

Discrepancies in the Kurdish constitution disregard feelings of the Iraqis

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The constitution of Kurdish region is described by Sunni and Shiite Arab parliamentarians as running counter to Iraq's national constitution. It has created outrage among Arab and Turkmen political factions. Chaldeo-Assyrian politicians say that it undermines their national interests. The Yazidi parliamentarian condemns it. The Shabak's deputy considers it challenging the feelings of the Iraqis. Almost all non-Kurdish Iraqi politicians have criticized it, even several Kurdish politicians. According to Prime Minister al-Maliki, it is provocative, upsetting and risks damaging relations. The Obama administration has also appeared surprised and troubled by it.

Since the occupation of Iraq in 2003, Iraqis have been engaged in confronting numerous critical challenges. Meanwhile, the Kurdish authorities have been wholly engaged in collecting interests that in many occasions are at the expense of Iraqis and Iraqi state. Noting worth that the Iraqis were in an awful situation, due to 12 years of economical embargo during which they suffered from hunger and its catastrophic outcomes, fortunately, the Kurdish region averted that disasters.

Benefiting from the absence of centralized state power and lack of experienced opposition politicians, with the backing of the occupation forces, the Kurdish actors imposed their interests on the Iraqi state's constitution. The result has been the drafting of an internally inconsistent constitution that weakened the Iraqi state.

Serious restrictions on the power of central state authorities, contradictory articles, vague terminology, granting independency to the federal authorities in many important state's power, the living of future decisions in non-treated fields to the federal authorities and the sharing of the regional governments in almost all the authorities of the central government have meant that the Iraqi constitution has lost many of its federalist characteristics. This has, at the same time, damaged the influence and workability of the state as a whole.

Moreover, despite the enormous advantages that the Kurds obtained from the Iraqi constitution, the Kurdish authorities continue to violate its articles. Today, it is clearly visible to the international community that the Kurdish authorities are the major obstacle to constitutional amendments, which according to article 142 of the Iraqi constitution, should have been initiated in the four months following its adoption in 2005.

In addition, **the recently published Kurdish constitution** (KC) contains all the organs and mechanisms of an independent state, it:

- A. Risks the Ignition of existing animosities and decreases the opportunities for reconciliations.
- B. Clarifies what is a continuation of the opportunistic attitude of Kurdish actors and their nationalist agenda.
- C. Shows clearly the expansionist attitude of the ruling Kurdistan Democratic Party and Patriotic Union of Kurdistan.

The followings are discrepancies in the Kurdish constitution:

A. Introduction

- i. The Kurdish nation and the Kurdish country are purposely stressed. Furthermore, it stresses the creation of a united Kurdistan, which doesn't exclude neighboring countries.
- ii. It details the suppression of the Kurdish people by successive Iraqi governments, and glorifying the braveness and fighting of Kurdish rebels, whilst ignoring the Kurdish Peshmerga militias that attacked the Iraqi state for decades and killed thousands of Iraqi soldiers. Thousands of Iraqi children were subsequently orphaned and women widowed.

Selections from Introduction: *"We are the people of Iraq's Kurdistan" "valuing the leaders and the symbols of the liberation movement of Kurdistan, its strugglers, the Peshmerga, its immortal martyrs and their sacrifice for our freedom, safeguard of our dignity and defending our country and for recognition of our right to self-determination by our absolute free will, and remaining loyal to the message, values and objective for which they scarified, and to establish civilized Kurdistan community, -----, releasing the energy of its generations to establish Kurdistan as unified homeland for commonalty, -----."*

B. Article 2,

- i. Item 1, without any historical bases the constitution wrongly defines a region called Kurdistan and includes vast Iraqi lands and large numbers of districts.
Item 1: *"Iraq's Kurdistan is a geographical and historical entity constitutes Duhok province with its present administrative boundaries, and the provinces of Kerkuk, Sulaymaniya, Erbil, and the districts of Akra, Shakhan, Sinjar, Tilkeyf, Kara Kus and the sub-districts of Zummar, Ba'ashiq, Eski Kelek from the province of Nineveh, and the districts of Khanaqin and Mendeli of Diyala province, but with the boundaries of 1968"*
- ii. Item 2, despite that Article 140 of the Iraqi constitution lost its applicability; the Kurdish constitution demands its application.
- iii. Item 3, prohibiting Creation of regions, it contradicts with the Iraqi Constitution and discovers the double standard of the Kurdish actors, who strongly asks federalism for Iraq but refuse it for their regions.
Item 3: *"establishment of a new (federal) region inside boundaries of Kurdistan region doesn't be allowed"*

