

# Iraqi Constitutional Violations

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

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## INTRODUCTION

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The people of Kurdistan exhibit distinct cultural, national, and political characteristics. For thousands of years they have maintained their separate identity. After World War I, they were forced to be part of a newly created republic of Iraq because the British wanted a Sunni balance to the mostly Shiite Iraqis. Consequently, the people of Kurdistan were subjected to racial and ethnic discriminatory practices by successive Iraq governments. The Kurdish people's rights were violated and freedoms curtailed. More significantly they faced multiple genocidal campaigns by successive Iraq governments. In the 1950's, the Iraq government expelled hundreds of thousands of Kurds from their homes and replaced them with Arabs to diminish Kurdish presence in their homeland. In the notorious Anfal ethnic cleansing in the late 1980s, Saddam Hussein gassed the Kurds with chemical weapons, and furthered the decades of ethnic cleansing by destroying their villages.

In spring 1991, the people of Kurdistan led a liberation movement against injustice and dictatorship, forming their own government by creating a Parliament, thus establishing the Kurdistan Regional Government (KRG). In 2003, the Kurdistan political leadership played a prominent political and military role in liberating Iraq and in its democratic transformation.

After the fall of Saddam Hussein, Kurdish leaders spared no effort working on a Constitution, which would become the political and social contract for establishing a unified Iraq government. The KRG, which had been operating under its own system of government for over a decade, only agreed to a union with the rest of Iraq if it were given equality and partnership in a federalist state. Kurdish leaders sought a Constitution that ensured all citizens enjoyed equal rights and liberties. In 2005, that Constitution was ratified by referendum. Kurdish support was instrumental in its passage.

The Constitution enshrines basic principles of federalism, democracy, and genuine partnership for the nationalities and components that comprise Iraq. It provides

for partnership of authority and the decision-making process. It establishes a federal democratic state capable of providing security, stability, and public services to all citizens. Sadly, Iraq governments since 2005 have not followed the Constitution.

There emerged in Baghdad a ruling political elite who violated the Constitution. Successive Prime Ministers pursued policies of exclusion and marginalization of Iraqi components instead of national reconciliation and tolerance. They subordinated the Kurdistan people, refusing to transform the political decision-making process into a joint national process. Instead of supporting the rights of the Kurds, they threatened military force and declared an economic war against them. Kurdistan has never received its full pro rata share of federal funds as mandated by the Constitution. In 2014, Iraq cut off all funds to Kurdistan.

The sectarian conflict that began in 2003 with the fall of Saddam Hussein killed tens of thousands, displaced millions, and destroyed numerous towns and cities. ISIS, a product of this sectarian competition, destroyed Iraq's most prized and historical sites and statues. Unfortunately, Iraq has become a target for settling regional accounts in the Middle East. Neighboring countries' interference, such as Iranian support for the Shiite majority and its material control of Iraqi officials, has only exacerbated the underlying sectarian differences.

Iraq is a failed state. It has purposely not pursued inclusive, power-sharing policies among the country's components. This memorandum documents the Articles in the Constitution that every Iraq government since 2005 has violated. The people of Kurdistan have the unalienable right to freedom and self-determination. That is why on September 25, 2017 they will vote on the Referendum of Independence

An affirmative vote is binding. But independence is not immediate. Just as the UK is negotiating the Brexit terms so will the Kurdistan government negotiate separation from Iraq if the citizens support independence.

## **FIRST: IRAQ HAS VIOLATED THE PRINCIPLES OF FEDERALISM AND TRUE PARTNERSHIP**

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A federal state rests upon the principle of participation, which requires meaningful constitutional institutions and procedures to carry out that principle. Iraq is composed of regional entities with distinct identities. Whether these regional identities are based on territorial, national, religious, sectarian, or geo-historical features, they must be included in the decision-making process for the government to function as a federalist entity as directed in the Constitution.

The principle of participation requires two components: First, institutions to implement this principle. A crucial institution to guarantee the rights of regions in the decision-making process is a legislative entity mandated by the Constitution, the Federation Council, which has equal regional representation similar to the United States Senate's equal representation by States. The extant chamber, the Council of Representatives (Council), has membership according to the national population similar to the United States House of Representatives. The Council, controlled by the powerful Shiite political parties, has refused to create the Federation Council.

Second is the process. Federal institutions must consider the opinions and interests of the Regions when making governmental decisions. This component is carried out by guaranteeing a Region's representation in the Executive and Judiciary. (Kurdistan is the only recognized Region. Iraqi Prime ministers have refused to authorize any additional Regions even though the people of those areas have complied with the constitutional process to do so.) Under all Prime Ministers since 2005, there has been no protection for the rights and political requirements of the minorities.

The Constitution requires mutual participation and partnership. UN Security Council Resolution 2367 on Iraq, July 14, 2017, highlighted the importance of this principle by calling for improved cooperation between the Iraq government and the Kurdistan Regional Government (KRG) for "genuine partnership" under the Constitution.

