a long-lasting political bias which has to be questioned and challenged, namely that the use of minority languages strengthens the identity of minority groups, increasing moves towards separatism and threatening political unity.<sup>105</sup>

On the contrary, linguistic diversity is a key strategy for conflict prevention, as it may help to prevent political crises, the costs of which would be considerably higher than that of the policies previously considered.<sup>106</sup> The right of

<sup>99</sup> *Ibid*

<sup>100</sup> *Ibid*

<sup>101</sup> Skutnabb-Kangas, *The stakes: linguistic diversity, linguistic human rights and mother-tongue based multilingual education or linguistic genocide, crimes against humanity and an even faster destruction of biodiversity and our planet* (2009), page 16

<sup>102</sup> Amartya Sen as quoted in Skutnabb-Kangas (2009)

<sup>103</sup> Francois Grin, as quoted in Skutnabb-Kangas (2009)

<sup>104</sup> *Ibid*

<sup>105</sup> S. Thomas University, *Education through the medium of mother-tongue: the single most important means for saving indigenous languages* (2005)

<sup>106</sup> Mohanty et al, *Multilingual Education for Social Justice. Globalising the Local* (2009)

the child to be educated in his/her mother-tongue represents a deterrent factor for future conflicts: young generations should enjoy the right to peace and to grow up in a tolerant environment. If children are able to absorb from the very beginning these values, they are likely to spread and implement them in their adulthood.

**Right to participation in democracy and development:** Children who are not educated in their mother-tongue are deprived of a necessary skill for the enjoyment of another fundamental human right: participation. In order for a child to be heard and have his/her view taken into account, language as the medium of communication is essential.<sup>107</sup>

Children who are not able to speak the language of the community leaders and authorities will not be able to challenge these authorities or to replace them in the future according to the rules of the relevant state. They will not be able to voice the needs of the communities they could represent, because that voice would be incomprehensible. Accordingly, violations of linguistic rights in education could end up in restraining fundamental prerogatives like participation and political representation, thus seriously hindering evolution towards democracy and sustainable development.<sup>108</sup>

### Other issues at stake

**Family and community:** Children from minority groups need to know their mother-tongue in order to communicate effectively with their families and communities. Language in this sense is the medium of communication and participation; it the key for accessing those places and opportunities that contribute to the creation of self-identity.<sup>109</sup>

Unfortunately, when children are prevented from cultivating their first language, they are deprived of the ability to communicate with their grandparents or even with their parents. Therefore, the chain of historic and cultural transmission gets broken. Additionally,

<sup>107</sup> UNESCO, *Strong Foundations: Early Childhood Care and Education* (2007)

<sup>108</sup> *Ibid*

<sup>109</sup> National Folklore Support Centre, *Mother tongue education* (2009)

children could be perceived as different or even “aliens” and their chances to participate proactively in the decisions of a community and in leadership are seriously hampered.<sup>110</sup>

## V. MOTHER-TONGUE EDUCATION TODAY IN THE KURDISH REGIONS

With the exception of Iraq, the States prohibit Kurdish mother-tongue education in practice, both as an academic subject and as the language of instruction, except under certain circumstances<sup>111</sup>. The expression of Kurdish language rights is generally regarded as a sign of separatist intention which is viewed with hostility by the three States concerned. The weak protections in their domestic constitutions do not serve to protect these rights in practice. Iran, Syria and Turkey are therefore in breach of their international human rights obligations in this regard.

In Iraq, despite the fact mother-tongue education is provided in certain regions, it is not applied consistently throughout the State. Minority groups in Iraq are therefore not fully guaranteed the right to mother-tongue education in practice. Iraq may also be said to be in breach of its international legal obligations in this regard.

### Turkey

With a view to creating a uniform standard of education across Turkey, a concept which was integral to Ataturk’s vision of a nationalist, ethnically homogenised State, the use of the Kurdish language, both as a language of instruction and as a subject, was prohibited in Turkey. Structurally and ideologically, this education system in Turkey has remained largely intact. Indeed, an analysis of the main provisions of Turkish domestic law in Part III of this Briefing Paper showed that Turkish remains the country’s only official language and that no language other than Turkish may be taught as a mother-tongue in schools. The education of “foreign languages” (both as an academic discipline and as the language of instruction) is left up to the State to regulate.

