

**EXECUTIVE SUMMARY AND LEGAL DOCUMENTS**

**The Mandaean Human Rights Group**                      **2011,**

**Abstract**

- Overview of facts
  - Mandeans are one of the religious and ethnic minority groups in Iraq.
  - They are spread across the world, in countries including Europe, USA, the Middle-East and Australia.
- Range of suffering
  - In Iraq.
  - In Middle-Eastern refuge.
  - Other countries of refuge.
- Ultimately, action is required by the international community

Compiled by:

Mandaean Human Rights Group (MHRG)

Contact:

The Mandaean Associations Union  
19 Ketch Rd.  
Morristown, NJ 07960 ,USA  
Tel: +1 973 865 1340  
Fax: +1973 292 3906  
suhaib.nashi@gmail.com  
www.mandaeanunion.org

## Contents

### 1. Background to the Mandaean Religion

- 1.1. Terminology
- 1.2. Hierarchical Structure of Mandaeism
- 1.3. History of the Religion
- 1.4. Geographical Origin of Mandaeans
- 1.5. Language

### 2. Global Distribution of Mandaeans

- 2.1. Population by Region
  - 2.1.1. Middle-East
  - 2.1.2. Europe
  - 2.1.3. North America
  - 2.1.4. Australasia

### 3. The Mandaean Crisis

- 3.1. Persecution of Mandaeans in Iraq
- 3.2. The Motive behind the Persecution of Mandaeans in Iraq
- 3.3. Barriers to Iraqi Mandaeans Fleeing Iraq
- 3.4. Claiming Refuge in Syria and Jordan
- 3.5. Current Conditions for Refugees in Syria and Jordan
  - 3.5.1. Medical Care
  - 3.5.2. Employment
  - 3.5.3. Education
  - 3.5.4. Forced Religious Conversion
  - 3.5.5. Sexual Abuse of Women and Children
  - 3.5.6. Threat of Kidnap
- 3.6. Forcible Return of Refugees to Iraq
- 3.7. Threat of Extinction of the Mandaean Religion

### 4. The Requests of the Mandaean Community

- 4.1. Regarding Mandaeans still in Iraq
- 4.2. Regarding Refugees in Syria and Jordan
- 4.3. Regarding the Forcible Return of Refugees to Iraq
- 4.4. Regarding the Commission of International Crimes against Mandaeans
- 4.5. Regarding Mandaeans as Indigenous People
- 4.6. Regarding the Mandaeans' Right to Self-Determination

## **1. Background to the Mandaean Religion**

### **1.1. Terminology**

Several terms are used by international institutions and governments to describe followers of Mandaism, which include 'Sabian-Mandaean' (or 'Sabian' for short) and 'Sabaeen-Mandaean').

The religion is properly referred to as 'Mandaism' while followers of Madaeism are most properly referred to as 'Mandaean', with the adjective also being 'Mandaean'.

### **1.2. Hierarchical Structure of Mandaism**

- Reishuma – translates to “head of State” and is used as the title for the current head of the religion.
- Kenzeffrah – translates to “bishop” and their role is to perform religious rituals. There are currently seven Kenzeffrahs and are spread across the world: One Kenzeffrah resides in each of Sweden, Iraq, Iran and USA, and three Kenzeffrahs reside in Australia.
- Termida – translates to “student”. They essentially perform the same role as Kenzeffrahs but are regarded as their junior.
- Sholia – refers to one who is in training to be a Termida.
- Eshkanda – refers to the assistant to the Kenzeffrah or Termida when performing religious rituals.

### **1.3. History of the Religion**

Academics have traced the religion back as far as 400 BC. The last prophet of the religion was John the Baptist. The religion operates independently of all other religions including Christianity, Judaism, and Islam.

The Mandaean religion does not allow conversion into the faith; the community only recognises members that are born from parents who are both Madaeans.

### **1.4. Geographical Origin of Madaeans**

Followers were initially widespread across the Middle East (Palestine, Iran, Iraq). The earliest recorded presence of Madaeans in Mesopotamia (Ancient Iraq) goes back to the first and second century AD, when Madaeans emigrated from other regions in the Middle-East including Palestine.

### **1.5. Language**

The original language of the religion is ancient Aramaic. Currently, only Mandaean scholars, who comprise around 1-2% of the community, can fully understand (speak, read, write) Aramaic. These scholars are spread throughout the world.

The general decline in the use of Aramaic by Madaeans began during the mid-19<sup>th</sup> century and rapidly decreased under the direction of the Turkish Ottoman Empire in the early 1900s. The language is now recognised by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) as a threatened language.

---

**NOTES on Indigenous Peoples****U.N. INDIGENOUS GENERAL CRITERIA**

Self-identification as indigenous peoples at the individual level and accepted by their community as a member

Historical continuity with pre-colonial and/or pre-settler societies

Strong link to territories and surrounding natural resources

Distinct social, economic, or political systems

Distinct language, culture and beliefs

Form non-dominant groups of society

Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities

---

## 2. Global Distribution of Mandaean

In total there are approximately 60,000 Mandaean in the world.  
Over 85% of Mandaean live outside Iraq.