The principle of participation of all Iraq is enshrined in numerous Articles in the Constitution. The intent was to ensure that Iraq would be united and to convince the

Kurdistan Region to join the political process by supporting passage of the Constitution. The Kurds had abandoned the Iraqi political process in 1991 because their rights had been violated by successive Iraq governments, particularly during the Ba'ath regime. Thus, the Kurds requested specific constitutional provisions before giving their support to a unified Iraq. Although the Constitution contains these provisions, Iraq governments have not followed them. Despite the KRG's continuing request for the federal government to respect partnership, the Iraqi state since 2005 has violated this principle by blocking implementation of Articles that were included to ensure partnership.

**Article 1:** The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.

Article 1 provides that Iraq is a federal and independent state with a democratic, parliamentary system of government. Yet, twelve years after the Constitution's ratification, Iraq functions as a centralist government because fundamental principles of a federal system have not been created, such as a bicameral legislature and a constitutional judiciary. Thus, Kurdistan has not been given the independent authority and representation guaranteed in the Constitution.

**Article 48:** The federal legislative power shall consist of the Council of Representatives and the Federation Council.

**Article 65:** 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 a two-thirds majority of the members of the Council of Representatives, shall regulate the formation of the Federation Council, its membership conditions, its competencies, and all that is connected with it.

**Article 137:** Application of the provisions of the articles related to the Federation Council, wherever it may be cited in this Constitution, shall be postponed until the Council of Representatives issues a decision by a two-thirds majority vote in its second electoral term that is held after this Constitution comes into force.

Articles 48, 65, and 137 require a Federation Council be established. The Council of Representatives, because of its domination by the Shiite parties, has refused to establish the second chamber thereby denying Kurdistan its rightful representation in an entity that is constitutionally required in order to pass valid legislation. The Council unilaterally passes legislation without consulting Kurdistan and those governorates not organized within a region. Therefore, Sunni and Kurdish components of Iraq are always subject to the positions of the Shiite controlled legislature, which in turn is greatly influenced by Iran.

The Council of Representatives passed the General Elections Law without considering the Kurdistan Region and minorities, thereby not reaching a national consensus. The Elections Law limits the number of representatives Kurdistan is entitled to in the Council. The alleged rationale was that the new representation distribution was based on population proportion. However, there is no reliable census. The Elections Law resulted in minorities losing seats to the Shiite majority. And because the Council has refused to pass the constitutionally mandated Federation Council, all legislation is passed without valid legislative authority.

**Article 4: First:** The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac, and Armenian shall be guaranteed in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions.

**Second:** The scope of the term "official language" and the means of applying the provisions of this article shall be defined by a law and shall include:

- A. Publication of the Official Gazette, in the two languages;
- B. Speech, conversation, and expression in official domains, such as the Council of Representatives, the Council of Ministers, courts, and official conferences, in either of the two languages;
- C. Recognition and publication of official documents and correspondence in the two languages;
- D. Opening schools that teach the two languages, in accordance with the educational guidelines;
- E. Use of both languages in any matter enjoined by the principle of equality such as bank notes, passports, and stamps.

Article 4 provides that Arabic and Kurdish are the official Iraq languages. It is intended to strengthen the partnership of the two main components of Iraq: the Arabs and

Kurds just as Canada is bilingual in French and English. The Iraq Government is required to put the Official Languages Law into force to give both Arabic and Kurdish the same official status. It has refused to do so. Kurdish is absent from federal government institutions and in Council of Representatives discussions. Kurdish is absent on the Iraqi Dinar currencies. The federal government writes all its documents only in Arabic and demands that any Kurdish document be translated into Arabic before recognizing it as official.

**Article 9: First:**

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.

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

Article 9 imposes a balance of the components of the Iraqi people participating in the Iraqi army. This text was included because of the bitter experiences suffered by the Iraqi people as a result of the abuse of the Iraqi army, which suppressed and excluded certain ethnic and religious groups. The Kurdish people were oppressed and annihilated by the Iraqi army, especially during the Ba'ath regime. To prevent a recurrence of these tragedies, the Constitution mandates participation of all components of the Iraqi people in the army.

However, Iraq violated this Article by creating numerous armed militias outside the Iraqi army, most notably the Popular Mobilization Forces (PMF), which were given legal status by the one-house legislature. The PMF is independent from the Iraqi army, which is required under the Constitution to be sectarian. The PMF is an uncontrolled and unprofessional force that acts on political consideration. The Constitution prohibits political involvement of the armed forces. Yet the PMF is comprised and directed by religious components that are anti-Kurdish and anti-Sunni.

**Article 105:** A public commission shall be established to guarantee the rights of the regions and governorates that are not organized in a region to ensure their



fair participation in managing the various state federal institutions, missions, fellowships, delegations, and regional and international conferences. The commission shall be comprised of representatives of the federal government and representatives of the regions and governorates that are not organized in a region, and shall be regulated by a law.

**Article 106:** A public commission shall be established by a law to audit and appropriate federal revenues. The commission shall be comprised of experts from the federal government, the regions, the governorates, and its representatives, and shall assume the following responsibilities:

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

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

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

**Article 107:** A council named the Federal Public Service Council shall be established and shall regulate the affairs of the federal public service, including appointments and promotions, and its formation and competencies shall be regulated by law.

