

# Iraqi Constitutional Violations

A legal memorandum on recorded violations of the 2005 Constitution of the Republic of Iraq committed by the Iraqi federal authorities.

# FIRST: VIOLATIONS OF THE PRINCIPLES OF FEDERALISM AND TRUE PARTNERSHIP

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Under this title are many constitutional articles that have been violated by the Iraqi government. The most important of these articles can be summarized as follows:

1. **Article 1:** This article outlines the Iraqi state outlook when it determined the state's system, form and type of government, by asserting that it is a single, sovereign and independent federal state with a democratic parliamentary system of government. It also stipulates that this Constitution guarantees Iraq's unity. After the ratification of this Constitution for more than 12 years, the Iraqi state is still more of a centralist, non-federal state than a federal state because the fundamental principles of the federal system are not applied – such as bicameral legislation, partnership and multi-regionalism.
2. **Article 4 (First and Second):** It has stated that the Arabic and Kurdish languages are the official languages in Iraq. This article is meant to ensure strengthening the partnership of the two main components of Iraq (Arabs and Kurds). The Iraqi Government is thereby required to put the Official Languages Law into force to give the Arabic and Kurdish languages the same official state level. However, there is a persistent negligence of the Kurdish language in the federal government's institutions, and discussions of the Iraqi Council of Representatives. Kurdish, as an official language, is still absent on the Iraqi Dinar currencies.
3. **Article 9 (First: Paragraphs A and B)** It imposes the balance and symmetry of the components of the Iraqi people in the Iraqi army formation. This text came in light of bitter experiences endured by the Iraqi people as a result of the misuse of the Iraqi army by one of the components or sect as a tool to suppress and exclude other ethnic and religious groups of Iraq. The tragic experience of the Kurdish people from oppression and annihilation by the Iraqi army, especially during the Baath regime, resonated significantly at the internal and international levels. In order to prevent the recurrence of these tragedies, the Constitution recognized the principle of participation of all components of the Iraqi people in the formation of the new Iraqi army.

4. **Article 12** (First): This article is among others which has not been implemented by the Iraqi legislation. The article calls for the Iraqi flag, emblem and national anthem to symbolize the diversity and composition of the Iraqi society.
5. **Articles 48, 65 & 137**: Among major violations of the partnership principle by federal government officials in general and the legislative branch is the suspension of implementation of these three articles in respect to the partnership principle and maintaining balance between the federal and regional authorities by establishing the second chamber. Thus far, the Iraqi Council of Representatives unilaterally passes legislations on a majority basis without consulting the regions and those governorates not organized within a region. Therefore, since the interests of the regions and governorates are under the blessings of the larger political parties and parliamentary blocks, the Sunni and Kurdish components will be subject to the Shiite positions' as they constitute the majority of the Iraqi society and therefore the Iraqi Council of Representatives.
6. Any federal state is characterized by a federal court, which ensures the implementation of the federal constitution and the resolution of disputes between the regions and the federal government. The Iraqi Constitution stipulates in Article 92 that this court should be formed through a law enacted by the Iraqi Council of Representatives. However, thus far the Iraqi parliament has suspended this article in practice and has not legislated a law for regulating the work of the Federal Court in accordance with the Constitution (whereby the Court currently operates according to law enacted before the enactment of this Constitution). On the other hand, the Constitution has neglected international standards in the composition of the Federal Court by stipulating the allocation of a percentage of its seats for the jurisprudence. In addition to the frequent interventions in the affairs of this court by the federal executive power, especially by the former Prime Minister Nuri al-Maliki, which brought severe damage to its reputation and neutrality.
7. To ensure the proper application of the principle of genuine participation in governance, through balancing and guaranteeing the rights of regions and those governorates that are not organized in a region, Articles 105, 106 and 107 of the Iraqi Constitution stipulates the need to establish a set of bodies by law. Such as the formation of a public body to guarantee the rights of regions and governorates not

organized within a region of the fair participation in the administration of various federal state institutions, scholarships and fellowships, delegations and regional and international conferences, and media and communications board, which must consist of representatives of the federal government, regions and governorates.

As well as the formation of a public body to monitor the allocation of federal incomes, which must consist of experts from the federal government, regions, governorates and representatives to ensure the verification of the equitable distribution of grants, international aid and loans under the entitlement of regions and governorates. And to verify the optimal use and sharing of federal financial resources and to ensure transparency and justice when allocating funds to the governments of regions or those governorates not organized in a region in accordance with the prescribed rates.

As well as the establishment of the Federal Public Service Council to organize the affairs of the federal public service, including appointment and promotion.