### 2.1. Population by Region

Note: There are a significant number of Mandaean that are unaccounted for in the statistics below. This is mainly due to the absence of communication during the resettlement of refugees, the detention of Mandaean refugees regarded as illegal immigrants, and the fact that Mandaean in Iraq keep their identity secret to avoid persecution, according to Article 44 paragraph 1 and 2 of the Iraqi Constitution. Oct. 2005.

#### 2.1.1. Middle-East

Iraq	More Than/ 5,000 - Unknown
Iran	5,000 – 8,000
Syria	4,500 – 5,000
Jordan	300
Dubai	20
Libya	1
Yemen	1

#### 2.1.2. Europe

Sweden	5,500
Netherlands	3,500
Germany	2,200
Denmark	600
Austria, Hungary, Poland, Romania, Belgium, Bulgaria, Italy, France	500
United Kingdom (England)	400
Norway and Finland (between)	400

#### 2.1.3. North America

United States of America	4,000 - 5,000
Canada	800 – 1,000

#### 2.1.4. Australasia

Australia	6,000 – 6,500
-----------	---------------

#### 2.1.5. Asia

Thailand and Malaysia (imprisoned for illegal immigration)	6
--	---

### **3. The Mandaean Crisis**

#### **3.1. Persecution of Mandaeans in Iraq**

The Iraqi Government has not yet provided adequate protection for the Mandaean minority in Iraq.

Since 2003, over 200 have been killed by mobsters, Islamic extremists, militia and terror groups, including Al-Qaeda.

Currently, Mandaeans in Iraq are suffering from a range of acts of persecution that amount to severe abuses of their human rights *according to Article 27 of the International Covenant on Civil and Political Rights 1966.*

The range of acts of persecution suffered by Mandaeans includes:

- Murder (There have been 159 cases of murders since 2003)
- Kidnap (often resulting in murder or victim remaining missing when ransom is paid) (There have been 430 cases of kidnapping since 2003)
- Rape (There have been 11 reported cases of rape )
- Assault (There have been 238 cases of assault since 2003)
- Inhumane treatment, incl. physical and psychological torture
- Forced conversion to Islam ( 33 cases of forced conversion to Islam)
- Forced internal and external displacement (41 cases of forced displacement)
- Theft, looting, and unlawful confiscation of property
- Other forms of discrimination on account of religion: e.g. refusal of employment, considered to be 'filthy' (59 cases of other forms of discrimination)

(See Mandaean Human Rights Group report 2011 for references and cases)

Both kidnapping and murder go against article 15 of the Iraq Constitution OCT 2005

Theft, looting and unlawful confiscation of property goes against article 23 – 1/2/3a/3b. of the Iraq Constitution. OCT 2005.

Cases have been reported as far back as 2003. There are approximately 108 cases of abuse per year.

The number of incidents is generally accepted to be higher than those given above as victims are often threatened with further violence if they report to the Iraqi authorities.

#### **3.2. The Motive behind the Persecution of Mandaeans in Iraq**

Due to the manner in which many of the above acts are carried out, there is an implication that behind the conduct is an organisation with a common motive to remove minority religions from Iraq, as opposed to random, indiscriminate acts.

Article 7 of the Iraq Constitution OCT 2005. (Ethnic Cleansing)

For example:

- Death threats are often directed at a Mandaean individual or family with very specific demands including:
  - convert to Islam (Article 41/42/43 paragraph 1 and 2 of the Iraq Constitution OCT 2005.)
  - close their business
  - vacate their home
  - leave the city, region or country
- On the victims reporting threats to the Iraqi police the offenders are frequently informed of the report as quickly as several hours.
- Cases of severe attack against Mandaeans, including murder, kidnap, and inhuman treatment, are periodic in time and occur approximately every 3-5 months (Article 15 of the Iraq Constitution OCT 2005).
- There exist cases of 'professional hits' - killings carried out by masked men with silenced firearms.

### **3.3. Barriers to Iraqi Mandaeans Fleeing Iraq**

Generally, only those with sufficient resources are able to successfully leave Iraq to reach countries of refuge in Europe, the cost being between \$10,000 and \$20,000 per person. The cost to reach refuge in North America is around \$30,000 per person. These costs go towards paying human traffickers to smuggle Mandaeans out of Iraq. Note that a refugee that pays this amount is not guaranteed refuge and risks being detained as an illegal immigrant and returned to Iraq.

As indigenous people, when considering seeking refuge, Mandaeans in Iraq are sometimes reluctant to leave family members' ancestral homes behind, as the Iraqi Government is yet to provide a guarantee of the property left behind by refugees (Article 23 paragraph 1, 2 and 3 of the Iraq Constitution OCT 2005).

Applications for refuge are being refused by countries offering asylum, due to language difficulties, miscommunication, ill-health, and applications being made on an individual rather than group basis.

### **3.4. Claiming Refuge in Syria and Jordan**

Mandaean refugees entering Syria as illegal immigrants without visas are so far tolerated by the Syrian Government. They must apply for recognition as refugees through the UNHCR.