<sup>110</sup> *Ibid*

<sup>111</sup> Turkey now offers Kurdish studies in one of its universities and has removed the main legal hurdle to private Kurdish language courses. However, students must be over the age of 18 and instruction in Kurdish is still prohibited.

No minority language is taught as a foreign language in Turkish public schools.<sup>112</sup> In 2002, Turkish domestic law was amended so as to allow the opening of private courses for the learning of different languages and dialects used traditionally by Turkish citizens in their ordinary lives.<sup>113</sup> Private Kurdish language courses have since been initiated, the first opening in Batman on 1 April 2004.<sup>114</sup> There have also been plans to open Kurdish language and literature departments in Turkey’s main universities.<sup>115</sup> For instance, on 11 October 2010, Mardin Artuklu University began a three-month Kurdish literature and culture course for 50 graduate students.<sup>116</sup> In December 2010, a textbook entitled “Secondary Education Kurdish Language and Literature Textbook”, described as “*the first of its kind in the country*”, was also published.<sup>117</sup>

Despite such encouraging developments, a fundamental problem with the provision of private Kurdish language courses is the money and time needed to sustain the system. Lack of attendance on these grounds is often mistakenly portrayed by the government as a lack of interest to learn the Kurdish language.<sup>118</sup> In addition, most Kurds are interested in first seeing Kurdish as a language of instruction and then possibly continuing to study it as a language when they come of age. The provision of Kurdish education in public schools therefore remains a priority. The need is particularly prevalent in the Kurdish region

<sup>112</sup> Minority Rights Group International, *Forgotten or Assimilated? Minorities in the Education System of Turkey*, by Nurcan Kaya, 2009, page 6

<sup>113</sup> Article 11 of Law No. 4771 amending Law No. 2923

<sup>114</sup> Minority Rights Group International, *Forgotten or Assimilated? Minorities in the Education System of Turkey*, by Nurcan Kaya, 2009, page 18

<sup>115</sup> Today’s Zaman, 6 January 2009, [http://www.todayszaman.com/newsDetail\\_getNewsById.action?load=detay&link=163330](http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&link=163330), last accessed on 14 June 2011

<sup>116</sup> US Department of State, Bureau of Democracy, Human Rights and Labour, 2010 Human Rights Report: Turkey, 8 April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, last accessed on 14 June 2011

<sup>117</sup> Today’s Zaman, *Textbook on Kurdish to Help Diversify Approach in Education System*, <http://www.todayszaman.com/news-230048-textbook-on-kurdish-to-help-diversify-approach-in-education-system.html> 19 December 2010, last accessed 22 June 2011.

<sup>118</sup> The Christian Science Monitor, *Opened with a Flourish, Turkey’s Kurdish Language Schools Fold*, <http://www.csmonitor.com/2005/1005/p07s02-woeu.html>, 5 October 2005, last accessed 22 June 2011

of south-eastern Turkey; for instance, an estimated 90 per cent. of the population in Diyarbakir is Kurdish<sup>119</sup> although the schools there continue to teach in Turkish.

Whilst Turkey permits private and public schools and universities to teach in languages such as English, German, French and Italian,<sup>120</sup> Turkish Prime Minister, Recep Tayyip Erdogan, continues to reject calls to introduce Kurdish as a language of instruction in Turkish schools.<sup>121</sup> The final resolutions of the EU-Turkey Civic Commissions' 6<sup>th</sup> International Conference in Brussels reiterated its call for Turkey and the EU to develop and promote a strategic plan for, *inter alia*, mother-tongue education.<sup>122</sup> However, **demands for mother-tongue education are regarded by the State as a threat to national security and, in fact, as a barrier to education. For example, students Hasan Boztemir and Yasemin Acer, who were reportedly charged with "making propaganda for an illegal organization" and "hindering education", were sentenced to 10 years and seven months in prison each for protesting for mother-tongue education.**<sup>123</sup>