8. On the other hand, there is a lack of genuine will from the Iraqi governments to implement the Iraqi Constitution in general and the articles that are crucially important for the foundation of the federal state, especially regarding the application of articles 117 (Second), 118 and 119 concerning the formation of new regions. In practice, the Iraqi federal government has opposed the formation of regions, publicly or otherwise. A prominent example is the prevention of the formation of the Salahaddin Region by then-Prime Minister Nuri al-Maliki, when on 27 October 2011 its provincial council voted to make the governorate a federal region in accordance with the Constitution. Then they passed over their request to the federal government for the completion of legal procedures and declaration of the region. The region was prevented to be formed due to the opposition of the Iraqi government. The same mechanism was taken against the people of Basra when they called for their region of their own.
9. **Article 121** (Third and Fourth): Regarding the financial and diplomatic rights of the regions, the Kurdistan Region has not been allocated its fair share of revenues since 2014, nor has it been entitled to establish the diplomatic representations within embassies and diplomatic missions of Iraq.

10. **Article 141:** On the advantages of those legislations, decisions and court rulings passed by Kurdistan before 2003, the Iraqi government fought the implementation of this article by opposing those laws and decisions issued by the Kurdistan Region.
11. The Iraqi parliament passed the legislation of the General Elections Law by an absolute majority without considering the concerns of Kurdistan Region and minorities into account of the principle of consensus. It thereby divided Iraq into several electoral constituencies equal to the number of governorates, whereas the entire country was considered one constituency in the first general elections in 2005. First, the parliament allocated the seats of parliament to the governorates on the basis of the proportion of the population of each governorate as per the entire Iraqi population. However, verifying the accuracy of the population of the governorates could not be made due to the lack of a reliable census. Second, the division of Iraq into several districts without the allocation of seats to the governorates in a fair and equitable manner results into minorities losing seats for the majority and larger groups. This in turn undermines the Council of Representatives to be the exact representation of the actual population of Iraq. This, in the absence of the Federal Council (Council of Regions), violates partnership and affects the principle of consensus in the legislative authority.
12. In the interest of achieving effective partnership in running the federal state institutions, several political agreements have been signed between the Kurdistan Region and the successive Iraqi governments without any of them implemented. Amongst them, the 2005<sup>th</sup> agreement for cabinet formation by Mr. Ibrahim Jaafari; the Erbil 2010 Agreement to form a cabinet by Mr. Nouri al-Maliki; and the 2014<sup>th</sup> agreement to form the cabinet by Mr. Haider al-Abadi. None of these agreements were implemented by any of those government cabinets which have resulted in KRG's loss of trust in any Iraqi government to implement their obligations commitments.

## **SECOND: VIOLATIONS OF PRINCIPLES OF DEMOCRACY AND SEPARATION OF POWERS**

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The federal authorities have not adhered to the principle of separation of powers, which is the foundation of the democratic system that guarantees the establishment of a civil state. Article 47 of the Iraqi Constitution stipulates that the federal authorities consist of the legislative, executive and legislative branches. It exercises its functions and duties on the basis of the principle of separation of powers. However, this picture has not been completed as it was hoped, through the incomplete construction of the federal institutions required to consolidate the separation of powers or the absence of legislating laws in line with the democratic system(s) and the predominance of the executive authority over the judicial and legislative authorities:

1. The executive branch's intervention in the Affairs of the judiciary: **Article 130** of the Constitution stipulates that: *“Existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution.”* Decisions of the dissolved Revolutionary Command Council are continuously being practiced which have given judiciary powers to the executive authority. The following articles of the Constitution Article 19 (*Fifth/Twelve/A*), Article 37 (*First/B*) and Article 88, stipulate: The accused shall be presumed innocent until proven guilty in a fair trial; arbitrary arrest shall be prohibited, no one may be arrested or interrogated except by judicial order; judges are independent and no one has authority over their jurisdiction other than the law. On the other hand, the decisions of the Revolutionary Command Council are still in force, which violate the independence of the judiciary, such as Decision No. 27 on February 4 1992, which grants the Minister of the Interior powers to impose fines and detain violators. Resolution No. 55 permits the arrest of people for a period of 15 days to a month. Resolution No. 160 of 1997 and amendment of Resolution 73 in 1994 granted the Minister of Commerce the power to impose fines and seize funds. Resolution 160 of 1997 and its amendment No. 5 In 2002 grants authority to the Minister of Transport to detain people. The following decisions are still valid which affect the independence of the judiciary: Resolution 494 and 1333 passed in 1984; 215 on 20/2/1979 and Resolution 515 on 5/5/1985. This is in addition to the numerous reports of the intervention of the executive in court decisions.

