

The Kurdish draft constitution is a negative message for the stability of Iraq (Conflicting Items and Articles of the regional Kurdish draft constitution with the Iraqi Federal constitution).

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It is clear that Iraqi state from the time of its creation following after World War I has not protected the various Kurdish and Turkmen ethnicities and others Iraqi non-ruling communities as it should be. To a great extent, this goes back to a fault in its constitutional makeup and the nature of its political system. The basic law of 1925, which was the constitutional make up of the state of Iraq, up to the last Iraqi constitution of 2005 which was described as Shi'ite Arab- Kurd constitution.

Turkmen had resisted assimilation policies and opposed dictatorial and repressive regimes throughout the recent history which led these governments to further marginalize the role of the Turkmen in the political arena and that of decision-making within the government. In order to obtain independence for the country of Iraq during the royal rule, the government pledged allegiance to the League of Nations in May 30th 1932, and hence assured the inclusion of prominent Turkmen in the early governments and confirmed the recognition of the major ethnic groups of Iraq as being made up of Arabs, Kurds and Turkmen.

In order to strengthen national loyalty and to deepen social harmony in any constitution, national rights tolerance must be recognized, human rights and freedoms of the individual must be respected in accordance with the provisions of the Universal Declaration of Human Rights and other related international treaties and conventions.

In the 25 June 2009 the Kurdish local parliament had approved the draft of what was called (Kurdistan constitution). The Kurdish parliament, which is controlled by the both KDP (Kurdistan Democratic Party) and the PUK (Patriotic Union of Kurdistan), is facing strong opposition from within their ranks, as well as among Kurdish intellectuals and the society at large. Corruptions, nepotism, tribalism, mismanagement, monopolization of power and marginalization of Turkmen and other minorities have become standard complaints directed against the two ruling parties, although that the two parties have ordered the draft constitution to be approved.

Relations between Iraqi's various ethnic and religious groups are going through a new round of complications since provision in the draft constitution of the country's northern region had declared a range of disputed areas part of the historical Kurdish homeland, infuriating non-Kurds in the country. Sunni and Shi'ite Arab and Turkmen and other parliamentarians groups like Chaldea-Assyrians, Yazidis and Shabak said the constitution of Iraqi's Kurdish region ran counter to Iraq's national constitution and should be debated by the country's parliament in Baghdad.

The followings are main principles in Iraq federal constitution and any legal text contradicts with it would be considered void.

Article 13

First: This constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: No law that contradicts this constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this constitution shall be considered void.

Article 116

The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations

Article 120

Each region shall adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, provided that it does not contradict this Constitution.

The followings in the Kurdish constitution contradicted with the Iraqi federal constitution (some examples):

1.

The Kurdish draft constitution

Article 1

Kurdistan Region is a region within the federal State of Iraq, and its political system is Republican, Parliamentary, and Democratic, which adopts political pluralism, peaceful rotation of power, and the principle of separation of powers.

The Iraqi federal constitution

Article 1

The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.

Comment:

The Kurdish draft constitution suggested an equal concept republic system with the federal state as republican while it was a region and not republic and that ran counter to the principles of the unity of Iraq as a single federal state consisting of regions and provinces.

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2.

The Kurdish draft constitution

Article 2

First: Kurdistan Region-Iraq consists of the governorate of Dahuk in its current administrative borders and the governorates of Kirkuk, Sulaymaniyah, and Erbil, along with the districts of Aqra, Shekhan, Sinjar, Tala'far, Talkif, Qaraqush, and the subdistricts of Zimar, Ba'shiqa, and Aski Kalak from Nineveh province. Besides, the districts of Khanaqin and Mandali from Diyala province, the district of Badra, and the sub-district of Jassan from Al-Wasit Region in their administrative borders prior to 1968.

The Iraqi federal constitution

Article 1

The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq

Article 112

The federal system in the Republic of Iraq is made up of a decentralized capital, regions and governorates, and local administrations.

Article 113

First: This Constitution shall approbate the region of Kurdistan and its existing regional and federal authorities, at the time this constitution comes into force.