Articles 105, 106, and 107 stipulate the need for specific entities to be established by law. Such provisions ensure equal participation in governing by guaranteeing the rights of Regions and governorates not organized in a region. For example, public entities are needed to guarantee fair administration of federal institutions, scholarships and fellowships, regional and international conferences, and media and communications boards, which must consist of representatives of the federal government, Regions and governorates. A public entity, which must consist of experts from the federal government and Regions, is needed to monitor allocation of federal incomes. A public entity is needed to verify the optimal use and sharing of federal financial resources and to ensure transparency and justice when allocating funds to the Regions or those governorates not organized in a region. Also, a Federal Public Service Council is needed to organize the federal public service, including appointments and promotions.

None of these entities has been created in the twelve years since ratification of the Constitution.

**Article 117:** First: This Constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

Second: This Constitution shall affirm new regions established in accordance with its provisions.

**Article 118:** The Council of Representatives shall enact, in a period not to exceed six months from the date of its first session, a law that defines the executive procedures to form regions, by a simple majority of the members present.

**Article 119:** One or more governorates shall have the right to organize into a region based on a request to be voted on in a referendum submitted in one of the following two methods:

First: A request by one-third of the council members of each governorate intending to form a region.

Second: A request by one-tenth of the voters in each of the governorates intending to form a region.

In violation of Articles 117, 118, and 119, Iraq governments have refused to permit the formation of new Regions. Then-Prime Minister Nuri al-Maliki refused to recognize the people of Kirkuk in 2008 when they submitted a Region request. In 2011, he refused the people of the Salahaddin Region after they had also voted in accord with the Constitution to make the governorate a Region. The same unconstitutional process was used by Prime Minister Haider al-Abadi against the people of Basra when they requested status as a Region in 2015. All three are shameful examples of the Iraq government refusing to follow the democratic process mandated by the Constitution.

**Article 121:** Fourth: Offices for the regions and governorates shall be established in embassies and diplomatic missions, in order to follow cultural, social, and developmental affairs.

Article 121 mandates that Kurdistan shall have offices in Iraq's "embassies and diplomatic missions." The Iraq government has not permitted any Kurdish office in any of its foreign establishments. In Washington D.C., for example, the KRG has to operate from a separate office.

**Article 141:** Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled

pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.

Article 141 requires the Iraq government to recognize legislation passed by Kurdistan since 1992. It has not done so. Nor does it acknowledge the legality of Kurdistan court opinions. Neither does Iraq acknowledge Kurdistan's universities, refusing to validate rightfully earned degrees.

Since passage of the Constitution, agreements have been signed between the Kurdistan Region and Iraq governments. The agreements were for the purpose of achieving partnership, as mandated by the Constitution. The agreements with the KRG were signed by both Prime Ministers Maliki and Abadi. They involved such material issues as payments to the Peshmerga, reparations to the Kurds for the ethnic cleansing, and distribution of oil and gas rights. None of these agreements were implemented by any of those governments, resulting in the KRG losing trust in any promise by Baghdad to implement its obligations and commitments.

## **SECOND: IRAQ HAS VIOLATED PRINCIPLES OF DEMOCRACY AND SEPARATION OF POWERS**

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The Iraq government has not adhered to the principle of separation of powers, which is the foundation of the democratic system under the 2005 Constitution. Article 47 stipulates that the federal authorities consist of the “legislative, executive and judicial powers,” and that these powers be “exercise[d]” on the basis of the “principle of separation of powers.” However, federal institutions required for the separation of powers have not been established. Not only has the Council of Representatives not created the Federation Council but it also refuses to pass a law providing for the composition and case jurisdiction of the Federal Supreme Court.

**Article 92:** First: The Federal Supreme Court is an independent judicial body, financially and administratively.

Second: The Federal Supreme Court shall be made up of a number of judges, experts in Islamic jurisprudence, and legal scholars, whose number, the method of their selection, and the work of the Court shall be determined by a law enacted by a two-thirds majority of the members of the Council of Representatives.

Because there is no Federal Supreme Court regulated by a new law, individual liberties are not protected.

**Article 19:** Fifth: The accused is innocent until proven guilty in a fair legal trial. The accused may not be tried for the same crime for a second time after acquittal unless new evidence is produced.

**Article 37:** First:  
B. No person may be kept in custody or investigated except according to a judicial decision.

**Article 88:** Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice.

These articles establish judicial independence and authority, and provide all citizens the right to a fair trial. However, decisions by the dissolved Ba’ath Revolutionary Command

Council are still in force. For example, citizens may be arrested and held for up to a month; the Minister of Commerce may seize personal funds; and the Minister of Transport may detain persons.

In addition, there are numerous incidents of the Executive prosecuting dissenters by controlling the courts. Outspoken Sunni leaders Tariq Hashemi and Rafi' Issawi were charged with pretext terrorism violations and the courts acquiesced by prosecuting them.

