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SPECIAL REPORT

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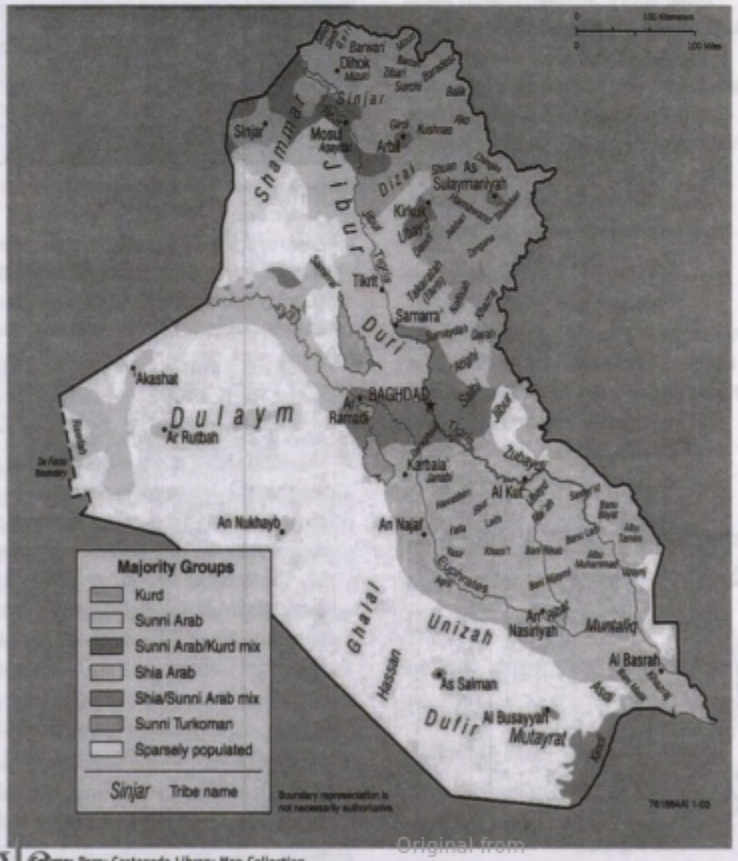

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Timeline	
JAN	• January 30: Elections
FEB	
MAR	
APR	
MAY	• May 10: 55-member Constitution Drafting Committee formed (without Sunni Arab representation) • May 23: Committee Chair appointed
JUN	• Jun 16: Decision to expand Committee membership to include Sunni Arab representation
JUL	• **Jul 8: Constitution Drafting Committee work begins: Sunni Arabs attend first Committee meeting** • Jul 19: Sunni Arab Committee member assassinated; other members suspend participation • Jul 25: Sunni Arabs rejoin Committee
AUG	• Aug 1: Deadline to request Art.61(F) extension • **Aug 8: Constitution Drafting Committee work ends: negotiations moved to Leadership Council** • Aug 15: Deadline for draft constitution; National Assembly amends Transitional Authoritative Law for ad hoc one-week extension • Aug 22: Ad hoc three-day extension • Aug 25: Ad hoc unlimited extension • Aug 28: Draft submitted to National Assembly
SEP	• Sep 18: Draft submitted to United Nations for printing
OCT	• Oct 15: Referendum

Summary

- Even with the approval of a permanent constitution in the October national referendum, Iraq's future is uncertain. Widespread Sunni Arab opposition to the new constitution has confirmed the existence of a fault line that profoundly divides Iraqi society.
- The Transitional Authoritative Law (TAL) envisaged a six-and-a-half-month, transparent, participatory, and orderly constitutional process. The TAL also provided the option, in Article 61(F), of a further six-month extension.
- Notwithstanding the preference of the Chairman of the Constitution Drafting Committee that the Article 61(F) extension be used—a view senior Kurdish and Shia negotiators, as well as other minority group and civil society leaders publicly and privately supported—the U.S. Government pressed for the drafting to be completed by August 15. The decision not to use Article 61(F) had the effect of minimizing Sunni Arab participation in the drafting process, and led the National Assembly to make a series of ad hoc moves after it missed the August 15 deadline, which exposed the body to charges of illegality.
- The Constitution Drafting Committee began its work late and was terminated early. Substantive discussions to include Sunni Arab representatives did not begin until late June. On August 8, the negotiations were removed from the Committee to a series of private and irregular meetings between Kurdish and Shia party leaders, from which Sunni Arab negotiators were often excluded.
- The National Assembly formed a Constitutional Outreach Unit to disseminate constitutional information and analyze public responses. The Unit, however, had no more