Comment:

The Kurdish draft constitution declared a range of areas outside the existing regional borders as part of the Kurdish area and that ran counter to the above articles of the federal constitution.

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3.

The Kurdish draft constitution

Article 8

First: the international treaties and conventions which the Iraqi government holds with any state or foreign party that might affect the current or future circumstances, conditions, or rights of Kurdistan Region., will be implanted within the region when the parliament of Iraq's Kurdistan accepts it by absolute majority of its members.

Second: 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 does not accept it by absolute majority of its members, excluding the exclusive authorities of the federal government provided in the Article 110 of the Constitution of the federal Republic of Iraq

Third: Conclude agreements with governments of regions of foreign countries (within the limits of enacting laws that are not within the exclusive authorities of the federal government) according to article 110 of Iraqi constitution

Fourth: conclude agreements with foreign countries with the consent of the federal government, and the federal government may not show dissent without convincing legal and constitutional justifications.

The Iraqi federal constitution

Article 110

The federal government will have exclusive authorities in the following matters:

First: Formulating foreign policy and diplomatic representation; negotiating, signing, ratifying international treaties and agreements; negotiating, signing, ratifying debt policies and formulating foreign sovereign economic and trade policy.

Comment:

The Kurdish draft constitution amended and voided the exclusive authorities concerning formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements

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4.

The Kurdish draft constitution

Article 7

Kurdistan-Iraqi people shall enjoy the right to self-determination. They have chosen a free union with Iraq, its people, land, and sovereignty, as long as all shall be abided by the Federal Constitution, a federal, Parliamentary, democratic, and pluralistic system, and respect the human individual and collective rights.

The Iraqi federal constitution

Article 1

The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.

Comment:

The Kurdish draft constitution voided the principle of the unity of Iraq by saying the Kurdistan-Iraqi people would enjoy the right to self-determination.

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5.

The Kurdish draft constitution

Article 9

It shall be a fundamental and constitutional right of Kurdistan Region to:

First: Have a fair share of federal resources in a way that achieves the principle of population equality and proportionality, taking into account what inflicted Kurdistan from burning, destruction, and deprivation of its people from its merits during the previous successive regimes according to article 106 and article 112 of federal constitution.

While Article 17 said:

First: Natural wealth, surface water, groundwater, non extracted metals, quarries, and mines are national wealth of Kurdistan Region, and a law that preserves the interests of the current and future generations shall regulate their extraction, management, and disposal conditions.

Second: Public assets in Kurdistan Region belong to the Kurdistan people, and a law shall regulate the special provisions governing its preservation, management, and disposal conditions, and the limits within which some of the assets are to be relinquished.

These articles are supported by paragraphs 7 and 9 of Article 74

The Iraqi federal constitution

Article 110

The federal government shall have exclusive authorities in the following matters

Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank

Article 106

A public commission shall be established by a law to audit and appropriate federal revenues. The commission shall be comprised of experts from the federal government, the regions, the governorates, and its representatives, and shall assume the following responsibilities:

First: To verify the fair distribution of grants, aid, and international loans pursuant to the entitlement of the regions and governorates that are not organized in a region.

Second: To verify the ideal use and division of the federal financial resources.

Third: To guarantee transparency and justice in appropriating funds to the governments of the regions and governorates that is not organized in a region in accordance with the established percentages

Comment:

The Kurdish draft constitution voided the exclusive authorities of the federal government concerning tax, fees, incomes and financial resources. The Kurdish wrote the draft on the principle take and not gives.

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6.

The Kurdish draft constitution

Article 13

May not impose any fee or tax in the region of Kurdistan, modification or waiver without the consent of the Kurdistan parliament and this will be approved by law

Article 65

The Parliament shall practice the following exclusive powers among other according to the laws:

Ninth: Lay taxes and fees, and amend and repeal them.

The Iraqi federal constitution

Article 110

The following competencies shall be shared between the federal authorities and regional authorities

First: To administer customs in coordination with the governments of the regions and governorates those are not organized in a region. This will be organized by law.

