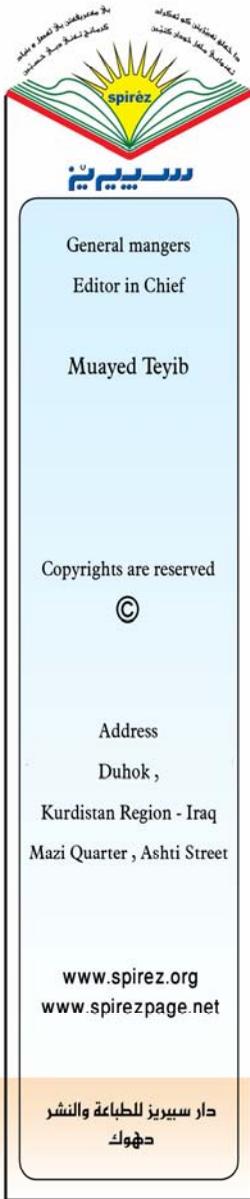


## **Conquering challenges facing Kurds in Iraq today**



- **Issue No: (391)**
- **Title:** Conquering challenges facing Kurds in Iraq today
- **Author:** Imad Al-Mizori
- **Translated in to Arabic:** Avraz Hussein
- **Designer:** Mina Abdul-khaliq
- **Cover:** Najmaaddin Biri
- **Printing Supervisor:** Sherwan Ahmad Tayib
- **First Edition**
- **No. of copies:** (1000 )
- **Deposit No:** ( 2297 ) for 2012
- **Printed by:** Khaney-Dohuk

دار سبيريز للطباعة والنشر  
دهوك

SPIREZ PRESS & PUBLISHER  
DUHOK

# **Conquering challenges facing Kurds in Iraq today**

**By  
Eamad J. Mazouri**

**Translated in to Arabic  
Avraz Hussein**

---

**2012**

**دولتي**

---



# Conquering challenges facing Kurds in Iraq today

**"The federal government is violating the Constitution itself by purposefully delaying carrying out Article 140, which is an essential part of the whole Constitution." Eamad J. Mazouri.**

Due to the existence of dissimilar versions of the Iraqi Constitution of 2005 and different translations, I find myself compelled to admit that it is not an easy task to find the correct version even on the Iraqi government website that is written in Arabic, where there is the original, the amended, and additions to the original and amended versions, not to mention the proposed amendments that are waiting to be ratified, some of which are still in dispute. However, we are relying on the Iraqi government's original version, hoping that there will not be too much discrepancy in terms of the article numbers mentioned hereof.



# Foreword

**T**hroughout the time and events leading to the liberation of Iraq on March 20, 2003, and in light of the proceeding Afghanistan experience, it was obvious that the U.S. and the allied forces would seek Kurdish assistance in order to accomplish their mission in Iraq with minimum losses, especially in the north. This became more evident following the failure of the Turkish Parliament to pass a bill allowing U.S. troops to be deployed on Turkish soil to enter Iraq from the north, which severely damaged American plans to open a northern front against Iraq. This in itself made it absolutely inevitable for Americans to rely heavily on Kurds in the north.

Later on, there would be another immediate outcome of the liberation war in favor of the Kurds, as it became clearer at its commencement that the liberation of Iraq is not only about changing the top echelon of the regime as some speculated and anticipated, but instead the change of the whole regime that indeed collapsed immediately after the liberation. While there were many well-organized militia forces affiliated with various Iraqi opposition

elements, the Kurdish Peshmarga stood as the most organized, experienced, and battle-hardened force on the ground, next to the allied ones. This naturally gave another plus to Kurds in the new, post-Saddam Iraq.

However, due to the inexperience of Kurds in the kind of alliances of this magnitude, the new, insurmountable challenges, and the fact that they were overwhelmed by the new political equation and fast-paced political developments, they perhaps failed to take full advantage of their new-found position.

Not underestimating what the Kurds have achieved and accomplished so far, they were not very successful in fully grasping the ramifications of the establishment of a new democratic Iraq under U.S. and international banners after more than eight decades of denial, deprivation, assimilation, and destruction of their region, Arabization and ethnic cleansing that mounted to genocidal proportions in Halabja, and the infamous al-Anfal campaign staged by Saddam's regime in 1988 and the mass exodus of 1991 that soon followed.

One of their colossal mistakes lies in allowing so expediently the return of Kurdistan to the bosom of Iraq without fully resolving the issue of the nature of the new government of post-Saddam Iraq, namely federalism, as it should have been a priority before any such reunion. Of course not dismissing US and allies pressure, The

misunderstanding here occurred when the Kurdish government and political parties had already raised the level of their demands through Kurdistan Parliament in 1992, from self-autonomy to federalism as the best solution for Kurdistan and Iraq, while the rest of the country was still suffering under Saddam. This logo replaced the old Kurdish demand of democracy for Iraq and autonomy for Kurdistan. Nevertheless, Kurds did succeed in passing the Transitional Administrative Law (TAL) that recognized the existing regional government of Kurdistan and defined Iraq for the first time as a federal state. Later on, in 2005, Article 1 of the Constitution once again defined Iraq as a federal democratic plural state. However, nothing was done to implement that concept, except of course the acceptance of Kurdistan Region as a federal constituency while the form of the rest of the country remains even today vague and ambiguous, especially following the failed attempts by SCIRI and the Basra Initiative to form federal regions in southern Iraq next to the Kurdistan federal region.