2. The intervention of the executive branch in the work of the legislative authority and violation of Article 61 of the Constitution, which gives authority to the Council of Representatives, including items Five and Nine for approving the appointment of ambassadors and holders of special grades; the chief of staff of the army, his assistants, the rank of division commander and above, and the head of the intelligence service, on the recommendations of the Council of Ministers. Iraqi governments did not consider the separation of powers in this article and exceeded the authority of Council of Representatives by appointing senior officers of the Iraqi army and in the declaration of a state of emergency which ought to be approved by a two-thirds majority, at the joint request of the President of the Republic and the Prime Minister. The Council of Representatives must approve extending the duration of the state of emergency and the presentation of actions taken during the state of emergency and war.
3. The Prime Minister has monopolized the powers granted to the Council of Ministers. The successive Iraqi government have ignored the proper implementation of Article 80 of the Constitution. This article stipulates the exercise of the powers by the Council of Ministers, while most of these powers are exercised by the Prime Minister unilaterally. Article 85, which imposes the establishment of the bylaw for the Council of Ministers, was not implemented with the aim of consolidating monopoly of power during two elections rounds. The Political Agreement Document of 2014 (under which the Third Government was established after the implementation of the Constitution) emphasized on the importance of enacting a bylaw for the Council of Minister which was not passed until the end of 2014. However, despite the by-law, the current Prime Minister has been continuing to act unilaterally and to reduce the representatives of the other components in the government under a so-called reform package.
4. The intervention of the executive branch in the affairs of independent bodies: The Iraqi Constitution has allocated a special section for the independent bodies. The High Commission for Human Rights, the Independent Electoral Commission and the Integrity Commission are independent bodies whose work is subject to the control of the legislative branch. The Central Bank, the Financial Control Bureau, and the Information and Communications Authority were also considered independent bodies financially and administratively. These bodies are either accountable to or linked to the Council of Representatives. Except the Endowment and Martyrs institutions, which are linked to the Council of Ministers. However, the decision of the Federal Supreme Court No. 88 of 2011 greatly affected the independence of these bodies

as it bound these independent bodies to the Prime Minister at the time, which gave room to the Prime Minister to intervene in their affairs and exploit power in order to dominate all executive joints in the state without a censor. Article 135 (First) of the Constitution states that the National Commission for Accountability and Justice, which replaced the Supreme National Commission for De-Baathification, continues to work as an independent body and coordinates with the judiciary and other executive bodies and is subject to the supervision of the Council of Representatives. But it has been used negatively in the process of exclusion and marginalization of the Sunni component.

### **THIRD: THE FEDERAL GOVERNMENT DENIED THE IMPLEMENTATION OF ARTICLE 140 AND 143 OF THE CONSTITUTION**

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**Article 140** stipulates: *“First: The executive authority shall undertake the necessary steps to complete the implementation of the requirements of all subparagraphs of Article 58 of the Transitional Administrative Law. Second: The responsibility placed upon the executive branch of the Iraqi Transitional Government stipulated in Article 58 of the Transitional Administrative Law shall extend and continue to the executive authority elected in accordance with this Constitution, provided that it accomplishes completely (normalization and census and concludes with a referendum in Kirkuk and other disputed territories to determine the will of their citizens), by a date not to exceed the 31st of December 2007.”*

Clearly, the constitutional legislator and the first item of Article 140 placed responsibility upon the federal government to take the necessary steps to complete the implementation of Article 58 of the Iraqi Transitional Administration Law in terms of taking the necessary measures to eliminate the effects of injustices` caused by it the racist policies of the former regime which led to demographic change in Kirkuk governorate and other governorates through the implementation of paragraphs A and B of Article 58 of the Iraqi State Administration Law for the transitional period 2004. As well as Article 143, which emphasizes on the continuation of Article 58 of the Transitional Administrative Law into the Constitution.

The follow-up of the successive Iraqi governments since 2005 on this issue showed no seriousness in the implementation of Article 140. These governments have merely implemented few simple steps that did not meet the required level, including the formation of a high committee of nine members and several sub-committees: The Committee of the Secretariat, the Finance Committee, the Fact-Finding Committee, the Technical Committee and the Follow-up Committee. As well as the opening three branch offices in Kirkuk, Sinjar and Khanaqin. This High Committee raised several recommendations to the Council of Ministers for the implementation of this article, but it soon became apparent that the federal government lacks serious motivations and lacks goodwill to implement this article and to allocate a budget for the implementation of this article. The recommendations made by the High Committee are as follows:

1. The return of employees who were dismissed because of their political affiliations. With the exception of a few rare cases of reappointments, this recommendation has not been implemented as required.
2. The return of deportees and displaced persons to their original areas of residence. This recommendation has not been implemented by the federal government. The deportees and the displaced have been repatriated only in small numbers and voluntarily returned by the deportees themselves.
3. Returning the Arab expatriates to their original areas and granting them financial incentives of 20 million IQD for each family with a plot of residential land in their areas of origin, only if the family does not own a plot of land previously allocated by the government. Most of the Arab expatriates received their financial grants from the federal government and did not return to their areas of origin. They stayed in the governorate and invested the money in purchasing new land in Kirkuk governorate, despite the positive intervention of the UN representative to resolve the problem in 2007.