Article 28

First: No taxes or fees shall be levied, amended, collected, or exempted, except by law.

Second: Low income earners shall be exempted from taxes in a way that guarantees the preservation of the minimum income required for living. This shall be regulated by law.

Comment:

The Kurdish draft constitution voided the principles of sharing and coordination in the fields of custom, tax, fees.....etc.

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7.

The Kurdish draft constitution

Article 15

Kurdistan Region shall adopt a free economic system, prohibit monopoly and exploitation, and guarantee a free and legitimate competition.

The Iraqi federal constitution

Article 110

The federal government shall have exclusive authorities in the following matters

First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy.

Seventh: Drawing up the general and investment budget bill.

Article 25

The State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources, and the encouragement and development of the private sector.

Comment:

The Kurdish draft constitution ran counter to the principles to insure the full investment of its resources, diversification of its sources and drawing up the general and investment budget bill.

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8.

The Kurdish draft constitution

Article 18

First: Legislative, executive and judicial authorities of Kurdistan region abide by the fundamental rights of this Constitution considering its basic provisions, and these should be applied and implemented as of being the fundamental rights of citizens of Kurdistan

The Iraqi federal constitution

Article 121

First: The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.

Comment:

The Kurdish draft constitution divided the judicial powers against the aims of the Iraqi federal constitution and applied its own provisions.

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9.

The Kurdish draft constitution

Article 77

Judicial power in the Kurdistan Region shall be independent and composed of the Juridical Council, Constitutional Court, Court of Cassation, Consultative Council, Judiciary Oversight Commission, Public Prosecution Department, and courts at all levels, types, and formations. The way they shall be formed and the conditions and procedures for the appointment of their members and their questioning shall be regulated by law.

The Iraqi federal constitution

Article 89

The federal judicial power is comprised of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated in accordance with the law

Article 90:

The Higher Juridical Council shall oversee the affairs of the judicial committees. The law shall specify the method of its establishment, its authorities, and the rules of its operation.

Comment:

The Kurdish draft constitution ran counter the Iraqi by establishing juridical council and Court of Cassation which the federal government should have exclusive authorities on it.

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10.

The Kurdish draft constitution

Article 77

Judicial power in the Kurdistan Region shall be independent and composed of the Juridical Council, Constitutional Court, Court of Cassation, Consultative Council, Judiciary Oversight Commission, Public Prosecution Department, and courts at all levels, types, and formations. The way they shall be formed and the conditions and procedures for the appointment of their members and their questioning shall be regulated by law.

The Iraqi federal constitution

Article 121

First: The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government.

Second: In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region.

Comment:

The Kurdish draft constitution ran counter the Iraqi by establishing juridical council and Court of Cassation which the federal government should have exclusive authorities on it.

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11.

The Kurdish draft constitution

Article 65

Seventh: Issue decrees that shall have the force of law after consultation and agreement with the Speaker of Parliament and the Council of Ministers of the Kurdistan Region. This shall be practiced when the Kurdistan Region and its political system or public security or its constitutional institutions face demolishing dangers threatening its entity, and the Parliament could not meet provided these decrees shall be presented to the Parliament in its first meeting. If not presented or presented but the Parliament does not approve them, the decrees shall cease to have the force of law.

Ninth: Declare a state of emergency in cases of war, occupation, rebellion, anarchy, natural disasters, spread of epidemics, or any other states of emergency provided the first period shall be for not more than one month. Further, the subsequent extensions, with the consent of an absolute majority of members of Parliament, may be for a period not exceeding three months for each. Special provisions of states of emergency shall be regulated by law.

The Iraqi federal constitution

Article 61

The Council of Representatives shall be competent in the following:

Ninth:

A. To consent to the declaration of war and the state of emergency by a two-thirds majority based on a joint request from the President of the Republic and the Prime Minister.

Article 110

The federal government shall have exclusive authorities in the following matters:

Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.

Comment:

The Kurdish draft constitution ran counter to the Iraqi federal constitution which gave the federal government exclusive authorities in matters of security and armed force.

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12.