C. Article 3,

- i. Item 1 clearly rejects the authority of the Iraqi Constitution, except those given in Article 110.
Item 1: *"the people are the source of authority and base of its legitimacy, practice it through its constitutional institutions. Kurdistan constitution and laws has sovereignty and superiority on all the laws which are made by the Iraqi government, excluding the exclusive authorities of the federal government provided in the article (110) of constitution of the federal Republic of Iraq"*
- ii. Item 2 almost completely rejects the authority of the central government, even that of Article 110 of the Iraqi Constitution.
Item 2: *"Application of Article 110 of the Iraqi constitution, which is related to the exclusive authorities of federal law, does not detract from the sovereign and highness of the Constitution and laws of Kurdistan region, and does not limit the powers of regional authorities contained in article in Article 115 and Item 2 of the Article 121 of the federal constitution"*

D. Article 7,

- i. The Kurdish Constitution leaves the possibility open for separation from Iraq and determines stipulations for separation.
Article 7: *“The people of Iraq’s Kurdistan has the right to determine their fate, they choose by their free will to be included as a region in the federal Iraq, as long as the federal, democratic, parliamentary and pluralistic system and individual and collective human rights are guarded, as it is mentioned in the federal constitution”*
- E. Article 8,
- i. Item 1 gives absolute power to the so-called Kurdish Parliament to hold international treaties and conventions contradicting Item 1 of the Article 110 of the Iraqi Constitution
Item 1: *“the international treaties and conventions which the Iraqi government holds with any state or foreign party touching the status of or rights of the region of Kurdistan, will be implantable in the region when the parliament of Iraq’s Kurdistan accepts it by absolute majority of its members”*
 - ii. Item 2 grants the right to the so-called Kurdish Parliament to reject various international treaties and conventions that the Iraqi state holds.
Item 2: *“the international treaties and conventions which the Iraqi government holds with the foreign states will not be applicable in Kurdistan region, if the parliament of Iraq’s Kurdistan not accepts it by absolute majority of its members, excluding the exclusive authorities of the federal government provided in the article (110) of constitution of the federal Republic of Iraq”*
- F. Article 9,
- i. Item 1 requests a share from all types of incomes of the Iraqi state for the Kurdish region, while Item 1 of the Article 17 keeps the incomes of Kurdish region for the Kurds only. This is supported by Item 7 and 9 of Article 74.
Item 1: *“the region has basic constitutional rights against the federal authorities in: A fair share from the federal incomes of international grants, aids and loans according to the equivalency and the population proportion taking in consideration the policies of genocide, arson, destruction and denial to which the people of Iraq’s Kurdistan subjected during the years of former Iraqi governments, in accordance with the Article 106 and 112 of the federal constitution”.*
 - ii. Item 2 requests fair Kurdish participation in administration of the Iraqi state, various missions, fellowships and delegations and regional and international conferences. The participation of Iraqis in the Kurdish region is ignored.
Item 2: *“the region has basic constitutional rights against the federal authorities in: a fair participation in the administration of different institutions of federal state, missions, scholarships, delegations to the regional and international conferences, and conferring career degrees to the peoples of the region in the federal offices in Kurdistan region in accordance with the Article 105 of the federal constitution and according to the equivalency and the population proportion”*
- G. Article 10 allows the Kurdish authorities to continue absorbing Kerkuk city into Kurdish region and to retain it as a capital.
- H. Article 13 clearly contradicts with Item 3 of the Article 121 of Iraqi Constitution and gives right to the so-called Kurdish Parliament to enact fiscal and custom laws. The Iraqi Constitution presents vague information (Item 3 of Article 110 and Item 1 of Article 114) about who will manage custom revenue. Item 3 of Article 110 considers it the exclusive right of the central government, but in Item 1 of the Article 114 shares it with regional authorities.

Article 13: *"No any fee or tax can be imposed, modified or exempted in Kurdistan region without approval of the enacting laws in Kurdistan parliament"*

- I. The underground wealth law which the Iraqi Constitution holds the central government as the major organizer is vaguely presented in Item 1 of the Article 17 in the Kurdish Constitution. It holds the Kurdish authorities as the organizers of Hydrocarbon law in Kurdish region.

Item 1: *"Resources and public sources of natural wealth and surface and underground water and unexploited minerals and quarries and mines are the public wealth, its exploitation, administration and the qualified provisions are organized by law to preserve it for the interest of present and future generations"*

- J. Item 1 of the Article 18 of the Kurdish Constitution regulates the executive, legislative and judicial powers without consideration of the Iraqi constitution, while Item 1 of the Article 121 states that regulation of aforementioned powers should be in accordance with the Iraqi constitution.