In the run up to Turkey's general election which took place on 12 June, the pro-Kurdish political party, BDP, called on Kurds **in Turkey to stage acts of civil disobedience in protest of the ruling AKP's continuing failure to effectively address the "Kurdish question". The demand for Kurdish language rights in both public and private schools was one of the aims of this campaign.**<sup>124</sup> However, there are numerous reports of the Turkish police raiding these tents and adopting extreme measures

(such as the use of pressurized water and pepper spray) to disperse crowds<sup>125</sup>. The Movement for Research on the Kurdish Language, Development and Education (TZP-Kurdî) called for a boycott of schools from 20 to 24 September 2010 in protest against the Government's language policy.<sup>126</sup>

Women from minority groups are often particularly vulnerable to discrimination. The CESCR considers that women in Turkey continue to be treated unequally from men and has called on Turkey to raise public awareness about gender equality and to adopt the necessary measures, legislative or otherwise, with a view to changing prejudices and perception about gender roles.<sup>127</sup> It has also called on Turkey to monitor, in collaboration with civil society organisations, the impacts of all measures taken on the enjoyment of economic, social and cultural rights of women by collecting specific data on the results of all its programmes and measures to promote gender equality.<sup>128</sup> Although not directly related to the provision of Kurdish language rights in education, the finding is significant as it suggests that Kurdish women and girls face an extra hurdle in the plight to securing their language rights.

## Iran

The approach of the Iranian authorities was made clear in its most recent State Report to the CESCR in November 2009. The Iranian Expediency Council is reported as having underlined the need for laying the ground for

<sup>119</sup> KHRP, *Report of the KCK Trial, Diyarbakir, Turkey*, March 2011, page 3

<sup>120</sup> Minority Rights Group International, *Forgotten or Assimilated? Minorities in the Education System of Turkey*, by Nurcan Kaya, 2009, page 9

<sup>121</sup> ANF, <http://www.info-turk.be/385.htm#education>, 24 September 2010, last accessed 22 June 2011

<sup>122</sup> <http://www.eutcc.org/articles/6/document389.ehtml>, last accessed on 14 June 2011

<sup>123</sup> FIRAT New Agency, (28 April 2011), "Students Sentenced to Prison for Demanding Education Rights", <http://en.firatnews.com/index.php?rupel=article&nucelID=2071>, last accessed 07-06-2011.

<sup>124</sup> Kurdish Info, 9 April 2011, <http://www.kurdish-info.eu/News-sid-Civil-Disobedience-and-Democratic-Resolution-Tents-15-Dead-338-Detained-16689.html>, last accessed on 14 June 2011; AFP, 6 April 2011, <http://www.kurdish-info.eu/News-sid-Civil-Disobedience-and-Democratic-Resolution-Tents-15-Dead-338-Detained-16689.html>, last accessed on 14 June 2011

<sup>125</sup> Kurdish Info, *Democratic solution tent met with repression*, <http://www.kurdish-info.eu/News-sid-Democratic-Solution-Tent-met-with-repression-16593.html>, 29 March 2011, last accessed 22 June 2011, ANTENNA Freedom of Expression Weekly Bulletin, Issue 13/11, 1 April 2011, Hurriyet Daily News, *Police Clash with Pro-Kurdish BDP protesters in SE Turkey*, <http://www.hurriyetdailynews.com/n.php?n=police-clashed-with-bdp-protesters-member-of-parliament-dragged-on-square-2011-04-08>, 8 April 2011, last accessed 22 June 2011, Kurdish Info, *Civil Disobedience and Democratic Solution Tents*, <http://www.kurdish-info.eu/News-sid-Civil-Disobedience-and-Democratic-Resolution-Tents-15-Dead-338-Detained-16689.html>, 9 April 2011, last accessed 22 June 2011

<sup>126</sup> ANF, <http://www.info-turk.be/385.htm> - PIK, 13 September 2010, last accessed 22 June 2011

<sup>127</sup> CESCR, *Concluding Observations: consideration of reports submitted by States parties under Article 16 and 17 of the Covenant* (2011), E/C.12/TUR/CO/1, paragraph 14

<sup>128</sup> CESCR, *Concluding Observations: consideration of reports submitted by States parties under Article 16 and 17 of the Covenant* (2011), E/C.12/TUR/CO/1, p.4

dialogue amongst religions and sects to deepen common teachings and avoid focusing on points of divergence.<sup>129</sup> The Council is also reported to have noted that the Iranian people from every class, ethnic group, language and religion are a single nation and are to be protected within the framework of respect for the consolidation of national culture.<sup>130</sup> It considered that in order to promote national culture in all executive policies, consideration must be given to processes that bolster social solidarity and harmonise cultural elements and the national culture.<sup>131</sup> In effect, Iran has adopted an approach similar to that of Turkey of assimilating Kurds within a nationalist, albeit “Islamic”, standardised State.