Here, erroneously, many Iraqi Arabs and perhaps some other elements of Iraqi populations such as Turkmen perhaps under pressure from regional players stood against the concept of federalism, arguing that it would lead to the partition of Iraq, when in fact it could be the only way to unify the country and keep it together after more than 80

years of war and destruction. To go back a little more than a decade earlier, at the start of 2003, Iraqi Kurdistan was already separated from the rest of the Iraqi State and enjoyed semi independence for more than 12 years while the rest of the country was still reeling under Saddam's tight control.

Therefore, federalism from the Kurdish perspective was actually to reunite with Iraq as a whole by rejoining the country, but Iraqi Arabs nationalists failed terribly to see that still believing that Kurdistan must return to Iraq under a strong central government-and the Kurds, on the other hand, were not that successful in making their Arab counterparts understand this essential point. Here I am reminded of a saying of one of the American civil rights leader cannot recall his name who once said that if a nation is capable of raising one generation in freedom, it would be impossible to get that nation back into slavery or submission. Once again, many people in Iraqi government had a hazy idea regarding federalism, while others speciously rejected it as a separation, initially by putting up little opposition that mounted gradually over time to total rejection. At the end, some Arab leaders and political organizations started openly speaking against federalism to a degree that even Prime Minister Nouri al-Maliki began calling for a strong central government in a clear appeal for the overhaul of the constitution and the whole

federal system. Soon the consequences of such calls were followed in the practices of Baghdad government, which surprised Kurdish officials who were treated not as active partners in the government, but rather as opposition.

Early in this process, it became clearer on daily basis that the following points between Baghdad and Arbil were to become the center of dispute and controversy if not explosive issues, and some of them might not be resolved anytime soon. By reviewing them, it becomes obvious that basically some of those points have a history and are the same ones that have been sticky points between Kurds and Baghdad perhaps since 1961 and possibly beyond. We will try to shed some light on these issues from the constitutional view point. But first, let's have a look at how negotiations in general were conducted between the two parties.



## **Negotiation technique and the psychological Preparedness**

**A**t a time when many observers believed that Kurds started negotiating strongly by presenting their maximum demands in an attempt to expand their gains like any know-how negotiator, they in fact didn't. Not to undervalue what they have achieved in Kurdistan-Kurds started with their demands as they are and were in the 1960s (excluding the concept of federalism, of course) when their major demands were confined to democracy for Iraq and self-autonomy for Kurdistan. With this mentality, they went to Baghdad to negotiate federalism (a concept that differs dramatically from autonomy) with their Arab counterparts who, on the contrary, were totally focused on the notion of a strong central government - especially the Sunni elements and later the Shiites as well. This did not allow Kurds much room for concessions that are deemed necessary in order to make the negotiation process successful and not as time consuming as it is today. The mistake here is that Kurdish negotiators since most of them were from the old Kurdish guard who had been negotiating with Baghdad for autonomy ever since 1961, there is no doubt that they needed to be trained and prepared psychologically on how to conduct these

negotiations based on a federal structure ahead of any real participation.

On the other hand, it is common knowledge that one of the maxims of the art of negotiation is that you never start from the rock bottom. Unfortunately, this is exactly what happened in this case. As a result, everything became more complicated, and the Kurds now are in a position in which they have to fight hard on the negotiation table not only to snatch every right regardless of how insignificant or important that right might be, but also to preserve what they have already achieved, because Baghdad is trying slowly to reverse the whole constitutional process including-but not limited to-the very federal structure of the state itself-this at a time when circumstances have changed considerably since the liberation, but unfortunately not so much in Kurds' favor.

## **1- The structure of the State**

This is one of the basic and most significant elements since it determines the ultimate nature of relationship between Baghdad and Arbil. Like we mentioned before, in order to safeguard their gains properly, Kurds decided in 1992 that the best form of the Iraqi state would be to establish a federal system similar to all of the democratic federal modern states such as the U.S., Germany, and Canada. They were successful in getting this principle

enshrined, first in TAL and later in the Constitution of 2005.

Nevertheless, what really happened in practice is merely the recognition of Kurdistan Regional Government while Baghdad still deemed itself as the central government and is still behaving accordingly towards Kurdistan Region. In other words, what we have in Iraq today is some kind of a distorted form of government that is neither federalism nor central versus autonomy structure. Fundamentally, this is the deep cause of most of the unresolved problems facing the country today.