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- **UN office of constitutional expertise:** the United Nations should establish a permanent office of constitutional advice and support within the Secretariat, analogous to the Electoral Assistance Division.
- **Constitutional implementation:** the Iraqi government, National Assembly, and international community should develop a strategy for constitutional implementation that focuses on intergovernmental relations and the enforceability by Iraqi citizens of their constitutional rights.
- **Nonpartisanship:** the international community, in assisting the Iraqi government on constitutional implementation, should not engage in the selection of political favorites, recognizing that any initiative must have broad political support.
- **Equal representation:** the institutional vehicles for constitutional implementation, including courts and Commissions, should visibly include Sunni Arabs, women, and members of ethnic and religious minorities.
- **Public views report:** the Outreach Unit of the Constitution Drafting Committee needs support in preparing a final report on Iraqi views on the constitution to form part of the public record.
- **Permanent Center for Constitutional Dialogue and Research:** the Iraqi government, with the support of the international community, should transform the Outreach Unit of the Constitution Drafting Committee into an independent Center for Constitutional Dialogue and Research established by national legislation.
- **Benchmarks:** the Iraqi leadership and the United States should adopt a strategy for Iraq's transition that prioritizes Sunni Arab engagement with the constitution, rule of law, and democracy-building benchmarks instead of adherence to the TAL or other timetables.

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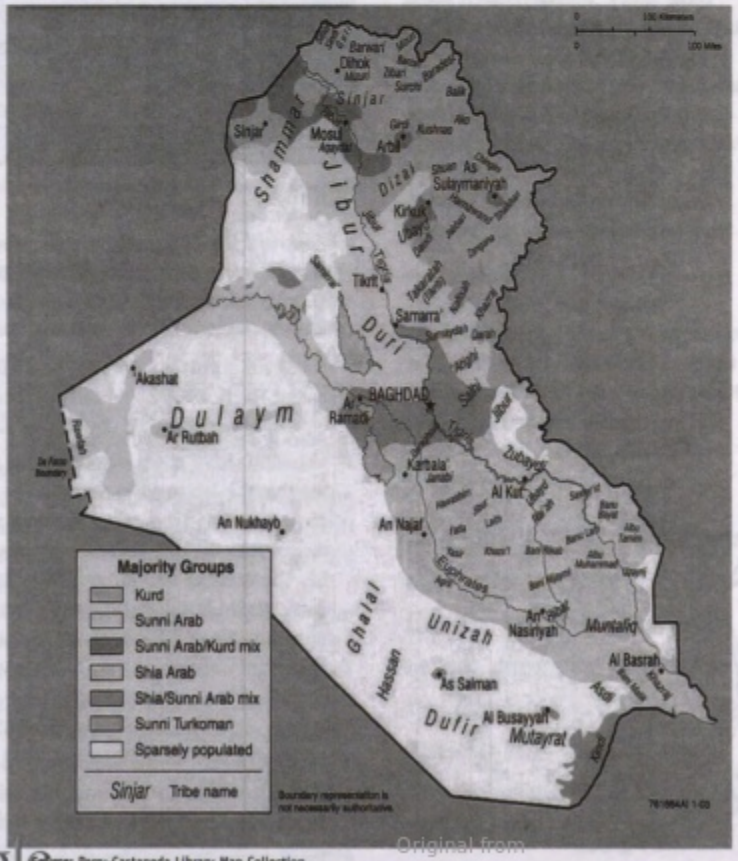

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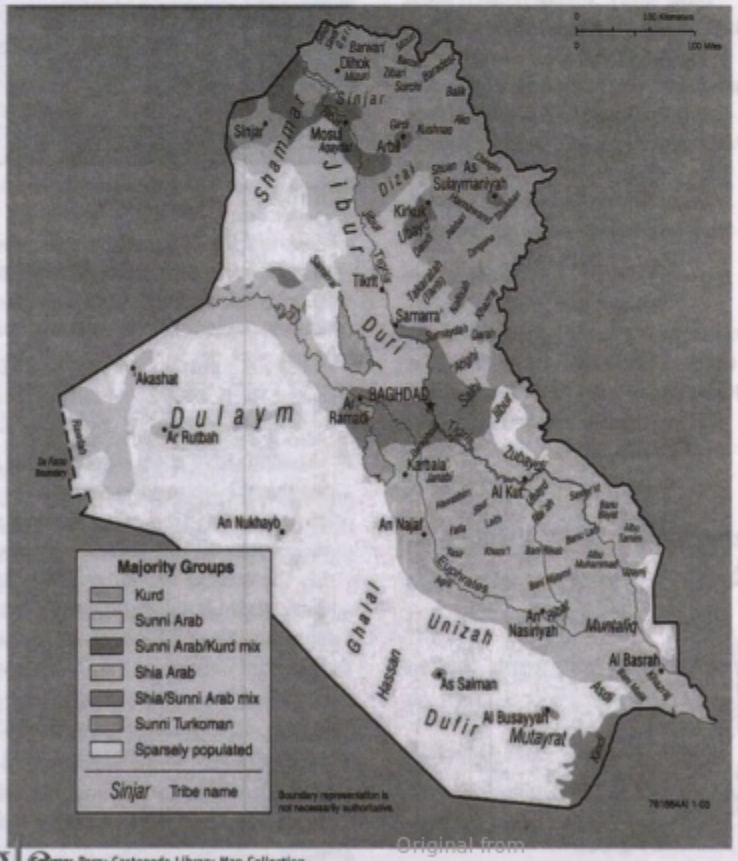