It therefore comes as no surprise that the weak protections in the Iranian Constitution do not serve to protect or promote the use of Kurdish language rights in education in practice. The Kurdish language is neither used as the language of instruction nor as an academic discipline in Iranian schools<sup>132</sup>.

Recent human rights reports have identified that those who campaigned for recognition of minorities’ economic, social and cultural rights faced systematic threats, arrests and imprisonment<sup>133</sup> and that the Iranian government restricts cultural activities amongst Kurds<sup>134</sup>. Iran’s clampdown on Kurdish language rights in schools was demonstrated when physics teacher, Ali Hesami, was arrested in 2009 for teaching his students in their native language in the Kurdish city of Divandareh. He was sentenced to 81 lashes and two years in prison. Hesami was also fired from his job.<sup>135</sup> Further, in January 2008, Amnesty International reported that at least three directors of pre-school

childcare facilities in the Kordestan province had been summoned to the regional governorate on grounds that they had permitted the teaching of a “non-national language”.<sup>136</sup> A non-governmental organisation, Soma, which used Kurdish in pre-schools in Sanandaj and Mahabad, was also reportedly closed by the authorities in early 2008.<sup>137</sup>

The urgent need for Kurdish language rights in education is reflected in the appalling fact that 70 per cent of Iranian Kurds are illiterate, making them the second least literate minority group living in Iran.<sup>138</sup> The economy of the Kordestan region is based on agriculture and livestock farming, making it one of the most deprived regions in the country.<sup>139</sup> As envisaged in Part IV of this paper, limited access to language rights in education is likely to have had a profound impact on the ability of Iranian Kurds to enjoy other social, economic and cultural rights, contributing to this situation.

## Syria

Kurds in Syria face similar barriers to those in Iran when it comes to exercising their language rights in schools. Despite the fact that an estimated 8.5-10% per cent of the Syrian population are Kurds<sup>140</sup>, recent human rights reports have shown that they continue to experience identity-based discrimination, including restrictions on use of their language and culture.<sup>141</sup>

Like Iran, Syrian authorities prohibit the teaching of Kurdish in schools and the use of Kurdish as the language of instruction.<sup>142</sup> It has been reported that whilst Assyrian and

<sup>129</sup> CESCR, *Country Report: Iran. Implementation of the ICESCR, Second periodic reports submitted by States parties under Articles 16 and 17 of the Covenant* (2011), E/C.12/IRN/2, 3 November 2009, Paragraph 497

<sup>130</sup> *ibid*, Paragraph 498

<sup>131</sup> *ibid*

<sup>132</sup> Kerim Yildiz and Georgina Fryer, *The Kurds, Culture and Language Rights*, August 2004, page 249

<sup>133</sup> Amnesty International, *Annual Report 2011, Iran, Section on Discrimination – ethnic minorities* (2011)

<sup>134</sup> Human Rights Watch, *World Report 2011: Treatment of Minorities* (2011)

<sup>135</sup> BRWSKA News, *A Physics Teacher imprisoned for Teaching in Kurdish*, <http://www.brwska.org/en/index.php?news=478>, 10 March 2009, last accessed 07 June 2011

<sup>136</sup> Amnesty International, *Iran: Human Rights Abuses against the Kurdish Minority* (2008), page 13

<sup>137</sup> Page 13, Amnesty International, ‘Iran: Human Rights Abuses against the Kurdish Minority’ (2008)

<sup>138</sup> <http://www.multicsd.org/doku.php?id=kurdish#language>, Multicultural Topics in CSD, last accessed 14 June 2011