But first, we must find out how this model came to be presented in Iraq. It is common knowledge that introducing federalism in Iraq came as a Kurdish initiative, since it was introduced by KRG and adopted by Kurdistan parliament back in 1992. As such, it was received by resentment if not objection from many Iraqi Arab and other circles as well as regional powers that are sensitive to the idea of a weaker central control in the country and especially the notion of Kurds gaining more control over their territory and natural resources, which might-in their view - serve as a good basis for a viable political entity, also it could constitute an inspiration to other restive Kurds in the neighboring countries to seek the same, while the international community and especially the U.S.-led allies considered the issue an

internal matter that must be resolved internally among various competing powers. With this realization in mind, the then Prime Minister of the KRG, Mr. Nechirvan Barzani, at the beginning of the fifth cabinet and rightly so, endeavored firmly to turn it into an Iraqi initiative by encouraging Arab parties in central and south of Iraq to seek the formation of at least one or two more federal constituencies in order to structure a proper federal system as it is recognized by the Constitution. Despite the good intentions, Arab attempts in this regard failed to secure that wishful outcome. Consequently, the Iraqi State remained as indistinct form where major constitutional powers remained in dispute until the present time.

It might be useful to point out here that in general; federal states-unlike self-autonomous ones-are created when two or more regions or entities get together out of necessity or need and of their own free volition, and agree to unite to form a federal government by making concessions for that entity. Clearly the power here comes from the people and their representative. As it is indicated, the power shift moves from the bottom upwards. In this case, from regions to federal government allowing it to function, while in the case of autonomy-on the contrary-there is an established central government that for a variety of reasons be that ethnical, geographical, historical religious administrative, grants a certain region or regions

certain rights, thus the power moves from top to bottom. Iraqi politicians must pay reasonable attention to this point if they are sincere in their endeavor to uphold the federal democratic structure of Iraq and put it on the right track in peace for stability and prosperity. Iraq cannot go back to the days when the citizen was getting killed in the name of patriotism.

Let's take a look at the previous and even existing experiences of federal states, we find out that federal systems that are established when most of the powers are granted to the federal government, where the regions must keep struggling and demanding more powers constantly, are doomed to failure and termination, while the ones that are formed when most powers are retained by the regions and the federal governments are granted the least possible—mainly monetary, foreign, and defense, enough to enable it to function properly—are sustainable and destined for democracy and prosperity.

Here, we don't need to mention the U.S. experience as the first modern federal experience in this regard, where it not only survived a long, bloody civil war, but it also prospered and became the greatest country with the largest economy in modern time, not to mention the first and only democratic country in which power transition has not been interrupted since its inception.

Hence, Iraqi Arabs must face this reality and decide what kind of federalism they need. Kurds alone, under the current circumstances and parliamentary arrangement, do not muster enough number of seats to make this objective fully materialize; however, since Iraq of post 2003 has been more about consensus than the majority rule, they do have adequate political clout in Baghdad to implement the pertaining articles of the Constitution and put the country on the right track. After all, Kurds do realize that seeking a perfect solution is basically seeking failure itself, while their Arab counterparts must realize that a democratic federal Iraq cannot be sustained without meeting essential Kurdish demands.

## **2- Disputed areas and Article 140**

Apart from the historical, geographical and demographical facts, not to mention historical Kurdish claims over these areas-starting with Singar to Akre, Sheikhan, Makhmour, Kirkuk all the way to Khaniqin, Mandali, Badra, and Jassan, all of which were subjected to intensive Arabization campaigns by various successive Iraqi governments in Baghdad-Kurds somehow and mistakenly voluntarily accepted these regions officially to be called disputed areas, when in fact they are natural extension of Kurdistan highlands and are under continued attempts to be cut off from Kurdistan. Here some might

point out that these areas are home to other ethnic and religious groups, indeed a fact that Kurds have admitted to and never disputed. These lands throughout history were home to many people who have lived for centuries in peace and harmony. However, since 1992, and in their effort to build a modern democratic, tolerant and prosperous society, Kurdistan Parliament and the KRG have recognized for the first time in Iraqi history all the elements that make up Kurdistan society who were then granted their administrative, cultural, and political rights at a time when these same minorities were still deprived of their rights in the rest of Iraq under Saddam. In reality, Kurdistan became a safe haven for all Iraqis, especially Christians, including Arabs who fled the violence of the south and central of the country and resorted to Kurdistan seeking safety and security. Fortunately, Kurdistan still continues to play that vital role.

The Kurdistan coalition must be commended on its efforts to pass Article 140 of the Constitution that states a referendum is to be held to decide the fate of these regions. As we know, the referendum was initially planned for November 15, 2007, but was delayed first, to December 31, and then by a further six months. As the elections were not called by early December 2008, they were postponed again as a concession and contribution

from the Kurds to facilitate the regional elections on January 31, 2009.

Kurds must realize by now that the Kirkuk issue alone is unique and almost separated from the rest of the issues because it has nothing to do with justice and fairness or historical, geographical, and demographical factors. This belief receives further support upon looking at the 1991 Kurdish Uprising that encompassed and liberated all four Kurdish provinces including Kirkuk. Then suddenly Saddam's regime was allowed to retake not Suleimaniya and Arbil nor Duhok, but Kirkuk. Kirkuk alone was singled out for reoccupation for obvious reasons: the oil factor and the ramifications of Kurds controlling those fields. It is time for Kurds to realize that Kirkuk is indeed a political issue, and Kurds must seriously convince the concerned parties on local and regional levels that the return of Kirkuk to Kurdistan is no threat to their interests and in fact might benefit all those concerned taking into consideration Iraqi, regional, and international dimensions of the crisis and the competing interests involved, some of which might not be served properly with the concentration of power in one hand versus a balanced disperse of that power.