In this regard, the process of demographic change continues to be maintained by the federal government. A recent decision by the Iraqi Ministry of Interior allows for the transfer of civil status registry to Kirkuk for every person who marries an Arab resident of Kirkuk governorate. Additionally, Arabs expatriates to Kirkuk, who returned copies of family registry and the civil status registry to their original governorates, have returned their documentations to the governorate of Kirkuk. They also facilitate the granting of ration

card and housing card for each of the displaced people who want to move to the governorate.

4. Not to cancel the agricultural contracts concluded within the policies of demographic change (policy of Arabization) in the disputed areas, including Kirkuk, where agricultural contracts remained as it is and the federal government did not move to abolish it, the agricultural land in the governorate is still invested and cultivated by Arab expatriates.
5. Approval of the payment of compensation to displaced families covered as per the provisions of Article 140. These grants were only paid to a limited number of the displaced people and the federal government declined to spend further under the pretext of lack of adequate budget.
6. A decision concerning the areas of Tis'in and Hamzeli on the return of their confiscated property, taken without compensation by the former regime and which have not been used for public benefit. This decision, issued on 1/10/2007, was not approved by the Council of Ministers, despite the Committee's assertions of its importance in resolving many of the property disputes and judicial transactions in Kirkuk.
7. As part of the federal executive authority and on the demand of Kurdistan Region, the Presidency of the Republic of Iraq sent a draft law to redraw of the Iraqi local borders, the Iraqi parliament failed to issue this law.
8. The Council of Ministers refused to respond to the request of the Kirkuk Provincial Council to hold a referendum in Kirkuk on the pretext that the implementation of Article 140 is still in its first stage, namely normalization. Despite the formation of the Higher Committee, sub-committees and offices, the mechanism of their work and the obstacles that have been placed before them by the successive Iraqi governments, such as the lack of sufficient cash and lack of seriousness in the transfer of civil status registries and ration card registries for Arab expatriates and the return of documentations and registries for displaced Kurdish and Turkmen citizens to Kirkuk. All these caused the failure to implement the initial steps that pave the way to the implement Article 140, the normalization of population conditions and conduct a census in the governorate and then a referendum to determine the fate of the governorate by its population. The process of implementing Article 140 of the Iraqi Constitution is still in the early stages, namely the stage of normalizing the situation in the governorate.

## **THEME: SUSPENDING KURDISTAN REGION'S SHARE OF FEDERAL BUDGET**

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Since the entry into force of the Constitution of the Republic of Iraq in 2005, it has been agreed to allocate 17% of the total actual expenditure (the government expenditures) and 17% of the total income (government, operating, and investment expenditures) of the federal budget approved after deducting sovereign expenditures. Since 2005, all federal budget have included this percentage and thus bound the federal government (Ministry of Finance) to spend them. However, successive Iraqi governments since 2005 violated their constitutional obligations and undertook arbitrary economic policies in a systematic way to increase pressure on Kurdistan Region, through:

1. Reduction of the proportion allocated to the Kurdistan Region, where the share of the region has been between 11% to 12% during the peak times.
2. Allocating lesser money to the Kurdistan Region through deducting sovereign expenses from public expenditures, and inflating the allocation of these expenses and the addition of new types of sovereign expenditures without a constitutional justification, all to add more pressure on the Kurdistan Region. While the number of these types of sovereign expenditures was determined in 2006 to be 16 types according to Item B of Article 13 of the Federal Budget Law No. 1 of 2006, these numbers has increased continuously to reach 33 types of sovereign expenditures, in addition to other added loans, transactions and installments that number another thirty-four, as per the second paragraph of Article 18 of the Federal Budget Law of the Republic of Iraq No. 44 of 2017.
3. Depriving the Kurdistan Region from allocations for regional development.
4. Depriving the people of Kurdistan Region of their entitlements by suspending the Region's share of the general budget since February 2014.
5. Reducing the share of the Kurdistan Region of medicine allocations, whereas since 2005 Kurdistan Region has only received (at best) 60 - 65% of its entitled share of medicine and this has been reduced to 25-30 since October 2016.
6. Averting paying Kurdistan Regions share of sovereign expenditures: Depriving Kurdistan Region's Peshmerga Forces of any defense budget, dam projects and public benefits.