Mandaean refugees enter Jordan every three months.

In both Syria and Jordan, refugees cannot work legally, cannot benefit from public services, and face the continual threat of their deportation back to Iraq. They are forced to use their own limited funds to meet essential living costs.

### **3.5. Current Conditions for Refugees in Syria and Jordan**

Syria and Jordan do not have the resources to deal with the number of refugees fleeing Iraq. As a result, living conditions are poor for Iraqi Mandaean refugees and they are extremely vulnerable to a range of abuses to their human rights. Cases go unreported as refugees fear the repercussions of facing more abuse, losing employment opportunities, or being deported back to Iraq.

#### **3.5.1. Medical Care**

The majority of Mandaean refugees suffer from physical and psychological trauma as a result of their experiences in Iraq. Depression and PTSD has caused damage to family cohesion.

Most refugees do not have the resources to pay for medical care and there is only a limited state-funded medical programme. A few organisations provide free health care but do not have the facility to treat any acute illnesses, much less chronic ones. Most malignancies are diagnosed too late, patients not treated, and some consequently die.

#### **3.5.2. Employment**

Mandaean refugees in Syria and Jordan are not allowed to work legally despite often being highly qualified. In order to survive, refugees are forced to work illegally. Abuse by employers is widespread: refugees are made to work long hours of manual labour, often denied compensation, or paid only with meals.

Refugees with illegal status who wish to complain to local authorities face punitive action and, almost certainly, deportation. Refugees with legal status are unlikely to have their case heard.

#### **3.5.3. Education**

Refugee children can attend primary school for free in Syria and Jordan but must pay for their attendance at a high school. Syrian and Jordanian nationals do not pay to attend high schools. Children have forgone their education to support their families. These children are in turn abused by their employers.

#### **3.5.4. Forced Religious Conversion**

In Syria and Jordan, Mandaean adults and children are being targeted and forcibly converted from Mandaism to Islam.

(See Mandaean Human Rights Group report 2011 for references and cases)

#### **3.5.5. Sexual Abuse of Women and Children**

Lack of food and money has led to women and children refugees being coerced into the sex trade. Cases of sexual abuses are rarely reported due to the threat of deportation and the social stigma attached to the sex trade in Middle Eastern countries.

#### **3.5.6. Threat of Kidnap**

Iraqi kidnappers have been identified in Syria and Jordan by Mandaean victims. The presence of kidnappers has caused anxiety among refugees who fear that they are to be the target of kidnap and ransom again.



### **3.6. Forcible Return of Refugees to Iraq**

The current conditions in Iraq present a real and grave danger to the lives of Mandaeans. Still there are instances of immediate rejection and forcible returns to Iraq of Mandaean refugees by the UK, Denmark, Sweden, Netherlands, and Australia.

Some refugees are indirectly forced to return to Iraq from Syria and Jordan due to the exhaustion of their financial resources and the difficult economic and employment conditions there.

The Iraqi Government is providing returnees with some cash assistance but is yet to guarantee equal employment opportunities for minorities, or to provide effective protection of minorities against serious abuses of human rights (Article 14 of the Iraq Constitution OCT 2005).

There are a high number of cases of Mandaean returnees being kidnapped and killed immediately upon their return to Iraq.

### **3.7. Threat of Extinction of the Mandaean Religion**

The Mandaean community in Iraq has endured and survived discrimination and harassment since the 14<sup>th</sup> century. However, since the Coalition Invasion of Iraq, sectarian violence has forced the majority of Mandaeans to be exiled from their native country and consequently disseminated around the world. The Mandaean religion, which is steeped in age-old tradition, faces the real risk vanishing in its alien environment (Article 18 paragraph 1 and 2 of the International Covenant on Civil and Political Rights 1966).

The religion survived previously as the Mandaean community was gathered in small isolated groups in Iraq and Iran. There is a risk that the sudden dissemination of the Mandaean community during the resettlement process has already contributed to the weakening of the Mandaean religion.

Furthermore, members of the Mandaean clergy, the leaders of the Mandaean community, have been deliberately targeted and killed in Iraq, while others have been forcibly exiled. Now, only a small handful of the clergy remains and is spread throughout several countries around the world (Article 20 paragraph 2 of the International Covenant on Civil and Political Rights 1966).