Article 140 of the Constitution of Iraq states that before the referendum is carried out, measures shall be taken to reverse the systematic Arabization policy, not only the

forced eviction of the Kurds and settling of Arabs into their homes and properties, but also the administrative measures Baghdad took to cut out regions from Kurdish provinces and annex them to Arab-dominated ones, especially in the case of the Mosul and Salahaddin governorates in an attempt to turn Kurds into minorities over their own land. This was to be followed by a population census before the referendum was to be held.

In order to block the referendum, some Arabs and certain circles of Turkmen stood adamantly against it, supported mainly by neighboring Turkey that launched in 2007 and prior to the due date of the referendum an extensive effort including sending delegations made up of Turkish MPs and various Turkmen and Arab political organizations touring U.S. universities and spreading propaganda that Kurds are merely trying to expand their already extroverted gains at the expense of other minorities and that Kurds have flooded Kirkuk with Kurdish settlers who were brought in all the way from Iran, Syria, and Turkey. This was a clear attempt to turn the state of the Kurds from being victims into aggressors, a clear and systematic attempt targeting international public opinion in general and the US public in particular. Finally, they claimed that since Article 140 was not implemented within the timetable specified in the Constitution, it expired and is no longer a valid item.

Of course all of these claims were baseless and unsubstantiated, but unfortunately and at the absence of any serious Kurdish counter effort, they were received in the West well by many listening ears. Consequently the media trend in the West in general and for the first time shifted not so much in favor of returning these lands to Kurdistan. Kurds, on the other hand, did not rise effectively to the occasion and once again failed to face this serious challenge by raising awareness and making their view point clear to the entire world. Thus, their just cause was seriously damaged and they found themselves mired in the morass they are in today concerning these lands.

Let's respond to some of the fabrications that were used by Kurds' opponents:

**First**, true that many Kurds who were expelled did return to their homes in the Arabized regions after the 2003 liberation as it was natural for them to do so, but the fact remains that the majority are still living in camps in Arbil and Suleimaniya waiting for their ordeal to come to an end. Huge numbers of Kurds were just recently, after 2003, driven out of their homes from Mosul province by terrorists and other anti-Kurdish elements of ultra Sunni Arab nationalists. The logical question here is why would Kurds have to import people from neighboring countries when denizens of Kirkuk itself are still living in refugee

camps in Arbil and Suleimaniya under miserable conditions and the process of driving Kurds out of their homes has not come to a halt yet-and the city ever since has been flooded with terrorists and Arab Shiite extremists who are creating chaos? This goes for both major cities Kirkuk and Mosul.

**Second**, the claim that Kurds have brought over 600,000 Kurds to Kirkuk alone is not only unrealistic but a total and deliberate lie, taking into consideration a documented Kirkuk population census that does not exceed 800,000 people in total. This figure was greatly exaggerated. Here I am reminded of an anecdote that goes like this: Once upon a time, a man went to a butcher and bought one kilo of meat and brought it to his wife to cook it for him. While the man was out, his wife-having an insatiable appetite-decided to cook the meat and eat the whole kilo by herself before her husband was even back home. Upon his arrival home, with no meat for supper, he was outraged and asked his wife what happened to the meat. She told him that the family cat ate it. The man was furious, not quite believing her story. He immediately brought in a scale and put the cat on it. To his astonishment, he discovered that the cat's weight was exactly one kilo. At this point, enraged more, he turned to his wife saying "if this is the meat, where is the cat? And if this is the cat, then where is the meat?" Hence, Kurds

have the right to ask those believing these stories the very same question. If they don't believe it then they can hold soon a population census that Kurds have been asking for and their opponents are trying to delay and block.

**Third**, Kurds are not demanding to annex any of these areas straightforwardly, but they are in favor of implementing Article 140, which would be fair to all Iraqis and apply to all regions including the south and west of Iraq, encompassing almost 8 governorates in total. The implementation of the article would show who constitute the majority and eventually allow people to decide on their own free will if they want to join Kurdistan or to remain as they are; after all, Kurdistan is a part of the democratic federal Iraq. By delaying time and again or refusing to carry out article 140, it simply means denying people the constitutional right to choose, a practice not acceptable in the new democratic Iraq.

**Fourth**, here the natural process must be taken into consideration too when dealing with this complex issue. Like any other city, the Kirkuk population has grown over the years. If the Arab and Turkmen populations have seen growth in 20 to 30 years, so did the Kurds. The Kurdish people who were evicted forcibly from the city and lived as refugees in camps are no exception. Most Iraqi cities, as a result of successive wars, were subjected to internal migration as well as external and reverse migration,

especially Kurdish cities that were subjected besides that to Arabization-and Kirkuk was at the heart of this brutal game.

Also, consider the natural migration from countryside (rural areas) to the city (urban centers), as it happens around the world, but more extensively in this case for the reasons we mentioned above.