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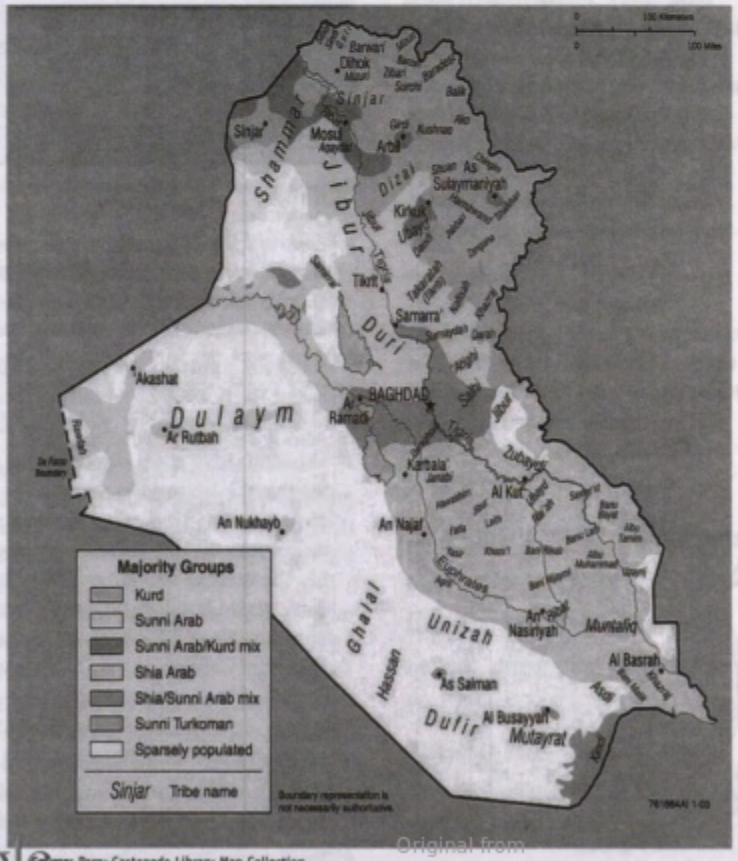

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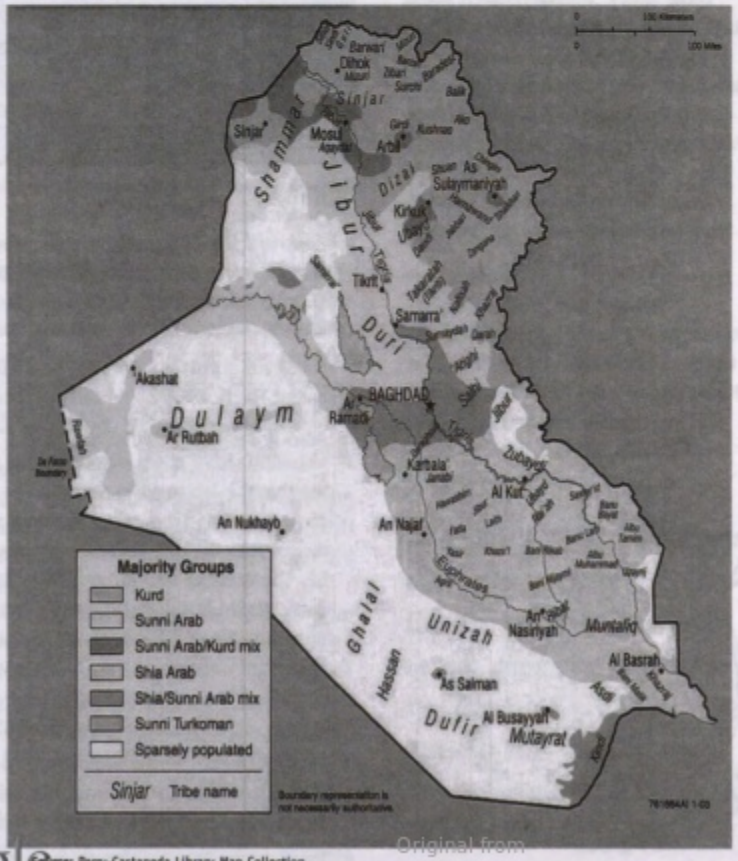