In 2010, the unconstitutional court ruled that Maliki could form a Cabinet even though Ayad Allawi's block had won more votes. Even Shiites, like Muqtada al-Sadr, have protested this court. Reports by UNAMI and human rights organizations have criticized the Iraq judiciary's involvement in sectarian differences.

**Article 61:** The Council of Representatives shall be competent in the following:

Fifth: Approving the appointment of the following:

A. The President and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the President of Judicial Oversight Commission by an absolute majority, based on a proposal from the Higher Juridical Council.

B. Ambassadors and those with special grades, based on a proposal from the Council of Ministers.

C. The Iraqi Army Chief of Staff, his assistants, those of the rank of division commander and above, and the director of the intelligence service, based on a proposal from the Council of Ministers.

Ninth:

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

B. The state of emergency shall be declared for a period of thirty days, which can be extended after approval each time.

C. The Prime Minister shall be delegated the necessary powers which enable him to manage the affairs of the country during the period of the declaration of war and the state of emergency. These powers shall be regulated by a law in a way that does not contradict the Constitution.

D. The Prime Minister shall present to the Council of Representatives the measures taken and the results during the period of the declaration of war and the state of emergency within 15 days from the date of its end.

The Executive has interfered in the work of the legislative authority in violation of Article 61, which gives sole authority to the Council to approve appointments of specified office holders. Iraq governments have usurped the authority of the Council by making appointments unilaterally. For example, no senior military officer appointment was presented to the Council for approval. These appointments should have been approved by a two-thirds majority.

Both Prime Ministers Maliki and Abadi have monopolized the powers authorized only to the Council of Ministers. Successive Iraq governments have not implemented Article 80, which specifies the Council of Ministers' powers. Article 85 mandates the Council of Ministers to establish working bylaws. They did not. The 2014 Political Agreement Document emphasizes the importance of enacting bylaws for the Council of Ministers. However, Prime Minister Abadi has continued to act unilaterally and to reduce the number of representatives of other government components under a so-called "reform" package.

The Constitution allocates a special section for bodies independent of the Executive: The High Commission for Human Rights, the Independent Electoral Commission, and the Integrity Commission are subject to control of the legislative branch. The Central Bank, the Financial Control Bureau, and the Information and Communications Authority are also considered independent bodies, financially and administratively. They are accountable to the Council of Representatives. However, a 2011(unconstitutional) Court decision bound these bodies to the Prime Minister, giving him authority to intervene in their affairs without limitation. Article 135 (First) requires the National Commission for Accountability and Justice to work as an independent body and coordinate with the judiciary and executive bodies. It is subject to the supervision of the Council. But it has been used by the dominate Shiites to exclude and marginalize the Sunnis.

### **THIRD: THE FEDERAL GOVERNMENT REFUSES TO IMPLEMENT ARTICLE 140**

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**Article 140:** 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.

Article 140 places responsibility on the federal government to complete implementation of Article 58, eliminating Iraqi Transitional Administrative Law. This process requires eliminating the effects of injustices caused by the racist policies of former regimes, which led to diminution of Kurds in their ancestral territory.

Starting in the 1960s and through 2003, Iraq governments directed campaigns of ethnic cleansing of the Kurds. The governments expelled hundreds of thousands of Kurds from their rightful homes, replacing them with Arabs (Arabization.) At its peak of ethnic cleansing, the governments completely destroyed Kurdish villages and the Kurdish infrastructure. The ethnic cleansing of predominately Kurdish areas was done to diminish its population and thus its influence in its own geographical homeland.

Despite the specific constitutional mandate for “Kirkuk and the other disputed territories” to have referenda to “determine the will of their citizens” to join the Kurdistan Region or maintain the status quo. Baghdad has refused to implement it.

Contrary to Article 140 and to prevent Kurds from returning to their rightful homeland, a recent decision by the Ministry of Interior allows civil status registry for every person who marries an Arab resident of Kirkuk. It also facilitates granting ration and housing cards for any Arab who wants to remain in the Kurdish area. Thus, the Iraq government continues Arabization of the Kurdistan Region.

Successive Iraq governments since 2005 have refused to implement Article 140 or to allocate a budget for doing so. Even though the federal government created a High Committee, it failed to carry out the recommendations. Some of the ignored recommendations are below:

1. Return employees who were dismissed from their government positions because of their political affiliations. With the exception of few reappointments, this recommendation has not been implemented.
2. Return deportees and displaced (Kurdish and Sunni) persons to their original residences. Deportees and the displaced have been repatriated only in small numbers.
3. Return Arabs to their original areas and grant them financial incentives of approximately \$18,000 USD. Most Arab expatriates received these financial grants from Baghdad but remained in Kirkuk. They invested the money to purchase new land in Kirkuk, despite the intervention of a UN representative to resolve the problem. In fact, the Iraq government continues to support the demographic cleansing of Kurds by allowing the Arabs to remain in Kurdish lands.
4. Return agricultural lands that were confiscated from Kurdish and Turkmen farmers of Kirkuk and given to Arabs.
5. Approve compensation to displaced families covered under Article 140. These grants have been paid only to a limited number. Baghdad declined to spend further under the pretext of "lack of adequate budget."
6. Approve returning the areas of Tis'in and Hamzeli to their rightful Kurdish owners. These properties were confiscated by Saddam Hussein. The 2007 recommendation to do so was never approved by the Council of Ministers, despite the High Committee's assertions of its importance in resolving property disputes in Kirkuk.
7. Redraw the provincial borders to the lines as they were before the Kurdish ethnic cleansing and the Arabization of Kurdistan as recommended in 2012 by the Kurdish Iraqi President Jalal Talabani. The Council refused to pass the law.
8. Hold a referendum in Kirkuk as requested by the Kirkuk Provincial Council. It has not been held on the pretext that implementation of Article 140 is still in its "first stage." Obstacles have been placed by successive Iraq governments, claiming lack of sufficient cash or lack of seriousness in transferring civil status registries. There has been no serious attempt by the Iraq government to implement Article 140.



## **FOURTH: IRAQ SUSPENDED THE KURDISTAN REGION'S SHARE OF THE FEDERAL BUDGET**

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One of the most and important constitutional obligations of the state is to provide a decent living for all its citizens. Under the 2005 Constitution, this obligation includes equitably distributing government revenues.

**Article 121:** Third: 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.

Article 121 mandates that the Kurdistan Region receive a percentage of the national revenues. Iraq agreed in 2005 to allocate to the Kurdistan Region 17% of total federal government expenditures and 17% of total federal income. All federal budgets have included this percentage and, thus, bound the Ministry of Finance to allocate the funds. Yet, Iraq never paid Kurdistan the entire 17%. In 2014, Iraq ceased all payments to the KRG.

Baghdad's complete suspension of the Kurdistan Region's share of the federal budget has negatively affected the constitutional rights of its citizens because the KRG requires these funds to carry out those rights. Iraq has withheld funds as leverage to pressure the Kurdistan Region to relinquish its legitimate demands for Iraq to comply with the Constitution. It did so as follows:

1. The proportion of federal funds allocated to the Kurdistan Region from 2005 through 2013 was reduced. Although the Kurdistan Region was entitled to 17% (approximately \$20 billion USD depending on the year), the Iraq government provided only about 11% (approximately \$13 billion USD).
2. Budgetary figures were manipulated to support an argument for providing less money to the Kurdistan Region.
3. In February 2014, Prime Minister Maliki single handedly suspended federal payments to the Kurdistan Region.
4. Baghdad deprived the Kurdistan Region of allocations for regional development.

5. Medical allocations to the Kurdistan Region were reduced. From 2005 - 2015 the Kurdistan Region received only 60 - 65% of its entitled share of medical supplies. In October 2016 the amount was reduced to 25 - 30%. Significantly, the Kurdistan Region was dealing with an influx of 1.8 million refugees many of whom required these medical supplies.
6. The Kurdistan Region's Peshmerga Forces were deprived of any defense budget.
7. The Kurdistan Region's share of 17% of foreign loans and financial and international aid, specifically from the World Bank, was not paid.
8. Compensation to the Kurdistan Region for the human and infrastructural damage caused by the ethnic cleansing of previous regimes (1963 to 2003), estimated at \$384 billion USD, was not paid.

Article 5 provides that the rule of law is "sovereign." It has been repeatedly violated by Iraq governments' non-compliance with the provisions mandating that the Kurdistan Region receive its equitable share of the federal budget and by Prime Minister Maliki cutting off the Kurdistan Region's entire funding in 2014. The most significant violations of constitutional Articles regarding the allocation of the federal budget are as follows:

**Article 14:** 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.

By treating the Kurdistan Region unequally, Baghdad violated the Constitution.

**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.

Baghdad has damaged the economy of the Kurdistan Region, causing a severe economic crisis by suspending its share of the general budget. Investment plummeted from \$13 billion USD in 2013 to \$2 billion USD as a result of Baghdad's decisions. The Iraq government maintains central economic planning and has not promoted the private sector.

**Article 26:** The State shall guarantee the encouragement of investment in the various sectors, and this shall be regulated by law.

Because it has not received the necessary funds, the KRG does not have the money to encourage foreign investors.

**Article 29:** First:

A. The family is the foundation of society; the State shall preserve it and its religious, moral, and national values.

B. The State shall guarantee the protection of motherhood, childhood and old age, shall care for children and youth, and shall provide them with the appropriate conditions to develop their talents and abilities.

As a result of the budget suspension, numerous KRG government workers lost their income, causing family issues. KRG court statistics for 2016 reflect the highest divorce rate and lowest number of marriages ever recorded.

**Article 30:** First: The State shall guarantee to the individual and the family - especially children and women - social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing.

Second: The State shall guarantee social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphanhood, or unemployment, shall work to protect them from ignorance, fear and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law.

**Article 31:** First: 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.

Second: Individuals and entities have the right to build hospitals, clinics, or private health care centers under the supervision of the State, and this shall be regulated by law.