<sup>139</sup> Amnesty International, *Iran: Human Rights Abuses Against the Kurdish Population*, <http://www.amnesty.org/en/library/asset/MDE13/088/20/08/en/d140767b-5e45-11dd-a592-c739f9b70de8/mde130882008eng.pdf>, July 2008,, last accessed 22 June 2011

<sup>140</sup> Multicultural Topics in CSD Kurdish Homeland, last accessed 22 June 2011

<sup>141</sup> Amnesty International, ‘Annual Report 2011, Syria, section on Discrimination, Kurdish minority’ (2011)

Armenian minority groups are permitted to run their own private schools and teach their mother-tongue,<sup>143</sup> private Kurdish schools and teaching of the Kurdish language are not tolerated.<sup>144</sup>

The prohibition of Kurdish education in schools has contributed to the fact that many fluent Kurds are illiterate<sup>145</sup>. Literacy rates amongst Kurds in Syria are only slightly higher than those in Iran.<sup>146</sup>

Like Iran, those who exercise language rights in schools risk being prosecuted by the State. In 2009, at least three persons were arrested because they had carried out teaching of the Kurdish language.<sup>147</sup>

### Iraq

Unlike Turkey, Syria and Iran, the Kurdish language is used both as the language of instruction and as an academic discipline in the KRG. The education of the Kurdish language at university level transcends the territorial boundaries between the KRG and central Iraq. Both Salahaddin University in Arbil and Baghdad University offer courses on the Kurdish and Arabic languages. Further, the Iraqi Ministry of Education is reportedly writing a book on the Kurdish language to be adopted in Iraqi primary schools in 2012 – 2013.<sup>148</sup> The formal recognition in the Iraqi

Constitution of Kurdish as an official language of the State has undoubtedly facilitated this.

The recognition of Kurdish language rights, as compared to the standardised approach taken by Turkey, Iran and Syria, has clearly contributed to creating a comparatively multicultural environment in Iraq. However, this does not mean that the use of minority language rights in education in Iraq is without threat. Although Kurds in Iraq do not face the same issues as those in the other three States, the future of Kurdish language rights is by no means secure, particularly in the disputed region of Kirkuk. Furthermore, the fact that both Arabic and Kurdish are regarded as official languages of the state presents its own set of unique problems.

Tensions in the disputed area of Kirkuk pose a significant threat to the realisation of mother-tongue education in that region. By way of a brief background in respect of Kirkuk, the Ba'ath party expelled many of the region's Kurdish inhabitants and imported Arabs to take their place as part of its "Arabisation" policy.<sup>149</sup> All schools which taught in Kurdish were closed down as part of this movement.<sup>150</sup> Many of Kirkuk's Kurdish inhabitants who had been expelled returned after the invasion by coalition forces in 2003.<sup>151</sup> One of their immediate demands was the provision of mother-tongue education.<sup>152</sup>

However, a balance needs to be struck in meeting the demands of the different ethnic groups in Iraq. In Ninawa<sup>153</sup>, for example, Iraqi MP and Ninawa representative, Wesal Salim, is reportedly advocating the use of *both* Arabic and Kurdish in the disputed areas of Iraq in order to cater for the different ethnic minorities which make up the population and to allay fears of non-Kurds that their children may be enrolled in Kurdish-speaking schools.<sup>154</sup> Arab

[schools&catid=25:iraq&Itemid=386](#), last accessed on 14 June 2011

<sup>149</sup> Page 70, "The Kurds, Culture and Language Rights", Kerim Yildiz and Georgina Fryer, August 2004

<sup>150</sup> *ibid*

<sup>151</sup> Page 243, *ibid*

<sup>152</sup> *ibid*

<sup>153</sup> Ninawa is a province in northern Iraq, the capital of which is Mosul. Various ethnic groups, such as Arabs, Kurds, Assyrians and Yazidis live in the region.