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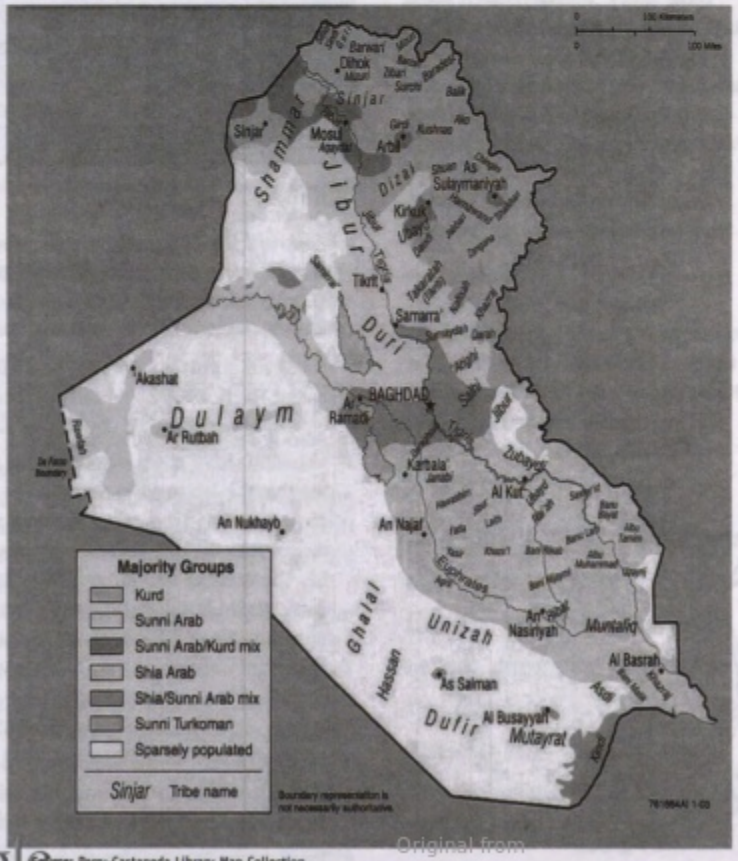

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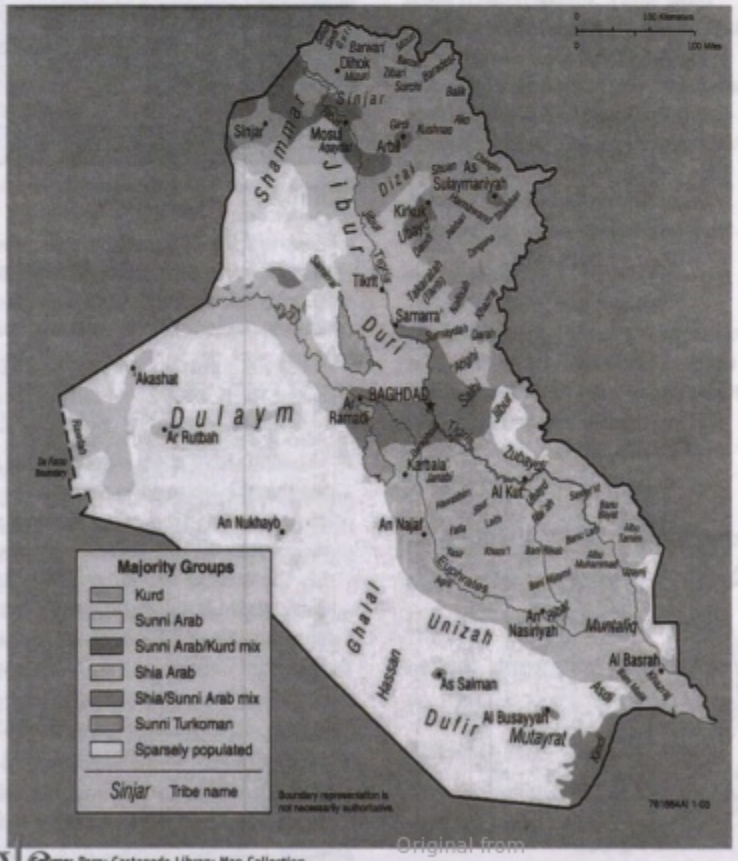

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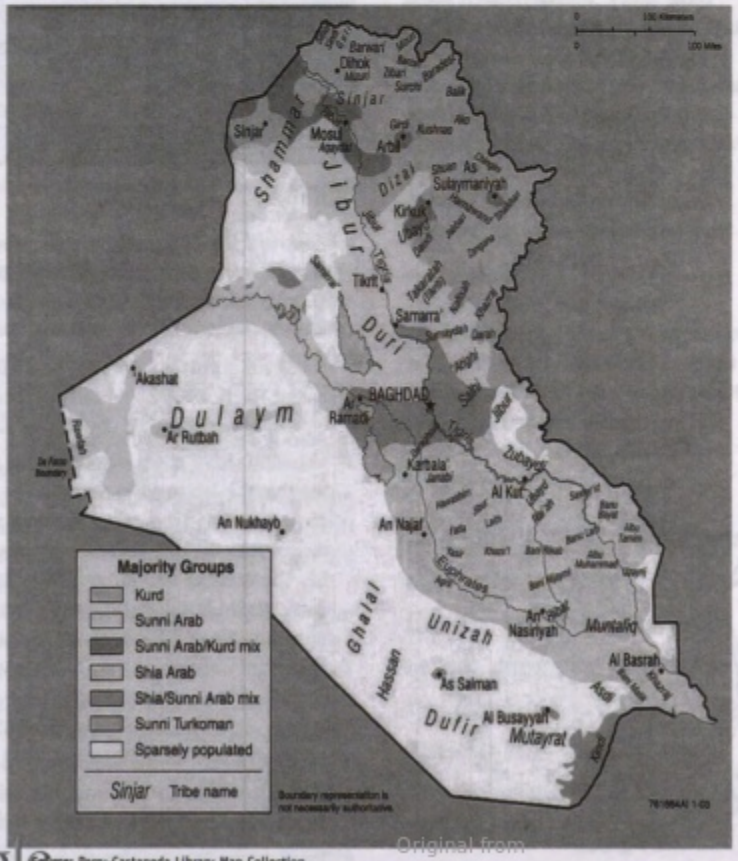