By suspending the Kurdistan Region's budget entitlements and reducing its share of medicine, the Iraq government violated the above Articles. Because of these reductions the KRG Ministry of Health is unable to meet local demand for medicine and medical supplies. These violations occurred when the KRG was experiencing an increase in medical needs due to the influx of more than 1.8 million refugees. Between October 2016 and June 2017 more than 35,000 refugees and Iraqi army personnel have been treated by the KRG with no reimbursement from Iraq.

**Article 32:** The State shall care for the handicapped and those with special needs, and shall ensure their rehabilitation in order to reintegrate them into society, and this shall be regulated by law.

Because Baghdad suspended the Kurdistan Region's share of the federal budget, the KRG cannot pay for care of its handicapped and special needs citizens.

**Article 106:** A public commission shall be established by a law to audit and appropriate federal revenues. The commission shall be comprised of experts from the federal government, the regions, the governorates, and its representatives, and shall assume the following responsibilities:

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

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

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

None of the above principles have been implemented because no entity has been created and no laws have been passed.

All Articles below were violated because Iraq has refused to provide funds to the Kurdistan Region:

**Article 33:** First: Every individual has the right to live in safe environmental conditions.

Second: The State shall undertake the protection and preservation of the environment and its biological diversity.

**Article 34:** First: Education is a fundamental factor for the progress of society and is a right guaranteed by the state. Primary education is mandatory and the state guarantees that it shall combat illiteracy.

Second: Free education in all its stages is a right for all Iraqis.

Third: The State shall encourage scientific research for peaceful purposes that serve humanity and shall support excellence, creativity, invention, and different aspects of ingenuity.

Fourth: Private and public education shall be guaranteed, and this shall be regulated by law.

**Article 132:** First: The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime.

Second: The State shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts.

## **FIFTH: IRAQ HAS REFUSED TO COMMIT TO A FEDERAL PARTNERSHIP PRINCIPLE IN UTILIZING ITS NATURAL RESOURCES**

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Oil and gas provide the greatest share of the Iraqi economy, necessitating specific Articles for allocating the country's natural resources.

**Article 111:** Oil and gas are owned by all the people of Iraq in all the regions and governorates.

**Article 112:** Second: 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.

**Article 110:** The federal government shall have exclusive authorities in the following matters:

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

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.

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

Fourth: Regulating standards, weights, and measures.

Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum.

Sixth: Regulating the policies of broadcast frequencies and mail.

Seventh: Drawing up the general and investment budget bill.

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.

Ninth: General population statistics and census.

**Article 115:** All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.

**Article 121: Second:** In case of a contradiction between regional and national legislation in respect to a matter outside the exclusive authorities of the federal government, the regional power shall have the right to amend the application of the national legislation within that region.

Because all Iraqis own these valuable natural resources, the Constitution provides the earnings be distributed in a “fair manner.” It was necessary to include these Articles for two reasons:

1. Iraq did not have a unified oil and gas law before the fall of the Ba’ath regime; and
2. The Ba’ath Party, as a totalitarian regime, was in complete control of the Iraq economy. Laws concerning oil reflected this totalitarian rule. The Constitution provides for a free economy and openness to foreign investments.

The above Articles create a compromise for sharing oil revenues that was specifically negotiated in drafting the Constitution. They establish the KRG’s right to develop the oil within its territory in exchange for the federal government managing Kirkuk’s oil field. However, the federal government’s authority to manage Kirkuk (and non-KRG) oil fields is contingent on its sharing all oil revenues according to population with additional amounts to compensate Kurdistan for Saddam Hussein’s atrocities.

Iraq has obstructed Kurdistan’s oil development and marketing by blacklisting companies that work with the KRG and by seeking foreign court injunctions against KRG oil sales. For almost a decade Iraq refused to distribute such oil revenues according

to population. In 2014, Iraq ceased distributing any oil revenues to the KRG. Kurdistan has no constitutional obligation to share its oil revenues but has offered to do so.

Successive Iraq governments since 2005 have been a stumbling block to passing oil and gas laws. The Federal Oil and Gas Law was submitted to the Council of Representatives in 2007. The law complied with the above Articles. It would establish the powers of Regions (Kurdistan) to manage and develop the oil and gas sectors. This draft law was submitted to the Iraqi Shura Council for review. But the Shura Council does not have authority beyond legal and linguistic editing. Its edited draft did not comply with Article 112 because it altered the words so significantly that the text no longer recognized the principle of full partnership in the oil and gas sectors between Baghdad and Kurdistan.

Attached to the draft law is an Appendix that states that if the law is not passed by May 31, 2007, each party is entitled to enter into development and production contracts in accordance with the Constitution. The law was not passed. Therefore, the KRG relied on that language to develop its own natural resources. The Iraq government now claims such development is illegal. Because it lays claim to all oil contracts in Iraq, Baghdad refuses to pay the required fees to foreign companies operating in the KRG.

Twelve years after the Constitution's effective date, Iraq has a legal vacuum regarding how to deal with oil and gas, the most important sectors of its national economy.