7. Depriving the region of its share of 17% of foreign loans and financial and international aid, especially from the World Bank, despite the participation of the region by 17% to meet the interest of these loans within sovereign expenses.
8. Failure to pay compensation to the Region for the loss of profits, and the human and infrastructural damage caused by unfair practices of the previous regimes during the years 1963 to 2003, estimated at 384 billion USD.

The most significant constitutional articles that have been violated because of this Iraqi government's policy are as follows:

- I. **Article 5:** This article stipulates the rule of law and considers the law as sovereign. However, it was violated by the Iraqi government through non-compliance with the provisions of the share of the Kurdistan Region in the laws of the federal budget since February 2014. The suspension of Kurdistan Region's budget was by a single decision issued by the Prime Minister.
- II. **Article 14:** The Iraqi government has discriminated between the citizens of Kurdistan Region and the rest of Iraq by cutting the salaries and living wages. This violates the article stating that "*Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.*"
- III. **Article 25 and 26:** The federal government other than these two articles (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.*), has damaged the economy of the Region, causing a severe economic crisis through the policy of suspending the Region's share of the general budget.
- IV. Item One of Article 29 and Items One and Two of Article 30 obliges the State to fulfill its duty to the family as the basis of society by preserving its religious, moral and national values; to protect maternity, childhood and elderly; to provide the appropriate conditions for the development of their talents and abilities, and to provide adequate and proper income, housing, care, social and health security. These state obligations are return for the social and economic rights of the individual and the family.

- V. Item One of **Article 31**: “Every citizen has the right to health care. The State shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and health institutions.” However, this has been violated by the Iraqi government by suspending the Kurdistan Region’s budget entitlements on one hand and by reducing the medicine share of the Region, where at best has not exceeded 65% on the other hand. These has caused the inability of the KRG Ministry of Health to meet local demand for medicines and medical supplies because of lacking enough financial resources and reducing the medicine share entitlement. All these at a time that the KRG was expecting increase in share of medicines due to the influx of more than 1.8 million displaced and refugees to the region.
- VI. **Article 32**: The Federal Government has violated its constitutional obligation stipulated in this article on the care of disabled persons and people with special needs and ensure their rehabilitation in order to integrate them into society, by suspending the Kurdistan Region’s of the federal budget, resulting in the inability of the KRG to pay their social wages in full.
- VII. **Article 106**: The formation of a public body to audit and appropriate federal revenues, to verify the fairness of the distribution of grants, aid and international loans pursuant to the entitlement of regions and those governorates not organized in the territory (Item One), to verify the optimal use of federal financial resources (Item Two), and to ensure transparency and justice when allocating funds to regional governments or those governorates that are not organized in a region in accordance with the prescribed rates (Item Three). But this body has not been formed as no such law has yet been formed and thus none of the aforementioned principles implemented.
- VIII. **Article 121** (Third) stipulates: “*Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge their responsibilities and duties, but having regard to their resources, needs, and the percentage of their population.*”
- IX. Finally, cutting the Region's share of the public budget has negatively impacted the exercise of many constitutional rights by the citizens of the Kurdistan Region, which by nature require the state to provide the necessary expenses to enjoy them:
- i. **Article 33**: The right of the individual to live in safe environmental conditions (Item One); and the State shall undertake the protection and preservation of the environment and its biological diversity (Item Two).

- ii. **Article 34:** Concerning the right to education and fighting illiteracy, and to encourage scientific research and care for excellence, creativity, innovation and various aspects of adulthood.
- iii. **Article 36:** The right of the individual for physical exercises and the obligation of the State to encourage its activities, to care for them and to provide its requirements.
- iv. **Article 132:** Concerning the right of the families of martyrs and political prisoners and those affected by the arbitrary practices of the former dictatorial (Item One) and the right of families of martyrs and those injured as a result of terrorist acts for compensation (Item Two).

## **FIFTH: NON-COMMITMENT OF FEDERAL GOVERNMENT TO PARTNERSHIP PRINCIPLE IN UTILIZING NATURAL RESOURCES BY THE PEOPLE OF KURDISTAN**

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Oil forms the highest share of the Iraqi economy, necessitating the allocation of special and detailed texts in the permanent Iraqi Constitution for this purpose.

Article 111 emphasizes that the ownership of oil and gas is for the people. Article 112 outlines the division of wealth in the new Iraq -- supposedly to be built on the basis of partnership in power and wealth as a cornerstone of the federal state in a country whose territory is abundant with natural resources. It was necessary to implement this article especially the First Item through a full and integrated law for three reasons:

1. Iraq did not have a unified oil and gas law before the fall of the former regime, but there was a set of laws, interspersed with long periods of time.
2. The previous economic system was based on the philosophy of the central economy under the control of a totalitarian regime. The laws concerning oil in force reflected this totalitarian rule. Whereas the new economic system after the entry into force of the permanent Constitution in 2005 was based on the philosophy of free economy and openness towards foreign investments, which means that the previous laws do not fit the new circumstances and therefore a new law for oil and gas resources is critical.
3. **Article 112** (Item Two) states that *"The federal government, with the producing regional and governorate governments, shall together formulate the necessary strategic policies to develop the oil and gas wealth in a way that achieves the highest benefit to the Iraqi people using the most advanced techniques of the market principles and encouraging investment."* These matters are not regulated by previous laws.