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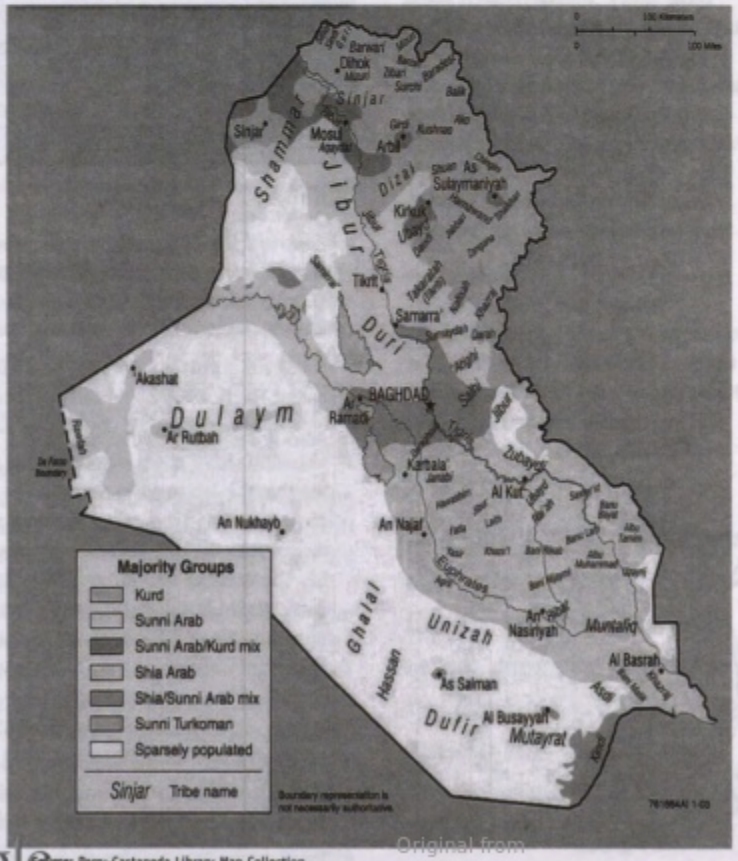

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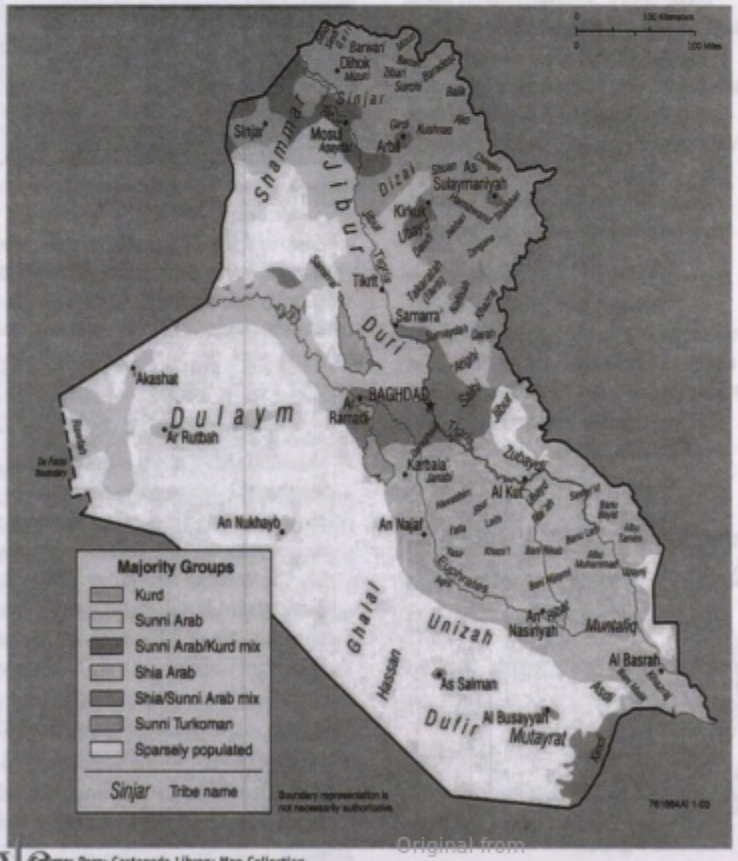