## **4. The Requests of the Mandaean Community**

### **4.1. Regarding Mandeans Still in Iraq**

1. The Iraqi Government must recognise the persecution of Mandeans in Iraq and fulfil their obligation, provided under Article 37 of the Iraqi Constitution, to protect them against such persecution.
2. The Iraqi Government must see that crimes committed against Mandeans based on religious hatred be punished by law, as guaranteed under Article 20 of the Iraqi Constitution. Such punishment will serve as a deterrent towards future incitement to crimes based on religious hatred, and will deliver justice to victims.
3. As provided under Article 23 of the Iraqi constitution, the Government of Iraq is obliged to ensure that the private property of all Mandeans, including those that have been internally displaced within Iraq and those that have fled Iraq as refugees, is protected against theft, burglary, looting and unlawful expropriation.
4. As provided under Article 10 of the Iraqi Constitution, the Government of Iraq must ensure that the Mandaean heritage in Iraq, including the holy sites and artefacts, are protected, so that future generations of Mandeans may return to Iraq to practise their religion.
5. For Mandeans in Iraq who currently fear and wish to avoid further persecution, their only option is to seek refuge in another State; their refuge must be facilitated by the international community.
6. For those Mandeans who are reluctant to leave their ancestral homes and remain optimistic that conditions in Iraq will improve for the Mandaean community, the Government of Iraq must ensure that they are safe and have the same access to medical treatment, financial assistance, education, and employment opportunities as is accorded to all Iraqi citizens by the Iraqi Constitution (Article 14 of the Iraq Constitution OCT 2005).

### **4.2. Regarding Refugees in Syria and Jordan**

1. The international community must send aid to Syria and Jordan, so that refugees may have access to adequate living conditions, medical care, and education.
2. The UNHCR and the international community must accept those Mandaean refugees in Syria and Jordan who are applying for resettlement and must expedite the resettlement of those already accepted.

This request is especially urgent in the case of Mandaean refugees in Syria, where there is current political instability and the threat of impending civil conflict.

### **4.3. Regarding the Forcible Return of Refugees to Iraq**

1. For those refugees subjected to such economic conditions that subsequently leave them no option but to return to Iraq, the Government of Iraq must ensure their security, and provide adequate medical and financial assistance immediately upon their return.
2. States of refuge must recognise that current conditions in Iraq are such that the safe return of

Mandaeen refugees is not yet possible, and therefore, as provided under Article 33 of the Convention on the Status of Refugees 1951, cease the unlawful return of Mandaean refugees to Iraq.

3. The international community must adopt a common policy towards Mandaean refugees that recognises them on a group rather than on an individual basis. This will help with the identification of genuine refugee applications, will minimise wrongful rejections and will facilitate collective resettlement, which will in turn minimise the global dissemination of Madaeans (Article 37 paragraph 1 and 2 of the Iraq Constitution OCT 2005).
4. States of refuge must act quickly to accept refugee applications of the family members of those Mandaean refugees that have already been resettled. This is vital in order that the unity of the family be preserved (Article 23 Paragraph 1 of the International Covenant on Civil and Political Rights 1966).

#### **4.4. Regarding the Commission of International Crimes against Madaeans**

A clear and manifest case exists in Iraq for the commission against Iraqi Madaeans of the international crimes of:

- a) genocide, as defined by Article 2 of the *Convention on the Prevention and Punishment of the Crime of Genocide 1948*, Article 6 of the *Rome Statute of the International Court*, and Article 6 of the *International Criminal Court Elements of Crime*, and;
- b) the crime against humanity of forcible displacement of persons, as defined by Article 7 of the *Rome Statute of the International Court* and Article 7 of the *International Criminal Court Elements of Crime*.

The international community is urged to investigate the commission of these crimes.

#### **4.5. Regarding Madaeans as an Indigenous People**

The Government of Iraq and the international community must recognise the Mandaean community as an indigenous people and afford the Madaeans rights and protections in Iraq as provided under the guidance of the UN Declaration on the Rights of Indigenous People 2007 (Article 8 paragraph 1 & 2. Article 9, Article 10, Article 11, paragraph 2. Article 12).

#### **4.6. Regarding the Madaeans' Right to Self-Determination**

Through severe persecution, the Iraqi Madaeans have been forcibly removed from their native homeland of Iraq and dispersed thinly across many countries around the world where they can no longer benefit from the privileges that nationality and citizenship bring (Article 44 paragraph 1 and 2 of the Iraq Constitution OCT 2005).

It is uncertain exactly when it will be safe for Madaeans to safely return to Iraq and enjoy their heritage as they once did. Nevertheless, the Mandaean people request that the international community recognise the unique situation of the Madaeans and the vulnerability of their national identity and recognise their right to self-determination: to choose their own sovereignty and political status, and administer their own community.

# **Mandaean Human Rights Report, 2011**

## **LEGAL DOCUMENTS**

## **CONTENTS**

1.	Iraqi Constitution	15
2.	International Covenant on Civil and Political Rights 1966	17
3.	Refugee Law	19
4.	Summary of International Crimes	22
5.	Genocide	24
6.	Ethnic Cleansing and Crimes against Humanity	24
7.	Self-Determination	25
8.	Indigenous Peoples	25
9.	International Religious Freedom Act 1998	29
10.	UN Compensation Commission	30

## 1. Iraqi Constitution

The Iraqi Constitution was drafted in 2005 by the Iraqi Constitution Drafting Committee, to replace the Law of Administration for the State of Iraq for the Transitional Period (the 'TAL').

On 28th August 2005, the draft was read to and adopted by the National Assembly of Iraq (the parliament of Iraq during the Occupation of Iraq).