In any case, Kurdish officials could take some of the blame for neglecting or failing to bring to the world attention these facts with appropriate documentation to back up their just claims, and consequently KRG lost the battle over Kirkuk and some other regions for the time being. Now the Kurdish fight is uphill, against many odds to mend these mistakes that could have been resolved much easier and faster with less effort at the beginning.

**Fifth**, most importantly and from the constitutional point of view, the claims that Article 140 of the Constitution of 2005 has expired are utterly invalid. Federal States are built on a voluntary basis, as is the case in Iraq-at least as far as the current Constitution goes. When it comes to constitutional matters, ordinarily the constitutional proposals that are subjected to deadlines pending approval of Parliament might expire when they are not ratified within the timetable specified, but constitutional articles that have been voted on and ratified, endorsed and already are part of the whole Constitution

waiting to be implemented are valid and technically pending implementation. The Iraqi Constitution includes many other articles other than 140 that are waiting to be carried out.

In general, governments have no power to annul such an article or declare it invalid. This is a constitutional process, and the due procedural process must be followed. In this case, to annul such an article would be in violation of the very principle the Constitution and the federal democratic state of Iraq is built on, which is the voluntary union-namely the constitutional contract between Kurdistan Region and Baghdad.

However, the issue of intent is crucial here. Iraqi legislatures-while drafting the Constitution and endorsing Article 140-intended to respond to a Kurdish grievance that these areas were cut off from Kurdistan and subjected to Arabization, and that the best method to remedy the situation was to implement Article 140. Yet it is clear that the intention of the legislatures here in subjecting the article to a deadline came as a positive response to Kurdish demands for a speedy implementation that cannot go beyond that deadline, and not that the article would be null and void if it wasn't implemented within the timetable specified in the Constitution. Therefore, it was not meant to expire after the deadline as some are trying to claim. Hence, Article 140 remains valid and needs to be

implemented. The Iraqi federal government, in fact, is in breach of its contract with KRG for not implementing this crucial article. Also, the federal government is violating the Constitution itself by purposefully delaying carrying out Article 140, which is an essential part of the whole Constitution.

### **3- Natural resources**

In spite of the fact that most of the Iraqi oil was extracted from Kurdistan, namely Kirkuk Baba Gurgur fields, Kurdistan was not only deprived of the oil revenues, but these revenues--since nationalization in June 1, 1972--were used to purchase weapons that were used exclusively against the Kurdish population by Baghdad. Over the years, this led to the creation of a huge gap of mistrust between the two sides. Unfortunately, that mistrust still persists today.

Now Article 112 in the first paragraph of the Constitution clearly states: "The federal government with the producing governorates and regional governments shall undertake the management of oil and gas extracted from current fields provided that it distributes oil and gas revenues in a fair manner in proportion to the population distribution in all parts of the country with a set allotment for a set time for the damaged regions that were unjustly deprived by the former regime and the regions that were

damaged later on, and in a way that assures balanced development in different areas of the country, and this will be regulated by law."

From the phrase "current fields" we can deduce the implied intention of the Iraqi legislatures while drafting this law. The word "current" simply cannot be accidental here: It is clear that Iraqi legislators intended to emphasize that by endorsing the term; otherwise, they would have dropped it. This basically means or rather implies that the legislators intended that future fields will either be dealt with later on or are left for the regional governments to handle.

One of the major disputes that remain unresolved is oil contracts. The post-Saddam Iraq is a federal democratic Iraq according to its 2005 Constitution that was voted on by more than 80 percent of Iraqi voters and ratified by the democratically elected Iraqi Parliament. This Constitution is clear on three areas of exclusive powers of the federal government in Baghdad: the defense, monetary, and foreign policies. There are also the shared powers between the federal government and the regions; however, if a conflict arises in any of these areas except in the exclusive federal powers, the Constitution gives the regional laws an upper hand over the federal ones.

We must admit that, all in all, oil-related articles are vague and contradictory, while clearly stating oil revenues

would be shared by the entire Iraqi population, a fact that Kurds have not argued otherwise; it implicitly gives the regions the right over non-current or future fields. However, it is understood that there should be cooperation and coordination instead of conflict between the federal and regional governments and non-region governorates not only on signing oil contracts, but also on other issues such as exploration rights, administration, and marketing. The Oil Ministry in Baghdad has signed as many or more contracts than KRG with international companies without even consulting KRG, even when these contracts are related to oil fields under KRG jurisdiction. Anyhow, it is understood that in the absence of a federal hydrocarbon law, they both have the right to go ahead with these contracts as long as they serve people and do not violate international standards especially if the country is in dire need for oil-generated revenues to support basic services such as clean water, power, communications, and decent roads as is the case now in Iraq.

Also as a consequence, the country is in dire need of foreign investments specifically in the oil industry when it comes to capital, technology, and expertise. Nevertheless, if the differences between the two parties reach a certain level of gridlock, then the federal Supreme Court should be the referee and the issue should be resolved constitutionally in a peaceful manner.