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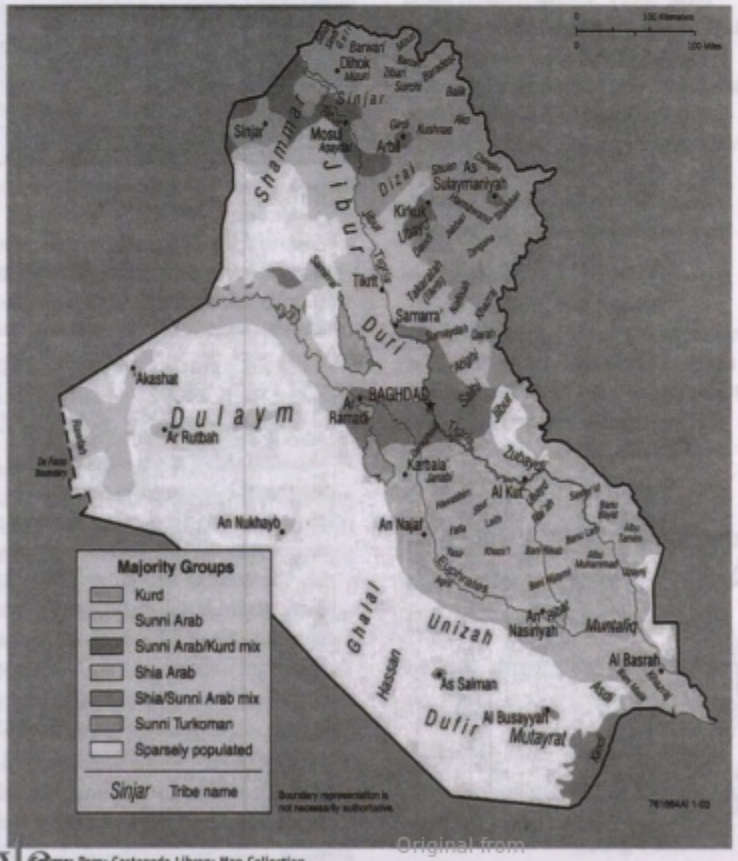

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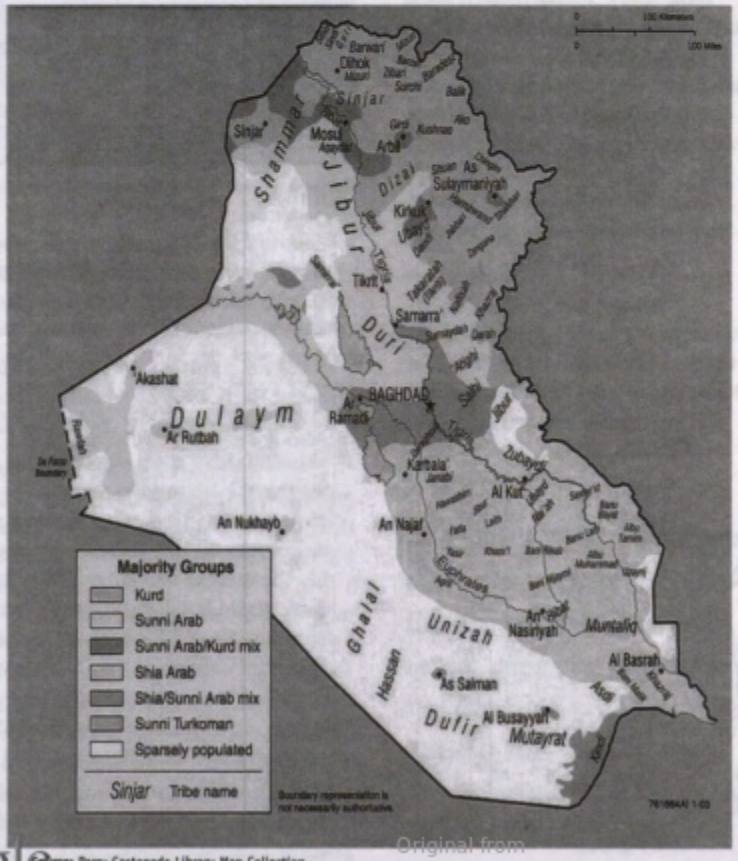

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1200 17th Street NW • Washington, DC 20036 • 202.457.1700 • fax 202.429.6063