On 15th October 2005, the Constitution was adopted by the Iraqi electorate in a referendum. There exists some controversy around the ratification of the Constitution. Nevertheless, it is the text that legally binds the Iraqi Executive, Legislative and Judiciary with regards to their proper exercise of power.

NOTE: The Occupation of Iraq officially lasted from 1st May 2003 to 19th August 2010, when the last US combat troops were reported to have left. 50,000 US troops were left in an 'advisory role'.

### Articles Relevant to Mandaean in Iraq

#### Article 2

(2) This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandaean Sabaeans.

#### Article 7

(1) Any entity or programme that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing, especially the Saddamist Ba'ath in Iraq and its symbols, under any name whatsoever, shall be prohibited. Such entities may not be part of political pluralism in Iraq. This shall be regulated by law

#### Article 9

(1)(b) The formation of military militias outside the framework of the armed forces is prohibited.

#### Article 10

The holy shrines and religious sites in Iraq are religious and civilisational entities. The State is committed to assuring and maintaining their sanctity, and to guaranteeing the free practice of rituals in them.

#### Article 14

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.

#### Article 15

Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority.

#### Article 16

Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken.

**Article 17**

(1) Every individual shall have the right to personal privacy so long as it does not contradict the rights of others and public morals.

(2) The sanctity of the homes shall be protected. Homes may not be entered, searched, or violated, except by a judicial decision in accordance with the law.

**Article 20**

Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.

**Article 22**

(1) Work is a right for all Iraqis in a way that guarantees a dignified life for them.

(2) The law shall regulate the relationship between employees and employers on economic bases and while observing the rules of social justice.

(3) The State shall guarantee the right to form and join unions and professional associations, and this shall be regulated by law.

**Article 23**

(1) Private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law.

(2) Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.

(3)(a) Every Iraqi shall have the right to own property anywhere in Iraq. No others may possess immovable assets, except as exempted by law.

(3)(b) Ownership of property for the purposes of demographic change is prohibited.

**Article 37**

(1)(a) The liberty and dignity of man shall be protected.

(1)(b) No person may be kept in custody or investigated except according to a judicial decision.

(1)(c) All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under force, threat, or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law.

(2) The State shall guarantee protection of the individual from intellectual, political and religious coercion.

**Article 38**

The State shall guarantee in a way that does not violate public order and morality: (a) Freedom of expression using all means.

**Article 41**

Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.

**Article 42**

Each individual shall have the freedom of thought, conscience, and belief.

**Article 43**

(1) The followers of all religions and sects are free in the:

(a) Practice of religious rites, including the Husseini rituals.

(b) Management of religious endowments (waqf), their affairs, and their religious institutions, and this shall be regulated by law.

(2) The State shall guarantee freedom of worship and the protection of places of worship.

**Article 44**

(1) Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq.

(2) No Iraqi may be exiled, displaced, or deprived from returning to the homeland.

**Article 46**

Restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom.

**2. International Covenant on Civil and Political Rights (ICCPR)**

The ICCPR, adopted by the United Nations in 1966, is a treaty that outlines fundamental human rights. Parties to the Covenant are monitored by the Human Rights Committee.

The Covenant currently has 167 parties which are legally bound to it. (All countries involved in the current Mandaean crisis are parties).

The Covenant contains 53 articles. Those articles which are relevant to the current situation of Mandaeans are listed below:

**Relevant Articles of the ICCPR****Article 1**

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

**Article 2**

(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant, undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;



(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

**Article 3**

The State's Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

**Article 6**

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

**Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

**Article 8**

(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

**Article 9**

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

**Article 12**

(1) Everyone lawfully within the territory of a State shall, within that territory, shall have the right to liberty of movement and freedom to choose his residence.

**Article 16**

Everyone shall have the right to recognition everywhere as a person before the law.

**Article 17**

(1) No one shall be subjected to arbitrary nor unlawful interference with his privacy, family, nor correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

**Article 18**

(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

**Article 19**

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

#### **Article 20**

(1) Any propaganda for war shall be prohibited by law.

(2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### **Article 23**

(1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### **Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage, and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

#### **Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

### **3. Refugee Law**

(A. Aust Handbook, pp. 170-77)

Refugee law has long been a part of customary international law. It has now been codified into the Convention on the Status of Refugees 1951 and the 1967 Protocol. Not all States are party to the Convention and its Protocol; only those States that are party are legally bound to it. Still, a State that is not party to the Convention or Protocol is always bound by the rules of customary international law.

#### **Parties to the Convention on the Status of Refugees 1951 and the 1967 Protocol**

Iran party to both

Iraq not a party

Jordan \* not a party

Libya not party

Syria \* not a party

UAE (Dubai) not a party

Yemen party to both

Australia party to both

Austria party to both

Belgium party to both

Bulgaria party to both

Canada party to both  
 Denmark party to both  
 Sweden party to both  
 Finland party to both  
 France party to both  
 Germany party to both  
 Hungary party to both  
 Italy party to both  
 Netherlands party to both  
 Norway party to both  
 Poland party to both  
 Romania party to both  
 UK party to both  
 USA party to 1967 Protocol only

The UNHCR's Statute gives the UNHCR a mandate to protect refugees of a State whether or not they are party to the Convention, provided the State is cooperative. Even if uncooperative, the UNHCR is compelled to urge the State to act appropriately or to publicise the plight of refugees.