<sup>154</sup> Assafir Press, 11 May 2011, [http://www.assafirpress.com/index.php?option=com\\_content&view=article&id=976:politicians-warn-](http://www.assafirpress.com/index.php?option=com_content&view=article&id=976:politicians-warn-)

<sup>142</sup> Human Rights Watch, 'World Report 2011: Discrimination and Repression against Kurds' (2011)

<sup>143</sup> LandInfo, *Kurds in Syria: Groups at Risk and Reactions Against Political Activists*, (2010), [http://www.landinfo.no/asset/1513/1/1513\\_1.pdf](http://www.landinfo.no/asset/1513/1/1513_1.pdf), p.6

<sup>144</sup> LandInfo, *Kurds in Syria: Groups at Risk and Reactions Against Political Activists* (2010), [http://www.landinfo.no/asset/1513/1/1513\\_1.pdf](http://www.landinfo.no/asset/1513/1/1513_1.pdf) p.12, <http://www.damascusbureau.org/?p=864> 27 July 2010, last accessed 16 June 2011

<sup>145</sup> Human Rights Association of Syria, *The Effect of the Denial of Citizenship of Syrian Kurds (November 2003)*, on page 255 of "The Kurds, Culture and Language Rights", Kerim Yildiz and Georgina Fryer, August 2004

<sup>146</sup> Kurdish Society and Culture: An Annotated Bibliography, Lokman I. Meho and Kelly L. Maglaughlin (2001), in *Multicultural Topics in CSD, Kurdish Homeland*, <http://www.multicsd.org/doku.php?id=kurdish#language> last accessed 09 June 2011

<sup>147</sup> LandInfo, 'Kurds in Syria: Groups at Risk and Reactions Against Political Activists' (2010), [http://www.landinfo.no/asset/1513/1/1513\\_1.pdf](http://www.landinfo.no/asset/1513/1/1513_1.pdf) p.17

<sup>148</sup> *Kurdish Language to be Studied in Iraqi Schools*, 17 April 2011, PUKmedia, [http://www.pukmedia.com/english/index.php?option=com\\_content&view=article&id=7464:kurdish-language-to-be-studied-in-iraq-](http://www.pukmedia.com/english/index.php?option=com_content&view=article&id=7464:kurdish-language-to-be-studied-in-iraq-)

students who are attracted by the relative stability of the north may even find themselves at a disadvantage in the KRG, having limited knowledge of the Kurdish language<sup>155</sup>. A report by the Institute of War and Peace Reporting also revealed a “*growing language gap*” between Iraqi Kurds and Iraqi Arabs, in that few young Kurds speak Arabic and even fewer young Arabs learn Kurdish.<sup>156</sup>

**In central Iraq, the future of mother-tongue education faces a different threat: a lack of financial investment.<sup>157</sup> Like the private school initiatives in Turkey, under-resourced or poorly-financed Iraqi schools which teach or teach in a minority language, risk closure<sup>158</sup>.**

It is clear that although the Iraqi national framework guarantees mother-tongue education, the implementation of the dual-language policy in practice is not consistent throughout the State. Coupled with the lack of investment, this in turn hinders conflict resolution, and can even contribute to, rising tensions amongst the different ethnic groups. As mentioned in Part III above, additional protections may need to be included in Iraq’s national legal framework to address some of these practical concerns, particularly where the scope of language rights are left within the discretion of the State and are therefore vulnerable to repeals in the future, depending on the policies of the ruling government of the time.

[of-imposing-kurdish-language-on-school-teaching-in-northern-iraq-disputed-areas-&catid=13:politics&Itemid=26](http://www.iwpr.net/report-news/northern-iraq-disputed-areas-&catid=13:politics&Itemid=26), last accessed on 14 June 2011

<sup>155</sup> Hama, S., (21 February 2005), ICR Issue 63, “*Northern Iraq’s Babel of Tongues*”, <http://iwpr.net/report-news/northern-iraqs-babel-tongues>, last accessed 14 June 2011

<sup>156</sup> Institute for War and Peace Reporting, 29 November 2009, ICR No. 306, 24-Sep-09 <http://iwpr.net/report-news/iraq-language-gap-probed>, last accessed on 14 June 2011

<sup>157</sup> Shafaq News, 14 April 2011, <http://www.shafaq.com/en/news/39-news/1057-some-schools-in-baghdad-refuse-kurdish-language-teaching>, last accessed on 14 June 2011