But successive governments have become a stumbling block to the issuance of an oil and gas law since the Federal Oil and Gas Law was submitted to the Council of Representatives on 4/7/2007. These two constitutional articles were reflected in this draft and would have established the powers of the regions in the management and development of the oil and gas sector. This project was submitted to the Iraqi Shura Council on 26/2/2007 -- the Federal Government permitted the Shura

Council to intervene whose powers do not originally exceed beyond the legal and linguistic editing and not to invalidate constitutional articles, as they did with the first item of Article 112 which recognizes the principle of full partnership in the oil and gas sector between the federal government and the provincial government. Although the Kurdistan Region was committed to the memorandum of understanding dated 26/2/2007 signed by the President of the Kurdistan Region and the Prime Minister of the Iraq, attached to the first federal oil and gas law draft an appendix that states that if the federal oil and gas law is not reached until 31/5/2007, the parties are entitled to enter into development and production contracts in accordance with the Constitution.

As well as depriving the share of the Region from oil and gas products, and the payment of dues of foreign companies operating in the region, while the allocations of the Federal Oil Ministry are all within the allocations of sovereign expenditures, and the federal oil and gas draft.

After twelve years since the issuance of the permanent Iraqi Constitution, Iraq as a federal state has legal vacuum in the most important sectors of the national economy because of the reluctance of successive Iraqi governments in passing a similar type of law based on these two articles. They have refused to recognize the principle of partnership for the KRG (the only federal region in Iraq), through federal legislations such as the Iraqi oil and gas law. This means that the federal government bear all the legal problems through the conclusion of oil contracts with foreign parties and to carry out all other oil operations, without the existence of a law that delineates the scope of these contracts and operations, all with the purpose of not recognizing the right of the Kurdistan Region's partnership in the national wealth owned by the people of this territory under the title of ownership, as according to Article 111 of the Iraqi Constitution itself.

## SIXTH: VIOLATIONS OF RIGHTS AND LIBERTIES

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The current Iraqi Constitution has provided for many of these rights and liberties, which was one of the main reasons that the Iraqi people voted for the Constitution. However, successive Iraqi governments, which were formed in accordance with the provisions of this Constitution, violated most of the provisions relating to the rights and liberties. We shall list some of these violations as follows:

1. The second item of **Article 2** states that *"This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandeans Sabeans."*
2. **Article 14** states that *"Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status."*

Successive Iraqi governments have worked against this constitutional article and have practiced discrimination against the different components of the Iraqi society, distinguishing the Shiite community from the rest of the sects, such as in: the public service, income distribution, postgraduate studies, scholarships, diplomatic missions and even in providing security for the Iraqi people.

**Article 15** stipulates that *"Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority."*

**Article 37** (First/B) stipulates that *"No person may be kept in custody or investigated except according to a judicial decision."* Iraqi governments have acted in complete opposition to this article. There are many cases of arrests and killings against the Sunni.

3. The second paragraph of **Article 28** and **Articles 29** and **30** stipulate a set of personal, social and economic rights for the Iraqi individual (such as reducing the tax on limited income holders; maintaining the family structure, protecting maternity, childhood and elderly; prevent economic exploitation of children; prevent violence in family and school; ensure social and health security and the basic elements of living a decent life; provide

income and adequate housing for the individual and the family; and provide social and health security for old, sick or disabled people, etc.).

Iraqi governments have not been able to provide any of these rights in the right way. Thousands of families have been fragmented, whether because of war, poverty, disability or ignorance. Regarding the protection of motherhood, children and elderlies, thousands of them have been displaced from their homes by forced displacement or because of terrorism and the inability of the Iraqi government to maintain security. In addition to thousands of children deprived of the right to education and the right to live in dignity, thousands have been dumped onto the streets and subjected to various kinds of violations. The rest of the rights mentioned in these articles are neglected by successive Iraqi governments, deliberately or not. In both cases, their responsibility lies with these governments

4. **Articles 31 and 32** regulate a range of health rights for the Iraqi individual (such as the right to health care, the establishment of hospitals and health institutions, the care of the disabled and people with special needs).