**Definition of 'refugee'** (Article 1A, Convention on the Status of Refugees 1951)

It is *vital* to distinguish refugees from displaced persons seeking asylum. The term, asylum-seeker, is very broad, therefore, to avoid ambiguity, always refer to Mandaeans applying for refuge as refugees. The definition of refugee is now part of customary international law and is someone who: '*...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.*'

**Fear of Persecution**

An applicant's fear of persecution will be well-founded if he establishes to a reasonable degree that if he were to return to his State it is likely that he will be persecuted. As fear is largely subjective, the applicant's perception will be important, although it must still be reasonable. Even if the applicant has not yet, himself, suffered persecution, proof that other persons in the State in a like position are being persecuted would be sufficient.

States of refuge will investigate the applicant's individual and family background and assess the conditions in his own State to determine if the fear is reasonable. The fear of persecution does not have to be the reason that the applicant left his State; only that the fear is the reason for application at the particular time.

Persecution has not been defined but is generally accepted as some form of ill treatment or abuse of human rights. Economic or welfare constraints, if severe enough, can be sufficient.

States differ in opinion as to whether persecution by private individuals who are not formally linked to the State is enough. The UNHCR Handbook makes clear that persecution by non-State agents is sufficient.

**Application for Refugee Status**

The determination of refugee status should be made by the first State in whose territory the claim for refugee status is made. Every State is obliged to admit refugee claimants.

A claim for refuge can be made as soon as an applicant enters the territory of the State, including its territorial waters. States declaring an 'immigration zone' in an airport, etc. which an applicant must reach to make his claim is not supported by international law.

While the claim is pending, the refugee is entitled to stay in the territory.

It is not necessary for an applicant to have entered the State's territory lawfully. The status of 'illegal immigrant' does not affect an applicant's ability to make their claim.

Unlike asylum, refugee status is a legal right. Once the above criteria have been satisfied, States have an obligation to recognise the person as refugee. They then follow procedure according to their own domestic law in dealing with claims. In applying their domestic legislation, States should be guided by the Convention, UNHCR Guidelines, and UNHCR Executive Committee.

### **Non-Refoulement** (Article 33, Convention on the Status of Refugees 1951)

The prohibition of *refoulement* (meaning 'return') is now part of customary international law.

A State is obliged to *recognise* refugee status, but is not obliged to *give* refuge. The prohibition of refoulement means that the State must not return a refugee to his own State or a third State if his life or freedom *would* there be threatened on account of his race, religion, nationality, membership of a particular social or political opinion. This principle applies before the claim is processed, provided there is a *prima facie* case. (Note: *would* = objectively determined)

### **Other Relevant Provisions of the Refugee Convention**

#### **Article 4: Religion**

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

#### **Article 21: Housing**

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

#### **Article 22: Public Education**

(1) The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

#### **Article 23: Public Relief**

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

#### **Article 31: Refugees Unlawfully in the Country of Refugee**

(1) The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

(2) The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

#### **Article 32: Restriction on Expulsion**

(1) The Contracting States shall not expel a refugee lawfully in their territory, save on grounds of national security or public order.

(2) The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

(3) The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

### **Article 33: Prohibition of Expulsion or Return (“refoulement”)**

(1) No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

### **Article 34: Naturalisation**

The Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

### **Article 35: Co-operation of the National Authorities with the United Nations**

(1) The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

(2) In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) The condition of refugees,

(b) The implementation of this Convention, and;

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

## **4. Summary of International Crimes**

Below is listed a summary of the elements of the crimes of (a) genocide and, (b) the crime against humanity of forcible transfer of population ('ethnic cleansing'), as recognised by the International Criminal Court (ICC).

### **Genocide by Killing**

(Article 6(a) ICC Elements of Crime)

1. The perpetrator killed one or more persons.

2. Such victim(s) belonged to a particular national, ethnical, racial or religious group.

3. The perpetrator intended to destroy, in whole or in part, that group.

4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group.

**Note:** above are only the elements required to satisfy 'genocide *by killing*'. The ICC recognises several forms of genocide (see Article 6, ICC Elements of Crime).

### **Crime against Humanity of Deportation or Forcible Transfer of Population**

(See Article 7 Rome Statute; Article 7 ICC Elements of Crime)

1. The perpetrator forcibly displaced, without grounds permitted under international law, persons to another State or location, by expulsion or other coercive acts.
2. Such persons were lawfully present in the area from which they were displaced.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The act was committed as part of a widespread or systematic attack directed against a civilian population• i.e. a course of conduct involving multiple commissions of acts in Article 7 below).
5. The act was pursuant to or in furtherance of a State or organisational policy to commit such attack• i.e the State or organisation 'actively promoted or encouraged the act'.
  - Such encouragement *may* also be satisfied in the case where the State failed to take proper action to prevent the attack.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.
  - The perpetrator does need to have had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organisation.