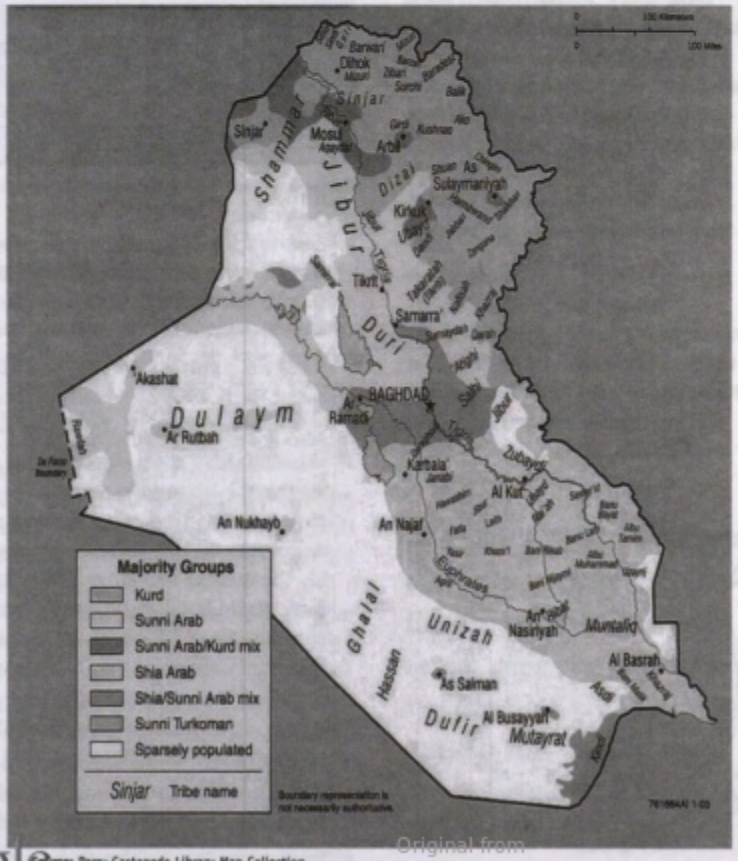
About the Report

Starting in August 2004, the U.S. Institute of Peace Rule of Law Program has been providing in-country support on constitution making to Iraqi political, governmental, and civil society actors. The goal of this program is to maximize the transparency and inclusiveness of Iraq's constitutional process, enabling Iraqi citizens to engage directly with the drafters, and ensuring domestic ownership of the constitution. USIP Rule of Law Program Officer Jonathan Morrow has been travelling frequently to Iraq over the last year. Through July and August 2005, he worked in Baghdad with Iraqi participants and with other international experts in the constitutional negotiations. In this report, he describes and analyzes the process of negotiating and drafting Iraq's constitution, and points to lessons for Iraq and for future constitutional processes.

Jonathan Morrow

Iraq's Constitutional Process II

An Opportunity Lost



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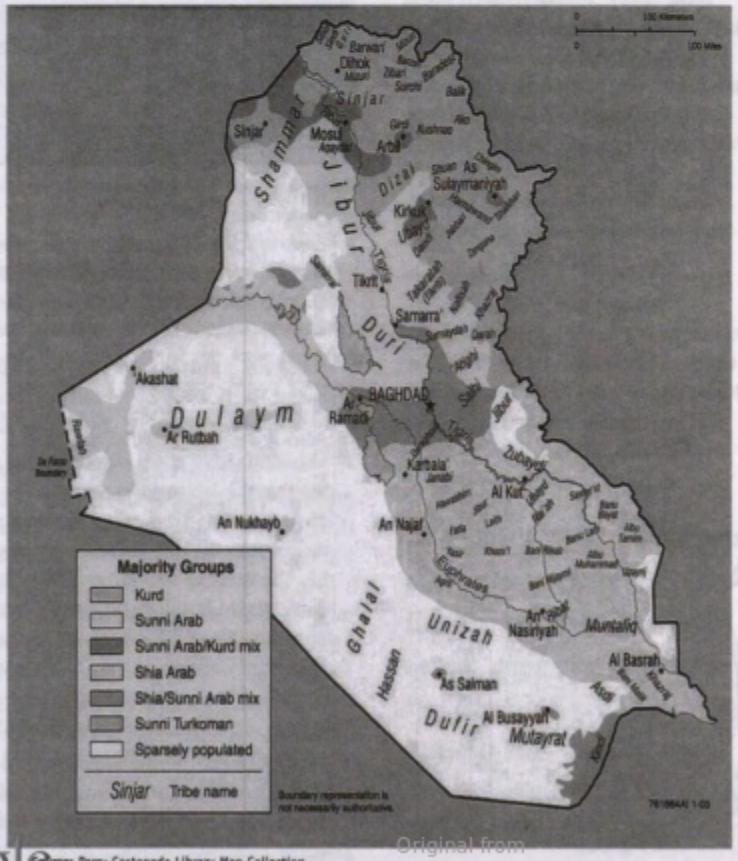

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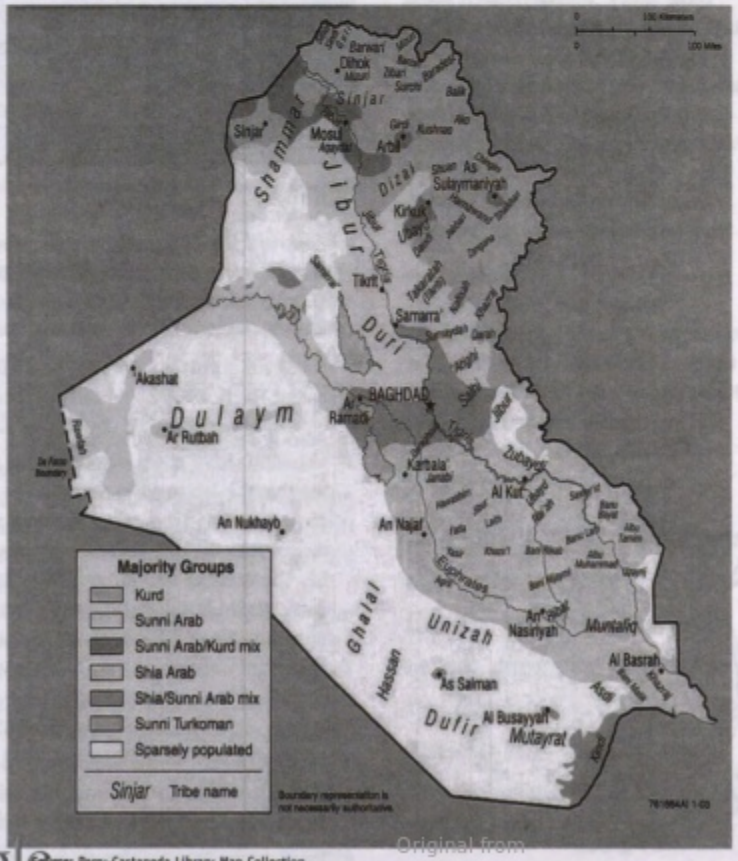