## **SIXTH: IRAQ HAS VIOLATED KURDISTAN CITIZENS' RIGHTS AND LIBERTIES**

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Protecting citizens' rights and freedoms is enshrined in constitutions throughout the world. Numerous international organizations support these principles. The most important is the United Nations, which in its Charter's Preamble and in more than one Chapter has stipulated that rights and freedoms be protected. Individual rights and freedoms are the fundamental building blocks of the family, the state, and international community. Violating these rights not only affects the individual but also directly or indirectly affects the international community. This issue was demonstrated in Iraq in 2014, where the main reason local communities gave early support to ISIS was because they had been mistreated by Baghdad.

The Iraq 2005 Constitution provides for basic rights and liberties, which was a crucial factor in getting the people's support. However, successive Iraq governments violated most of the provisions relating to rights and liberties. Some of these violations are:

**Article 2:** Second: 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 Mandaean Sabians.

Non-Shiite religious groups, such as Christians and Sunni, have been murdered and kidnapped, and their holy places blown up. The Iraq government has been lax in finding the perpetrators. Hundreds of thousands have fled, many to the Kurdistan Region where there is no discrimination based on religious beliefs.

**Article 14:** 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.

Iraq governments have violated Article 14 by discriminating against components of citizens, treating the Shiite community as first class citizens while all other communities are discriminated against. This discrimination is pervasive in all segments

of government services, such as income distribution, postgraduate studies, scholarships, populating diplomatic missions, and even in providing security.

**Article 15:** 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.

The Iraq government has failed to provide a secure and stable life for its citizens. Incompetent institutions and weak security have resulted in misery as evidenced in 2014 by the ISIS invasion. Kidnappings in Iraq reached 524 and assassinations reached 875 in 2015. In 2016, 354 were kidnapped and 518 assassinated. The government knows many of the perpetrators but fails to act for political reasons.

**Article 37:** First:

B. No person may be kept in custody or investigated except according to a judicial decision.

Iraq governments have repeatedly violated this Article. Many Sunnis are arrested without any legal or factual basis.

**Article 28:** 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 29:** Second: Children have the right to upbringing, care and education from their parents. Parents have the right to respect and care from their children, especially in times of need, disability, and old age.

**Article 30:** Second: The State shall guarantee social and health security to Iraqis in cases of old age, sickness, employment disability, homelessness, orphanhood, or unemployment, shall work to protect them from ignorance, fear and poverty, and shall provide them housing and special programs of care and rehabilitation, and this shall be regulated by law.

The second paragraph of each Article above provides personal, social, and economic rights for all Iraqi citizens, such as reducing the tax on limited income holders; maintaining the family structure, protecting children and elderly; ensuring social and health security and the basic elements of living a decent life; providing income and

adequate housing for the individual and the family; and providing social and health security for old, sick or disabled people.

Iraq governments have not provided these rights. Thousands of families have been fragmented, whether because of war, poverty, or disability. Parents, children, and the elderly have lost homes by forced displacement or because of terrorism and the inability of the Iraq government to maintain security. In addition, thousands of children have been deprived of the right to education.

**Article 31:** First: 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.

Second: Individuals and entities have the right to build hospitals, clinics, or private health care centers under the supervision of the State, and this shall be regulated by law.

**Article 32:** The State shall care for the handicapped and those with special needs, and shall ensure their rehabilitation in order to reintegrate them into society, and this shall be regulated by law.

Articles 31 and 32 grant healthcare rights for all Iraqi citizens. Iraq governments have not fulfilled these responsibilities, especially for Kurdistan citizens. Baghdad has reduced the share of medicine and medical supplies to the Region instead of increasing it, which is contrary to the KRG's expectation when it took responsibility for 1.8 million Iraqi Arabs and other refugees displaced from non-KRG governorates.

**Article 44:** First: Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq.

An example of the violation of this Article is the Iraq government prohibiting women from traveling alone, which restricts their freedom of movement.

**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.

**Article 125:** 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.

Iraq governments have violated this Article as they have not guaranteed political, administrative, cultural, or educational rights to non-Shiite nationalities and religions in Iraq. In areas where non-Shiite are the majority, there is no fair representation in local governments, schools are not taught in native languages, and religious beliefs are not protected.

**Article 132:** First: The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime.

Second: The State shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts.

Iraq governments have not guaranteed the rights of martyrs and political prisoners, especially those of the Kurdistan Region. Baghdad has refused to compensate the Anfal people for Saddam Hussein's chemical weapons attack. Baghdad has not compensated political prisoners. It has not sufficiently compensated families of martyrs and those injured because of terrorist acts. For example, in the war against ISIS, over 1700 Peshmerga forces were killed and close to 10,000 wounded. Baghdad has not compensated the families or the wounded for their injuries. It has no intention to do so.

## **SEVENTH: IRAQ HAS FAILED TO COMPLETE ITS LEGAL AND LEGISLATIVE SYSTEM**

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The federal government quickly passed only those laws that have a centralist nature. Laws that concern federalism, and thus Kurdistan, have been delayed. The following discusses additional Articles that have been violated but not covered in the First to Sixth Chapters.

**Article 93:** Sixth: Settling accusations directed against the President, the Prime Minister and the Ministers, and this shall be regulated by law.