Item 1: *"Legislative, executive and judicial authorities of Kurdistan region abide by the fundamental rights of this constitution considering it basic legislations ought to be applied and implemented because of being the fundamental rights of citizens of Kurdistan"*

- K. Item 2 of the Article 23 holds the central government of Iraq to compensate from the Iraqi budget the victims of Kurdish uprisings against the successive Iraqi governments, while the Kurdish regional government obtains 17% from the Iraqi budget, which is approximately twice the proportion of the Kurdish population in Kurdish region. Noting that the central government will also compensate large numbers of Iraqi victims out of Kurdish region from Iraqi budget. If all victims of Ba'ath regime should be compensated from Iraqi budget, then the victims of Kurdish region should logically be compensated from the budget of Kurdish region.

- L. Article 35 of the Kurdish Constitution grants the right to institute a federal region depending on the sect and ethnicity.

- M. Article 40 marginalizes the Iraqi Constitution and considers the so-called Kurdish parliament the only legislative power.

Article 40: *"the parliament of Iraq's Kurdistan is the legislative authority and the reference to decide on the crucial issues about the people of Kurdistan region, its members are elected by direct secret free general vote"*

- N. In the constitutional oath in Article 44 and Article 71, the members of the so-called Kurdish Parliament swear to work only for the peoples of Kurdish region.

- O. Item 1 of the Article 55 restricts the freedom of expression of parliamentarians.

- P. In the constitutional oath in Article 63, the president of Kurdish region and his deputies swear to work only for the peoples of Kurdish region.

- Q. Article 64 leaves the door open for Masoud Barzani to rule the Kurdish region for life.

- R. Article 65,

- i. Item 11 and Item 6 of the Article 70 empowers the president of the Kurdish region with an authority of Prime Minister of Kurdish region.
- ii. Item 12 severely restricts the movement of the Iraqi army in Kurdish region, which oppose the Item 2 of the Iraqi Constitution.

- Item 12: *“To allow (president of the region) federal armed forces to enter the territory of Iraq’s Kurdistan where necessary, after winning the approval of Parliament of Iraq’s Kurdistan on the entry of those forces with the identification of its functions and place and duration of stay in the Territory”*
- iii. Item 13 oppose the Iraqi Constitution and grant to the Kurdish Peshmerga militias the characteristics of an army.
- Item 13: *“To send (president of the region) forces of Territory’s guard the (Peshmerga) or the internal security forces to outside the Territory with the consent of Parliament”*
- iv. Paragraph 4 of Item 14 grants the authority to the president of Kurdish region to marginalize the so-called Kurdish parliament, by authorizing a non-elected prime minister.
- v. Item 21 oppose the Item 4 of the Article 121 of the Iraqi Constitution by giving the right to President of Kurdish region to establish offices for the Kurdish region out of the Iraqi embassies. At the same time Item 14 of the Article 74 gives right to the council of ministers of Kurdish region to establish such offices in the Iraqi embassies.
- S. Item 8 of the Article 74 violates the oil and gas law of the Iraqi Constitution (Article 111 and Item 1 and 2 of the Article 112) and grants the right of oil exploitation in Kurdish region to the so-called Kurdish parliament.
- Item 8: *“Joint work with the Federal Government to formulate strategic policies necessary for the development of the wealth of oil and gas, combined with the consent of Parliament in everything concerning the wealth of the Territory.”*
- T. Article 77 violates Item 1 of the Article 121 of the Iraqi Constitution by stating that the juridical authorities are independent in Kurdish region.
- Article 77: *“The judicial authority is independent in the territory of Kurdistan, consists of the Council of the judiciary, the Constitutional Court, and the Cassation Court, and the committee of judicial supervision, the public prosecution, and the courts in different degrees, types of organs, and organizes composition, procedures and conditions of appointment of its members and their accountability by law”*
- U. Item 1 of the Article 111 demands a share from the Iraqi underground wealth, while in the Item 4 opens the possibility to save the income of the underground wealth for the Kurdish region only.
- V. Article 115 complicates any future authorities of the Iraqi constitution on the constitution of the Kurdish region.

By refusing discussion of the Kurdish constitution in the Iraqi parliament, the Kurdish authorities not only violate the Iraqi constitution, they break the simplest bases of democracy and federal system.

The spirit of this constitution reflects the unproductive and offensive policy of KDP and PUK since, which illustrates that they have not rid themselves of pre-1991 rebel mentality. The Kurdish politicians irritate feelings of the Iraqis, abases the Iraqi state. This trend has potentially long-lasting grave implications for the whole Middle East.