Below are more legal sources pertaining to the crimes of genocide and forcible transfer.

### **5. Genocide**

(A. Aust Handbook of International Law, pp. 251-53)

#### **Convention on Prevention and Punishment of the Crime of Genocide 1948**

The law regarding genocide has been codified by the Convention on Prevention and Punishment of the Crime of Genocide 1948. The Convention has only 140 parties, nevertheless the crime of genocide simultaneously exists at customary international law.

**Article 2** of the Convention defines genocide as as any of the following acts committed with *intent to destroy*, in whole or in part, a national ethnical, racial, or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

**Article 3** of the Convention states that the following acts be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

The Convention places criminal responsibility on all individuals responsible; Article 4 makes no exceptions for any Heads of State, public officials, or private individuals.

It is down to the courts of the State in which the genocide was committed to try any individuals charged with genocide, provided they are competent (Article 6). Otherwise jurisdiction will fall to a relevant international penal tribunal.

Genocide shall not be considered a political crime for the purpose of extradition (Article 7).

Any Contracting Party may call upon the competent organs of the UN to take action under the UN Charter as is appropriate for the prevention and suppression of acts of genocide (Article 8).

**Note:**

Genocide is sometimes grouped together with crimes against humanity but, in fact, the two concepts stand in separate categories. The reason genocide is in its own category is because, for an act to be regarded as genocide, it must be committed with an *intent to destroy* (see the section below on crimes against humanity for more info).

Genocide, as with crimes against humanity, may be committed in peacetime as well as during an armed conflict.

**6. Ethnic Cleansing and Crimes against Humanity**

(A.. Aust Handbook of International Law, pp. 252-3)

**Ethnic Cleansing**

Ethnic cleansing is the unlawful deportation or displacement of people belonging to a particular group, in an attempt to create *ethnically homogenous geographic areas*.

The precise legal definition of ethnic cleansing is not certain and often criticised. Some do not see much difference between ethnic cleansing and genocide. The two principles are similar in that they both involve the targeting of individuals because of their membership in an ethnic group.

The difference lies in the intention behind the action: ethnic cleansing aims to force the flight of a particular group; genocide aims to physically destroy the group.

Confusion may arise when genocide (for example, by mass murder) is committed as a means of attaining ethnic homogeneity.

Finally, ethnic cleansing may fall under one of the crimes against humanity recognised by the ICC.

**Crimes against Humanity**

Crimes against humanity are grave offences against life and liberty on an extensive scale, regardless of whether they are lawful under the State's national law. They may be seen as collective violations of basic human rights, rather than against the individual. A crime against humanity may be committed in peacetime or wartime.

Crimes against humanity are considered part of customary international law. A definition is provided by the Rome Statute of the International Criminal Court.

**Rome Statute of the International Criminal Court:****Article 7**

(1) For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a *widespread or systematic attack* directed against any civilian population, *with knowledge of the attack*:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

(2) For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, *pursuant to or in furtherance of a State or organisational policy to commit such attack*;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular, women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

## 7. Self-Determination

(M. Dixon, Textbook on International Law, pp. 164-66)

Self-determination is a well-established principle customary international law proposes that nations have the right to freely choose their sovereignty and international political status, without external interference.

It effectively allows a people to secede from a State in order to form their own in a way that does not breach international law. Those that successfully exercise the right could go on to form their own independent state, or affiliate with another state under a federal system, or become an addition to an existing state.

There have been some views that not all peoples can exercise such a right, and that it is only available to colonial peoples as a process to gain independence. Now, it is accepted by international courts that all peoples are able to exercise the right to self determination (also see Article 1(2) ICCPR).

There are certain requirements that must be satisfied:

1. The exercise of the right of self-determination is a free and genuine expression of the will of the peoples concerned
2. The factual prerequisites for statehood must be met:
  - **Permanent population** (not necessarily homogenous)
  - **Territory** (size not important)
  - **Government** (political body in effective control of the territory)
  - **Independence in external relations** (government is sovereign and not subject to authority of other state)

## 8. Indigenous People

### Terminology

It is vital not to confuse the terms, indigenous and endogenous. They have similar meanings but are used in very different contexts. In the case of describing the native people of a region, INDIGENOUS is the appropriate word indi - genous: originating in and characteristic of a particular region or country (endo-genous: proceeding from within; derived internally).

### Definition of 'Indigenous'

Many definitions have been suggested but the UN is yet to adopt a concrete definition of 'indigenous people'. The approach of the UN is to identify rather than define 'indigenous people'.



The UN Permanent Forum on Indigenous Issues (UNPFII) is an advisory body to the UN Economic and Social Council (ECOSOC), with a mandate to discuss indigenous issues to economic and social development, culture, the environment, education, health and human rights.

As listed in the UNPFII Fifth Session Fact Sheet in May 2006, the characteristics that are normally taken into account in identifying an indigenous people are as such:

- Self-identification as indigenous peoples at the individual level and accepted by their community as a member
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic, or political systems
- Distinct language, culture and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities

Self-identification by the community itself is commonly the starting point in the process of recognising an indigenous people.