There is no law to hold a Prime Minister accountable for any constitutional violation. For example, Prime Ministers have refused to provide federal funds to the KRG and refused to recognize entities that requested to be Regions. There is no mechanism for challenging these violations.

**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.

Article 12 requires the Iraqi flag, emblem, and national anthem to symbolize the diversity and composition of the Iraqi society. Iraq continues to use the flag approved by Saddam Hussein, which reflects no emblem symbolic of Kurdistan. Kurdish holidays are also ignored by federal authorities.

**Article 22:** First: Work is a right for all Iraqis in a way that guarantees a dignified life for them.

Second: The law shall regulate the relationship between employees and employers on economic bases and while observing the rules of social justice.

Third: The State shall guarantee the right to form and join unions and professional associations, and this shall be regulated by law.

**Article 24:** The State shall guarantee freedom of movement of Iraqi manpower, goods, and capital between regions and governorates, and this shall be regulated by law.

These Articles include rights to political asylum, non-extradition of refugees, establish unions, freedom of movement of workers and goods, and own property. No laws have been passed to implement these matters.

**Article 84:** First: A law shall regulate the work and define the duties and authorities of the security institutions and the National Intelligence Service, which shall operate in accordance with the principles of human rights and shall be subject to the oversight of the Council of Representatives.

Second: The National Intelligence Service shall be attached to the Council of Ministers.

A significant problem during previous regimes was that security apparatuses were involved in genocidal campaigns. No law has been passed to limit or proscribe the conduct of the security and intelligence agencies. As a result, there are serious violations of human rights. Under the present federal government, intelligence and counter-terrorism forces have murdered and kidnapped minority Sunnis, violations that have been cited by the UN.

**Article 61:** Ninth:

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

B. The state of emergency shall be declared for a period of thirty days, which can be extended after approval each time.

C. The Prime Minister shall be delegated the necessary powers which enable him to manage the affairs of the country during the period of the declaration of war and the state of emergency. These powers shall be regulated by a law in a way that does not contradict the Constitution.

D. The Prime Minister shall present to the Council of Representatives the measures taken and the results during the period of the declaration of war and the state of emergency within 15 days from the date of its end.

There is no law to regulate the affairs of the country during war time.

**Article 86:** A law shall regulate the formation of ministries, their functions, and their specializations, and the authorities of the minister.

No law has been passed, resulting in an imbalanced relationship between the institutions of the federal government, and the Kurdistan Region and governorates not organized within a region.

**Article 112:** First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law.

There is no law for the oil and gas sector.

**Article 113:** Antiquities, archeological sites, cultural buildings, manuscripts, and coins shall be considered national treasures under the jurisdiction of the federal authorities, and shall be managed in cooperation with the regions and governorates, and this shall be regulated by law.

Because there is no antiquities law some of Iraq's and Mesopotamia's early civilization areas have been destroyed while many other areas are grossly neglected.

**Article 114:** First: To manage customs, in coordination with the governments of the regions and governorates that are not organized in a region, and this shall be regulated by a law.

The customs files are in a state of chaos and corruption. Vital records cannot be located. Officials demand payment to provide for ordinary government services. Because there is not a legal framework for the customs functions of government, there is no consistency. Different policies and fees are applied throughout Iraq, a situation ripe for corruption.

**Article 123:** Powers exercised by the federal government can be delegated to the governorates or vice versa, with the consent of both governments, and this shall be regulated by law.

No law has been passed, contrary to the principles of decentralization and federalism upon which the administrative system is based under the Constitution.

**Article 7:** 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 basic function of the state is to protect its citizens against aggression and terrorism. Iraq has failed to prohibit and/or penalize entities that practice racism and terrorism. Terrorist organizations continue their bloody and inhumane activities.

**Article 109:** The federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system.

**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.

Iraq has not maintained unity, independence, or sovereignty. The government could not protect its citizens against ISIS in 2014.

**Article 8:** 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.

Iraq governments have not maintained independence and sovereignty in dealing with neighboring countries. Iraq has become subordinate to neighboring countries. The role of Iran in Iraqi affairs is a paramount problem. Iraqi officials do not independently make major decisions without Iranian influence.

**Article 110:** 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.



No law has been passed. The federal government has not fulfilled its responsibilities to ensure the flow of water from international water sources.

**Article 28:** First: No taxes or fees shall be levied, amended, collected, or exempted, except by law.

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

Armed militias stop citizens at random checkpoints and extort payments for passage. Baghdad does nothing.

Products from the Kurdistan Region to the rest of Iraq have additional taxes levied on them. Baghdad imposes this taxation, which is illegal because no law has been passed for the government to do so.

**Article 110:** Ninth: General population statistics and census.

Iraq has failed to carry out a census. The absence of population statistics significantly affects the electoral process and representation. There have been numerous accusations of voting fraud in all elections since 2005. The absence of a census affects the implementation of Article 49:

**Article 49:** 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.

Because there is no reliable measure of the population, the number of representatives cannot be fairly determined. The Council passed the General Election Law giving the Shiite parties more seats than the percentage of their population.