The Kurdish draft constitution

Article 65

Eighth: Special pardon for those convicted according to law.

The Iraqi federal constitution

Article 73

The President of the Republic shall assume the following powers:

First: To issue a special pardon on the recommendation of the Prime Minister, except for anything concerning a private claim and for those who have been convicted of committing international crimes, terrorism, or financial and administrative corruption.

Comment:

The Kurdish draft constitution gave the president of the (Kurdistan) more power than the power of the Iraqi state about anything concerning a private claim and those who have been convicted of committing international crimes, terrorism.

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13.

The Kurdish draft constitution

Article 65

Twelfth: Allow the entry of federal armed forces or any other military units to the Kurdistan Region, when needed, with the consent of the Parliament of Kurdistan-Iraq, provided he shall determine their duties, venue, and the duration of their presence.

Thirteenth: The Kurdistan Region President may send Peshmarga forces (Regional Guard) or the internal security forces outside the Kurdistan Region with the consent of Parliament of Kurdistan-Iraq.

The Iraqi federal constitution

Article 78

The Prime Minister is the direct executive authority responsible for the general policy of the State and the commander-in-chief of the armed forces. He directs the Council of Ministers, presides over its meetings, and has the right to dismiss the Ministers, with the consent of the Council of Representatives.

Comment:

The Kurdish draft constitution ran counter to the Iraqi federal constitution which gave the federal government exclusive authorities in matters of security and armed force.

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14.

The Kurdish draft constitution

Article 65

Twenty: Issue a decree for the appointment of the Independent Electoral Commission and its manger after approved of Kurdistan parliament according to the article 107 of this constitution.

The Iraqi federal constitution

Article 102:

The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law.

Comment:

The Kurdish draft constitution ran counter to the Iraqi federal constitution by establishing electoral commission and ignoring the main Federal Independent Electoral Commission.

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15.

The Kurdish draft constitution

Article 111

First: Kurdistan Region's share of the revenues of oil and gas wealth, customs tariff, and other federal revenues including loans and grants.

Second and third: The income of taxes, fees, and wages of public utility services and revenues of public institutions, companies, and services in the Kurdistan Region, and what will be gained from expenses of the management and collection of customs taxes and tariffs and other federal income in Kurdistan Region.

The Iraqi federal constitution

Article 110

The federal government shall have exclusive authorities in the following matters

Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.

Comment:

The Kurdish draft constitution ran counter to exclusive authorities of Iraqi federal government regarding Iraqi federal constitution in formulating fiscal and customs policy; issuing currency; and regulating commercial policy across regional and governorate boundaries in Iraq;

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16.

The Kurdish draft constitution

Article 115

No constitutional provision or federal law that takes away from the powers of the Kurdistan Region-Iraq, which is not within the exclusive authorities of the federal government, shall be applied except with the consent of Kurdistan Parliament and the consent of the people of Kurdistan Region in a plebiscite by the majority of voters according to article 126 of the federal constitution.

The Iraqi federal constitution

Article 142

First: The Council of Representatives shall form at the beginning of its work a committee from its members representing the principal components of Iraqi society with the mission of presenting a report to the Council of Representatives, within a period not to exceed four months, that contains recommendations of the necessary amendments which could be made to the constitution, and the committee shall be dissolved after a decision is made regarding its proposals.

Second: The proposed amendments shall be presented to the Council of Representatives all at once for voting, and shall be deemed approved with the agreement of the absolute majority of the members of the Council.

Third: The articles amended by the Council of Representatives pursuant to item (second) of this Article shall be presented to the people for voting on it in a referendum within a period not exceeding two months from the date of its approval by the Council of Representatives.

Fourth: The referendum on the amended Articles shall be successful by the approval of the majority of the voters, and if not rejected by two third of the voters in three governorates or more.

Fifth: Article (126) of the constitution (concerning amending the constitution) shall be suspended, and shall return into force after the amendment stipulated in this Article have been decided upon.

Comment:

The Kurdish draft constitution ran counter to the article 142,126 of the Iraqi federal constitution.

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