#### **4- Peshmarga (Freedom Fighters) forces**

In essence, these forces are considered the defenders and protectors of the Kurds and their achievements. Their roots go as far as the early years<sup>47</sup> of the 20th century when Kurds started struggling for their rights and freedom. As an ally of the U.S.-led coalition, Peshmerga forces fought side by side with American and allied troops in the 2003 Iraq War in Iraqi Kurdistan. Since that time, the Peshmergas have assumed full responsibility for the security of the Kurdistan region and assisted in other parts of Iraq whenever their support was sought.

Due to the special status of Kurdistan, the glorious history of Peshmarga forces, and the outstanding role they played alongside the allied forces in the war on Saddam, Kurds were able to prevent Peshmarga forces from being characterized as a militia when the Iraqi government decided to dismantle all militia forces. Instead, they were incorporated into the Iraqi defense forces.

It is natural that as such and like the rest of the Iraqi army their services need to be compensated by the federal government. However, since the beginning Baghdad has claimed unjustly that KRG should compensate them from the 17 percent Kurdistan receives from the federal budget. The question here is how could Peshmarga forces be a part of the Iraqi defense system and not be paid like the rest? Some Baghdad circles are trying to justify that by

claiming that the loyalty of Peshmarga forces is confined to KRG and they lack allegiance to Baghdad, forgetting that the rest of the army has allegiance to their own affiliations--be that tribal, political organizations, or ethnicity. Once again, and as it becomes clearer, the confusion arises here from the fact that Iraq has a distorted form of government and the government in Baghdad still views itself as a central government, not a federal one as the Constitution stipulates.

## **5- Kurdistan's share of the wealth**

Following the liberation of Iraq in 2003 and the formation of the first transitional federal government in Baghdad, Kurdistan was allocated 13 percent of the total federal budget from Baghdad, a budget whose revenues are mostly driven from oil. Since this number was disputed by Kurds and at the absence of a new population census, it was almost impossible to decide otherwise. At the end, Kurds succeeded in convincing Baghdad that they should receive 17 percent depending on the outcome of the upcoming population census. However, no population census was in sight. Despite repeated Kurdish calls, who themselves estimated their percentage of the total population at around 25 percent for such a census, Baghdad failed to carry it out.

It is worth mentioning that Iraq has not had a population census since 1987, not counting the partial one of 1997 that was confined to only Arab-dominated provinces. As a result of Kurdish persistence, Baghdad finally caved in and accepted a census that is due in October 2010. This census will find out how many people live in Iraqi Kurdistan, which will define its slice of the central government revenues, currently estimated at 17 percent. If the census finds Kurds are at a greater percentage of the total population, the Constitution says the region gets more money and retroactive payments should follow. Still, the promised census must materialize first.

## **6- The federal Supreme Court**

It is stipulated in the 2005 Iraqi Constitution (chapter 3, judicial authority, second section: articles 92-94) that a federal Supreme Court will be established as the highest judicial authority in the country of a number of justices that shall be determined by a law enacted by two-thirds majority of the members of the Council of Representatives.

This court is tasked to interpret the Constitution and look into disputes between the regional governments themselves and the federal government.

If the federal state in Iraq is to be sustained, this court is to become one of the most important institutions in the country, even though it has not played a crucial role yet, which might change soon. When we go back into the history of the United States of America we can see how powers have shifted gradually from the states' governments to the federal one, mostly through cases that were brought before the Supreme Court in a peaceful judicial process.

Unfortunately, KRG has totally neglected this important institution along with many other institutions in the federal government. Since Kurds constitute a minority in Iraq, it leads to the fact that they will be a minority in the court as well. Unless Kurds have 50 percent of the number of justices on the bench, which is not going to be acceptable to their Arab partners, they have no chance of winning a single case under the present circumstances, regardless of the fact that the judicial system is to be independent and impartial-that is something that cannot be applied to today's Iraq.

Therefore, the only solution would be for the Kurds to have at least one justice if not more or rather a percentage equal to their ratio to the total population on the benches of the federal Supreme Court. The laws that govern the voting process should require that the vote in the court must be either unanimous or each justice should have the

right to veto every single decision that the court makes. This is probably the only way they can safeguard their gains in Iraq. Any other mechanism that goes against this will simply lead to Kurds losing most if not all the cases before the Higher Court.

## **7- Iraqi Parliament**

As we have observed, there are many articles in the 2005 Constitution that have not been carried out yet; yet, there are two that have not even been put seriously on the table of negotiations regarding the makeup of the federal Parliament in Baghdad, ever since the ratification of the current Constitution. Indeed it is unexplainable that Kurds have willfully ignored these articles and let it be practically omitted despite the significance of the issue handled by these articles. Let's take a quick look at the brief history of Iraqi Parliament.

An elected Iraqi Parliament was first formed in 1925 following the establishment of a constitutional monarchy under British mandate in 1921. The 1925 Constitution plainly called for a bicameral Parliament whose lower house was the Chamber of Deputies while the upper house, the Senate, was appointed by King Faisal I. A voting process mechanism was created to pass the laws through both chambers before seeking the approval of the King.