Iraqi governments have not fulfilled their responsibilities in regard to these rights, especially the rights of citizens of the Kurdistan Region. Although the expenses allocated for the purchase of medicines and medical supplies are the governing expenses in Iraq and its budget is allocated before all other deductions and items in the Iraqi budget, the Iraqi government has reduced the medicine and medical supplies share of the Region's instead of increasing. This is contrary to KRG's expectation from Iraqi governments at a time that the KRG took the responsibility of 1.8 million Iraqi Arab displaced people from the other non-KRG governorates. This is seen as falling short of fulfilling its responsibility from Baghdad of helping KRG at such a critical time providing healthcare to this large number of IDPs.

5. **Article 33** stipulates that "*The State shall undertake the protection and preservation of the environment and its biological diversity.*" The government has not been able to meet this important commitment directly related to the lives of its citizens. Instead, Iraq's environment has pollution-wise further degraded since 2003.
6. **Article 41** states that "*Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.*" The Iraqi governments have suspended the implementation of this article and have not

organized personal statuses according to religion and beliefs of different practitioners (Christians, Yazidis, Sabeans and Kakayis). This is a clear violation of the principle of freedom of religion, which is one of the most important rights of citizens and the basis of peaceful coexistence between the different religious groups.

7. The First Item of **Article 44** stipulates that “Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq.” Iraqi governments have acted against this article by preventing women to travel alone, and this is considered a restriction of freedom of movement and freedom of women.
8. **Article 17**: “*First: Every individual shall have the right to personal privacy so long as it does not contradict the rights of others and public morals. Second: The sanctity of the homes shall be protected. Homes may not be entered, searched, or violated, except by a judicial decision in accordance with the law.*”
9. **Article 125** stipulates “*This Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law.*” Iraqi governments have also not acted in line with this article, as governments have not been able to guarantee any political, administrative, cultural or educational rights to the various nationalities in Iraq.
10. **Article 132** (Items One and Two) stipulates that “*The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime*” and “*The State shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts,*” respectively.

Iraqi governments have not been able to guarantee the rights of martyrs and political prisoners, especially the martyrs and political prisoners of the Kurdistan Region, where it was the duty of the Iraqi governments to compensate the Anfal people and the families of martyrs (noting that the Anfal Operation and using chemical weapons in Halabja have been recognized by the Iraqi Council of Representatives). The government also did not compensate political prisoners at that time. As for compensating the families of martyrs and those injured because of terrorist acts, the Iraqi governments have fallen short with this regard. For example, in the war against ISIS, over 1700 of the Peshmerga forces were killed and close to 10,000 wounded. The Iraqi government has not compensated their families or

the injuries and lacks the intention to do so. Not to mention all those killed and injured as a result of terrorist acts from 2003 to 2017. In addition to the non-payment of dues of martyrs, politically dismissed people, retirees, disabled veterans and veterans of the Peshmerga within the allocations of the Ministry of Defense, despite that the Kurdistan Region had 17% share of the allocations to the Ministry of Defense from the sovereignty budget since 2005.

## SEVENTH: LACK OF COMPLETION LEGAL AND LEGISLATIVE SYSTEM IN IRAQ

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The Iraqi federal authorities have repeatedly tried to stall the implementation of the Iraqi Constitution by not submitting draft laws that would contribute to the federal system. The federal authorities in general and the government have been working with a centralist-state obsession similar to the pre-2003 era. The following is a review of the most important constitutional articles that have been halted and the relevant laws have not been passed:

1. **Article 12**

First: *“The flag, national anthem, and emblem of Iraq shall be regulated by law in a way that symbolizes the components of the Iraqi people.”* Second: *“A law shall regulate honors, official holidays, religious and national occasions and the Hijri and Gregorian calendar.”*

2. **Article 18** has given the right of citizenship to the child of an Iraqi mother. However, the Iraqi government is not considering this article and avoid its implementation, which in addition to the constitutional violation, is also an infringement of women rights.
3. **Articles 21, 22 and 24:** These articles include the right to political asylum, non-extradition of refugees, the right to establish trade unions and unions, freedom of movement of workers and goods, the right to own property,
4. **Article 84** of the Constitution emphasizes on passing a law regulating the functions of the security services and the intelligence apparatus. No such law has been issued to this date, resulting in many violations of human rights.
5. The absence of an emergency law to regulate the affairs of the country during war times, required under Item Nine of Article 61 of the Constitution.
6. **Article 86** which calls for a law to regulate the formation of ministries, their functions, specializations and ministers’ authorities, has yet to be passed. This has caused an imbalanced relationship between the institutions of the federal government, region and those governorates that are not organized within a region.
7. **Article 93** (Item Six) stipulates that *“settling accusations directed against the President, the Prime Minister and the Ministers, and this shall be regulated by law.”* However, this

law has not been issued yet and has caused major injustices. There is no law to hold the Prime Minister accountable for his unilateral and personal decision to cut the budget of the Kurdistan Region.