<sup>158</sup> Kurdistan News Agency, MISC, (23 October 2010), “*Kurdish Schools in Duzkhurmatu Threatened with Closure*”, <http://www.aknews.com/en/aknews/3/190370>, last accessed 10 June 2011

## VI. CONCLUSIONS AND RECOMMENDATIONS

The States are, to varying degrees, failing to comply with their international legal obligations in securing mother-tongue education rights, both in theory and in practice. The issue in Iran, Syria and Turkey fundamentally stems from the continued unwillingness of the respective governments to recognise minority groups, broadly due to an ingrained fear of disunity of the nation state. Iraq on the other hand explicitly recognises minority groups in its Constitution, which in theory immediately affords them the moderate protections therein. However, there is a stark inconsistency in the application of mother-tongue education rights in Iraq such that minority groups are in practice denied the enjoyment of this right. The denial of mother-tongue education is a significant hurdle towards achieving conflict resolution in the Kurdish regions. In order to address this pressing issue, KHRP makes the following recommendations:

### For Governments in the Kurdish regions:

- To amend their domestic legislation in line with international human rights obligations and standards, in particular:

- for Turkey to retract reservations from the ICESCR and other relevant conventions which require it to interpret its international obligations in accordance with the Treaty of Lausanne and its Constitution;

- for Iran, Syria and Turkey to formally recognise Muslim minority groups within their jurisdiction, entrenching their recognition in each of their Constitutions such that general anti-discrimination provisions and universal rights to education apply to them;

- for Iran, Syria and Turkey to formally recognise Kurdish as an official language and entrench mother-tongue education rights in their Constitutions;

- to amend broadly worded limitations based on nationalism or on the unity of the State and to ensure that the limitations meet the strict criteria set out in the relevant international conventions;
- develop a suitable political environment to encourage local NGOs, human rights organisations and civil society groups to monitor and establish appropriate frameworks to implement the reforms above;

▪ For Turkey to honour the obligations which follow from EU accession negotiations, including the Copenhagen Criteria, in order to protect and respect minority rights generally;

▪ Introduce further training for the judiciary, prosecutors, teachers and state officials regarding international human rights standards in order to ensure that they are aware of, and implement, the State's obligations with respect to minority language rights;

▪ To conduct research and develop accurate records of the financial investments made into securing mother-tongue education in order to monitor and ensure that sufficient resources are being allocated to the areas in need;

**For local NGOs, human rights organisations and civil society groups:**

▪ Document and highlight violations of minority language rights to provide up-to-date information that can be shared with governments and other NGOs and used in reporting to international monitoring bodies;

▪ Work across disciplines so that lawyers, campaigners, issue-based groups, teachers and others can work

together using a variety of tools to address the issues;

**For the international community:**

▪ Urge the Governments of the Kurdish regions to fulfil their international legal obligations with regards to minority language rights;

▪ Continue to closely monitor whether Turkey is satisfying the Copenhagen Criteria and to exert considerable influence to ensure that Turkey reforms its educational policies to meet the requirements of EU accession;

▪ Support the governments of the Kurdish regions in developing clear legislation relating to mother-tongue language rights in line with international human rights standards, as well as effective processes for implementation of such legislation and offer expertise in relation to the training of the judiciary; and

▪ Act swiftly and urgently to have the issue of violence against teachers and others involved in promoting mother-tongue education on an international agenda.

<b>VII. GLOSSARY</b>
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**CCPR** Human Rights Committee

**CDE** UNESCO Convention against Discrimination in Education (1960)

**CESCR** Committee on Economic, Social and Cultural Rights

**CRC** Committee on the Rights of the Child

**ECHR** European Convention on Human Rights (1950)

**ECtHR** European Court of Human Rights

**ICCPR** International Covenant on Civil and Political Rights (1966)

**ICERD** International Convention on the Elimination of All Forms of Racial Discrimination (1965)

**ICESCR** International Covenant on Economic, Social and Cultural Rights (1966)

**ICRC** Convention on the Rights of the Child (1989)

**KRG** Kurdish Regional Government or the Kurdish Autonomous Region, as the context requires

**States** Iran, Iraq, Syria and Turkey

**UDHR** Universal Declaration of Human Rights (1948)