Some may argue here that the formula adopted was more of the emulation of the British parliamentary system--then again that might not be the only reason behind that. But the fact remains that Iraq was a multi-ethnic and religious society where the government was dominated by the majority Arabs though controlled by a Sunni Arab minority (here we must not forget that what was then called Southern Kurdistan or Mosul Wilayet by The League of Nations, a territory that encompassed all Iraqi Kurdistan in addition to Mosul province, was part of the Sevres Treaty settlement of 1920 and was not annexed to the Iraqi State until 1926, except Suleimaniya, which was annexed in 1928, despite the fact that the Iraqi State was declared in 1921). Therefore, it could be argued that the measure was adopted also to safeguard the rights and liberties of minorities so their votes might not be lost as it certainly would in a single chamber Parliament system based on population representative.

Now, under the current permanent Constitution approved on October 15, 2005, the legislative authority here is also vested in two bodies, or the Parliament supposedly is to consist of two chambers: the Council of Representatives and the Council of Union. However, the articles pertaining to the establishment of the Council of Union like many other articles were later left out and the Parliament now is functioning by one chamber-the

Council of Representatives that is ruled by an Arab Shiite majority.

Article 62 originally stipulated that a second parliamentary chamber was to be set up to allow some representation for the sub-national units of the Iraqi State (the regions and provinces). In the end, however, the purpose, prerogatives, duties, procedures, and selection of the Council of the Union have simply been omitted, with the details to be filled in by legislative act of the Council of Representatives.

First we must commend the legislature for endorsing the Council of Union, yet It is absolutely unbalanced and undemocratic for the Council of the Union--an independent chamber of Parliament--to be formed by a law written by the other house in Parliament. In essence, this gives one chamber of Parliament absolute authority over the other, a practice not seen in traditional democratic countries. This presumably and in effect defeats the very purpose of establishing the second chamber in Parliament, which is to safeguard the actual participation of other Iraqis who are non-Arab and non-Muslim versus Arab majority.

The Council of Union, or Federation Council, was to be made up of representatives from Iraq's diverse regions. Its precise composition and responsibilities are not defined in the Constitution and are to be determined by the Council

of Representatives. The articles we are referring to here are mentioned in Chapter I: the legislative power, Article 46, which stipulates: The federal legislative power shall consist of the Council of Representatives and the Federation Council. However, in the second section titled: The Federation Council, Article 65 (in some versions article 62), directly explains this legislative body, stating that: a legislative council shall be established named the "Federation Council" to include representatives from the regions and the governorates that are not organized in a region. A law, enacted by two-thirds majority of the members of the Council of Representatives, shall regulate the Federation Council formation, its membership conditions, and its specializations and related tasks.

The question that pops up in our minds is why have these articles not been implemented? Why have the Kurds not included them in their demands while negotiating with Baghdad? Why the total silence as if everybody wants them to go away? Most importantly, why endorse them in the Constitution in the first place if they were not meant to be implemented anyway? And finally why subjecting it to the power and authority of the house of representative?

Detecting from the tune of the Iraqi legislators and learning from other nations' constitutional experiences, it is not difficult to find out that the purpose of setting up

this council clearly was to create some kind of balance between the Arab majority and minorities.

Taking a quick glance at the American experience might suffice our purpose here. The American Constitutional Convention in Philadelphia, Pennsylvania in 1787 , the American founders, at the beginning when drafting their Constitution to establish their federal state following their revolution, initially intended to have a Parliament with a single chamber, the House of Representatives, except that smaller states out of the 13 British colonies rejected this idea claiming that their votes would be lost when compared to bigger states with more population, which simply means these bigger states would be able to send more delegates or representatives to Congress. In consequence, it was agreed upon to set up a bicameral congress, the House of Representatives and the Senate. The first to be according to the population of each state while in the senate each state has the right to send two senators regardless of the size or population of that state. The senate was designed specifically for one purpose to satisfy the demands of smaller state.

However, this was not an artificial change modeled to temporarily appease smaller states, in fact it was a major change to the whole system as it had a major impact on the mechanism of voting system and eventually the whole process of decision making even today in that country.

Right now, the Iraqi federal Parliament practically is made up of one functioning chamber, the House of Representatives, and it has been clear that legislation process and governing in general has not fared well so far. Perhaps Iraq needs to set up the federation council to create balance and fairness and to alleviate the worries of a minority like Kurds who deems themselves under-represented in Iraqi Parliament today, especially after increasing the number of seats from 275 to 325 slipping from the third winning list in 2005 to the fourth one in last elections. They simply lost at least about 4 percent of their share of the seats in the last elections of March 7, 2010, at the absence of a national census, and this trend might continue with each election as the population increases. Let's not forget that the voting process in Parliament is that representative's vote for their own party or block regardless of the nature of issue on the table, which is another downside for minorities.

The second chamber, if it is formed, should be made up of an equal number of Kurds and Arabs in addition to the seats allocated to other ethnic and religious minorities. The voting mechanism also should be similar to the American Congress when legislations are passed and ratified by both chambers. This is perhaps the only way to create a balance and guarantee fairness to minorities in the legislative body of the new Iraqi federal government.