8. As of this writing, there is no law for the oil and gas sector which Item One of Article 122 has outlined. Earlier a chapter was devoted to this issue.
  9. There is no Antiquities Law as Article 113 has called for. This has resulted in the neglect of a large part of Iraq's and Mesopotamia's earlier civilizations.
  10. The customs file in Iraq is in a state of legal chaos and it was necessary to issue a law under the first paragraph of Article 114 of the Constitution.
  11. Article 123, on delegating powers between the federal government and governorates, has also been neglected. This is contrary to the principle of administrative decentralization on which the administrative system was based in Iraq after the entry into force of the Iraqi Constitution in 2005.
  12. The status of the capital Baghdad has not been regulated by law as required by Article 124.
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## EIGHT: FAILURE OF IRAQI STATE

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The failure of the Iraqi state and the inability of successive governments to manage the state have clearly shown. There are several international standards and indicators that indicate the failure of the Iraqi state in all levels. This is achieved by not implementing or suspending a number of articles of the constitution,

1. **Article 7** provides as follows:

- *“First: Any entity or program that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing, especially the Saddamist Ba’ath in Iraq and its symbols, under any name whatsoever, shall be prohibited. Such entities may not be part of political pluralism in Iraq. This shall be regulated by law.*
- *Second: The State shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, pathway, or field for terrorist activities.”*

The Iraqi state has failed to prevent the emergence of entities that adopt racism, terrorism and tyranny, and terrorist organizations continue their bloody and inhuman activities. The basic function of the state is to protect its citizens against aggression and terrorism. Article 109 of the Iraqi Constitution stipulates that *"the federal authorities shall maintain the unity, integrity, independence, sovereignty and federal democratic system of Iraq."* Article 110 (Second) of the Constitution stipulates that one of the exclusive functions of the federal authority is to *"establish and implement a national security policy, including the establishment and management of armed forces to ensure the protection and security of Iraq's borders and to defend it."*

The basic function of the state is to protect its citizens from aggression and terrorism. According to Article 109 of the Iraqi Constitution, *"The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system."* One of the exclusive functions of the federal authority under Article 110 (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.”*

However, the Iraqi authorities have been unable to maintain the unity, independence and sovereignty of Iraq since the promulgation of the Constitution in 2005 until now, nor were they

able to protect Iraqi territory, which was under the control of terrorist organizations for long periods.

2. **Article 8** stipulates that:

*"Iraq shall observe the principles of good neighborliness, adhere to the principle of noninterference in the internal affairs of other states, seek to settle disputes by peaceful means, establish relations on the basis of mutual interests and reciprocity, and respect its international obligations."*

Iraqi governments could not maintain Iraq's independence and sovereignty in dealing with neighboring countries on the bases of common interests and reciprocity. Not only did Iraq not nurture good neighborliness on equal levels but has become subject to some neighboring countries.

Under Article 110 of the Constitution, the Iraqi federal authorities have exclusive jurisdiction in the field of international waters: *"Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions."* The federal government has not fulfilled its responsibilities in ensuring the flow of water from neighboring countries.

3. **Article 9** (First) provides that:

A. *The Iraqi armed forces and security services will be composed of the components of the Iraqi people with due consideration given to their balance and representation without discrimination or exclusion. They shall be subject to the control of the civilian authority, shall defend Iraq, shall not be used as an instrument to oppress the Iraqi people, shall not interfere in the political affairs, and shall have no role in the transfer of authority.*

B. *The formation of military militias outside the framework of the armed forces is prohibited."*

Iraqi governments have been unable to prevent the formation of militias outside the armed forces.

4. **Article 25** states: *"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."*

Article 28 stipulates: *"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.”*

**Article 106** provides that:

*“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 are not organized in a region in accordance with the established percentages.”*

Despite international assistances, successive Iraqi governments have not been able to reform the Iraqi economy according to the modern economic foundations, as stipulated in Article (25) of the Constitution, and the Iraqi authorities failed to regulate taxes by law as stipulated in Article (28).

5. **Article 110** states that:

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

*Ninth: General population statistics and census.”*

Since the constitution was passed, Iraqi authorities have failed to carry out the census and population census. The absence of statistics and the general census of the population significantly affects the conduct of electoral processes and democracy in Iraq. In all elections thus far, there have been mutual accusations on voting frauds. The absence of a general census of the population affects the implementation of an important article in the Iraqi Constitution, namely Article 49 which states the following:

*“First: The Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people. They shall be elected through a*

*direct secret general ballot. The representation of all components of the people shall be upheld in it.”*