### **Indigenous and Tribal Peoples Convention 1989**

This International Labour Organisation Convention is only legally binding on the States that have ratified it, and this is only a very low number so far. (States are generally reluctant due to the anxiety caused by the right of self-determination).

Iraq is not a party to this Convention and therefore it is of no practical use to the Mandaean.

### **Declaration on the Rights of Indigenous People 2007**

This is only a statement of the rights of indigenous people.

It is NOT binding in international law, but rather represents 'legal norms' and the general commitments that States *should* follow; it would still have some persuasive authority at law.

Many of the rights listed here are reiterations of those already laid out in legally binding Treaties that apply to all peoples whether or not they are indigenous.

Although the Declaration is not legally binding on any State, the Mandaean community, once established as indigenous, can use it as a foundation upon which to assert rights regarding their heritage, etc.

There are a total of 46 Articles contained in the Declaration. The Articles which are of particular importance to the Mandaean situation are listed below (those of particular relevance are marked with \*):

### **Relevant Articles: Declaration on the Rights of Indigenous Peoples 2007**

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### **\*Article 8**

(1) Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

(2) States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

- (b)** Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c)** Any form of forced population transfer, which has the aim or effect of violating or undermining any of their rights;
- (d)** Any form of forced assimilation or integration;
- (e)** Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

**Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

**\*Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**\*Article 11**

(1) Indigenous peoples have the right to practise and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

(2) States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

**\*Article 12**

(1) Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

(2) States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

**Article 13**

(1) Indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

(2) States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

**Article 14**

(1) Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

(2) Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

(3) States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**\*Article 15**

(1) Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

(2) States shall take effective measures, in consultation and cooperation with the indigenous peoples

concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

### **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

### **\*Article 25**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

### **\*Article 26**

- (1) Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
- (2) Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
- (3) States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

### **Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognise and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

### **\*Article 28**

- (1) Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
- (2) Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

## **9. International Religious Freedom Act (IRFA) 1998**

This piece of legislation provides the conditions under which the US President may take action to resolve abuses of religious freedom. It is also the constituent instrument for the Office on International Religious Freedom (Section 101) and the Commission on International Religious Freedom. It should be emphasised that this Act is much more complex than the extracts below; these extracts should be read in the context of the numerous clauses that surround them.

The summary below aims only to give an overview of potential US Presidential Actions.

### **Provisions of the IRFA 1998**

Under Section 402 of the IRFA, the President may take action in response to 'particularly severe violations of religious freedom'.

What counts as *particularly severe* is defined under Section 3 as:

“.....systematic, ongoing, egregious violations of religious freedom, including violations such as:

- (A) Torture or cruel, inhuman, or degrading treatment or punishment;
  - (B) Prolonged detention without charges;
  - (C) Causing the disappearance of persons by the abduction or clandestine detention of those persons;
- or
- (D) Other flagrant denial of the right to life, liberty, or the security of persons.

When the President has determined that the government of a foreign country has engaged in or tolerated *particularly severe* violations of religious freedom, he is authorised to take one of the following actions as provided by Section 405(a)(9) to 405(a)(15):

- (9) The withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961.
- (10) Directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participations in the extension of credit with respect to the specific government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402.
- (11) The withdrawal, limitation, or suspension of United States security assistance in accordance with section 502B of the Foreign Assistance Act of 1961.
- (12) Consistent with section 701 of the International Financial Institutions Act of 1977, directing the United States Executive Directors of international financial institutions to oppose and vote against loans primarily benefiting the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402.
- (13) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402, under:
  - (A) The Export Administration Act of 1979;
  - (B) The Arms Export Control Act;
  - (C) The Atomic Energy Act of 1954; or
  - (D) Any other statute that requires the prior review and approval of the United States Government as a condition for the export or re-export of goods or services.
- (14) Prohibiting any United States financial institution from making loans or providing credits totalling more than \$10,000,000 in any 12-month period to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 401 or 402.
- (15) Prohibiting the United States Government from procuring, or entering into any contract for the procurement of, any goods or services from the foreign government, entities, or officials found or determined by the President to be responsible for violations under section 401 or 402.

## **10. UN Compensation Commission**

(A. Aust Handbook on International Law, p. 411)

The Commission represents Iraq's liability under international law, decided beforehand by the UN Security Council, for any direct loss, damage or injury to other States, nationals and corporations as a result of its invasion and occupation of Kuwait.

According to the Report of the UN Secretary General, the Commission is:

“a political organ that performs an essentially fact-finding function of examining the claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims”.

It can be described as similar to a national claims commission administering compensation received from another State responsible for an international wrong done to the nationals of the injured State.

**NOTE:** This is most likely not to be applicable to the Mandaean who have suffered as a result of the Coalition Invasion of Iraq as so far nobody has succeeded in having the invasion recognised by the international community as being illegal or an 'international wrong'. Still, it is interesting that such a body exists.