## Conclusion

The Iraqi State--like any other country in the Middle East, perhaps less or more--is the product of a long history of violence, tyrants, repression, and deprivation. The country is made up of multi-ethnic and religious groups brought together in 1921 against their will by colonial Britain to serve its own purposes. Modern Iraq has witnessed the rise of Arab nationalism at the expense of other ethnic and religious groups who were repressed and barred from enjoying the fruits of this country where the culture of intolerance is prevalent. While in Iraqi Kurdistan and since 1992, many laws have been passed and money allocated regarding the promotion of the culture of tolerance and acceptance of others, unfortunately the same cannot be said about the rest of the country that actually lacks this culture and is dragging its feet behind more open societies. This in turn is one of the major challenges that face this nation, and the government in Baghdad has failed so far to have an organized effort to sponsor such an endeavor, instead leaving the country to be torn by ethnic and sectarian strife. As a consequence, there is serious mistrust among various ethnic and religious groups--especially between Shiites and Sunnis as well as Arabs and Kurds, not to mention other small minorities. This deeply rooted distrust is the result of

decades of deprivation and suppression, and it cannot be eliminated overnight.

What we are basically witnessing in Iraq today is the direct result of those combined forces that contributed to Iraqi history and culture and ultimately Iraqi psyche until the liberation in 2003 when things started to change slowly for the better. This includes but is not limited to the distorted form of government in Baghdad that is neither federalism nor central.

On the one hand, you have a Constitution that clearly says that the Iraqi State is a federal State, although most of the articles pertaining to federalism have not been implemented yet and intentionally delayed. On the other hand, there are the Kurds who have been victimized throughout Iraqi history and they see their grievances are not going to be addressed and remedied unless provided with some concrete guarantees, perhaps constitutional and international. Therefore, they justifiably insist on the federalist structure that is based on a voluntary union as the only guarantor for their gains. Accordingly, Kurds have been conducting themselves in that manner. In the face of that, you have many Iraqi Arabs and some others including some high-ranking officials in Baghdad government insisting on calling for a strong central government and acting accordingly. The language used in

drafting the Constitution clearly indicates that some were and still are trying to preserve the central nature of the Baghdad government by directly calling for the amendments of constitutional articles that are considered the pillars of the federal structure and making unilateral decisions while treating Kurds not as partners in the government but rather as opposition.

Also, by establishing centralized institutions and issuing central decisions and directives in total contrast to the nature of partnership and federalism, these steps unsurprisingly have led to the creation of controversy and confusion if not chaos in a country whose people are in dire need of understanding, tolerance, security, stability, and basic services.

Iraqis are facing today crucial choices. They need to decide whether they accept federalism. If they decide in favor, then they need to set up an appropriate state based on the Constitution the country is holding. This leaves Iraqi Arabs, Shiites, and Sunnis to either declare the rest of Iraq excluding Kurdistan as a single federal constituency, or to form as many federal entities as will satisfy all parties. The most logical one so far is Joe Biden's proposal to turn Iraq into at least three federal entities. After establishing these states, they get together and decide to form a federal government in Baghdad out of chaotic Iraq.

Each State will make concessions to enable this federal government to function properly to serve all Iraqis on equal footing. Only then it will be possible to overcome the serious issues and challenges that are facing the country in a new spirit of tolerance and real democracy. Iraqis need to give their current Constitution a chance, which no doubt will prove that their security and welfare at the end surpass all other considerations that they are squabbling about now.

Iraq today is passing through a very critical juncture. Since the last election was held in March, major Iraqi groups have failed to reach an agreement to form the new government. The consequences of disagreement could be calamitous for most parties.

U.S. President Barack Obama's administration, amid pressure from inside and the worsening global economic crisis, is trying to hang on to the deadline of troop withdrawal from Iraq by the end of 2011, hence exerting more pressure on Iraqis to form their government and stabilize the country. However, too many conflicting interests are at stake, especially the regional involvement from neighboring countries. Therefore, a hasty government formation might not necessarily be as responsive to some major existing interests as it is hoped for, and the consequences of that in line with U.S.

withdrawal might be dismal. Therefore, a total withdrawal is neither advisable nor wise at this stage, especially for Kurds who possibly will seek an extension to the planned withdrawal or even advocate for long-term American bases in their region.

Finally, it is worth mentioning here that most of the nations that have matured in democracy have recognized their passed atrocities and offered their sincere apologies to their victims, such as Germany, who apologized for the crimes committed by Nazis against Jews (the Holocaust); even Italy recently apologized for its crimes against Libya, and I truly believe for Iraq, in order to open a new page, should apologize to the Kurds for the crimes of ethnic cleansing, especially Halabja and al-Anfal that were committed against them. This will be a good start for Arabs and Kurds to sail together in a new democratic federal Iraq where Kurds deem it as an excellent opportunity to have most of their rights short of statehood while enjoying the protection of a sovereign strong State called federal, democratic Iraq. Under such a scenario, Kurds and minorities will guarantee and solidify their achievements. No doubt that Iraqi people as a whole will be the ultimate winners if and when these changes are adopted. After all, a stable and prosperous Kurdistan will serve everyone's interests in the region.