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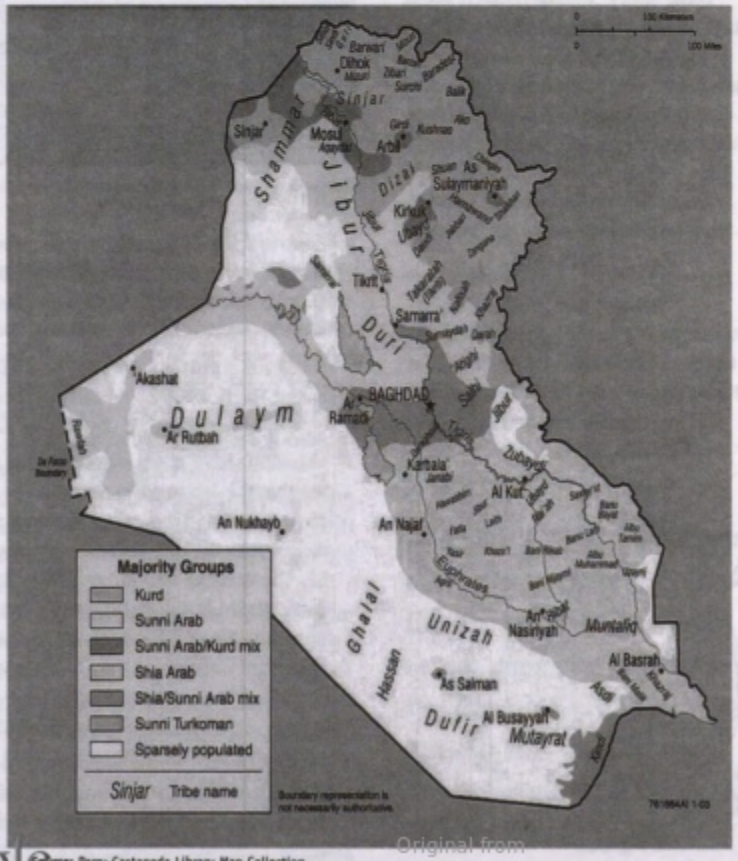

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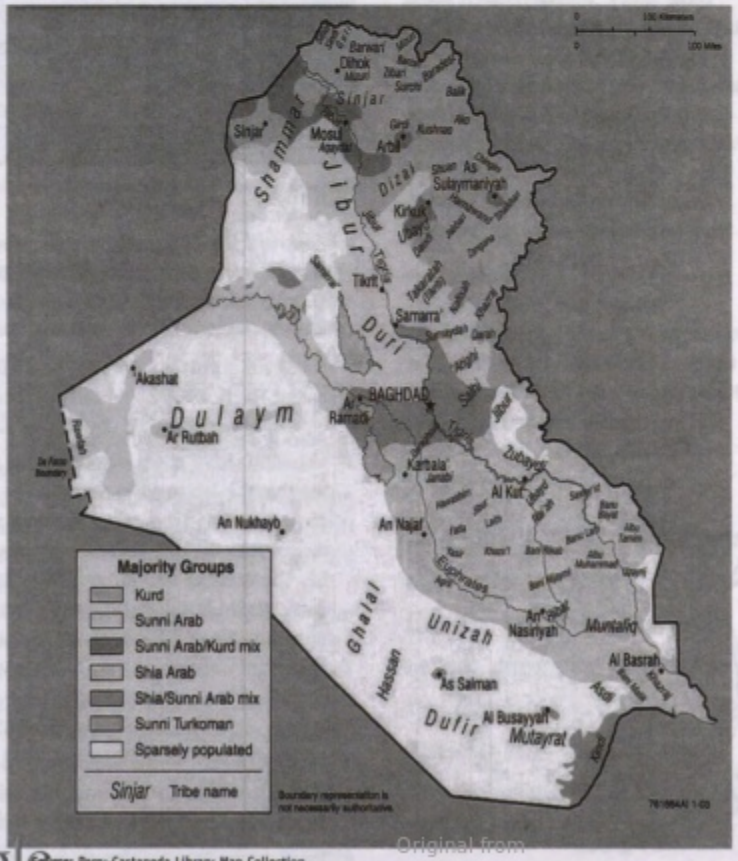

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