

IRAQ'S NEW REALITY

REPORT III



THE POLITICS OF GOVERNANCE AND FEDERALISM



The Centre for International
Governance Innovation
Centre pour l'innovation dans
la gouvernance internationale



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Dear Colleagues,

At this critical juncture in Iraq's history, the Stimson Center and the Centre for International Governance Innovation are partnering to explore the linkages between Iraqi reconstruction, security and a political process of national reconciliation involving all Iraqis. Our goal is to help shape a better understanding of the Iraqi situation and to generate new thinking about Iraq for policymakers. This project, entitled Iraq's New Reality, has included a series of workshops held in Canada and the United States, gathering leading experts to examine these key issues.

This report is based in part on the third workshop of the series, held on Parliament Hill in Ottawa, Canada on October 14, 2009. It benefited from presentations and contributions by Sami al-Askary, Hassan Bazzaz, David Cameron, Paul Dewar, Paul Heinbecker, Kamran Karadaghi, Najmaldin Karim, Brendan O'Leary, Abdelhussein Shaban and Nabil al-Tikriti.

The next workshop and report by the Stimson Center and CIGI in this series will address the issue of Iraq's relations with its neighbours. The reports from our first two meetings, Iraq's New Reality: The Impact of Conflict on Minorities, Refugees and the Internally Displaced and Iraq's New Reality: Ensuring Security and Setting the National Security Agenda are available at www.stimson.org and www.cigionline.org.

It is our hope that, at this critical juncture in Iraq's history, this project can explore and shed light on Iraq's new realities and prospects for stability.

Sincerely,

Ellen Laipson Ambassador Mokhtar Lamani



Overview

Iraq is a society in transition, grappling with the universal challenges of establishing forms of governance and allocating power within the institutions of the state. It is nearly seven years since the US invasion of Iraq, and vigorous debates about the future of Iraq continue internally and externally. The Iraqi Constitution adopted in 2005 remains a source of debate for several reasons. Much of the instability within Iraq is due to struggles between the various political, sectarian and ethnic groups that constitute Iraq's population. Iraq has always been ethnically and religiously diverse and has historically allowed minority communities to co-exist in harmony with the majority populace. Yet, the current situation has fuelled discord and even violence between these groups. Much of the contention has arisen due to differences in perceptions of how sectarian tensions can be resolved; whether through the creation of a strong central government focused on keeping the country politically unified, or by allowing a decentralized power structure in which groups are granted political self-expression.

There seems to be a central debate in Iraq about whether federalism will strengthen the state and national identity or instead be a source of division.

Federations have often been viewed as possible systems for managing diverse populations within a state. While there are vastly differing examples of federations in the world, most share a few common features – two levels of government (central and regional) with distinct powers accorded to them by means of a constitution. In successful federations, the division of power cannot be altered without mutual consent from each level.¹ There seems to be a central debate in Iraq about whether federalism will strengthen the state and national identity or instead be a source of division. While federalism may not be the best or the only solution for Iraq's political governance, it is useful to consider the different perceptions of federalism among the varying groups in Iraq. For some, the 2005 constitution and a federal system of governance is the only solution, why others believe that anything other than a unitary, central government will lead to the break-up of Iraq.

Perceptions of Federalism in Iraq

Federalism has been misunderstood. At the popular level, day-to-day security and economic challenges dominate thoughts and discourse. Many Iraqis are not aware of what a federal system is and what the costs and benefits are for governance. As a result, many perceive federalism as mostly addressing the contentious issues between the Kurdistan Regional Government (KRG) and the federal government, with no relevant application for other provinces in Iraq. There are also competing fears that either the existence or the absence of a federal system could lead to the secession of the Kurdistan Regional Government.

Perceptions of Federalism Among Iraqi Political Parties

The fears and misunderstandings of the Iraqi population are mirrored in the perceptions of federalism among Iraq's political elite. There are certain groups, particularly those in the KRG, that strongly support the idea of federalism as it exists in the constitution. While they have qualms about certain issues such as oil contracts and territorial disputes, the autonomy provided in the constitution is a critical and non-negotiable element to their Iraqi identity. Some Iraqi groups, such as the Islamic Supreme Council, also see federalism as a way of furthering their own interests, as the structure established in the constitution allows for the creation of additional federal regions in Iraq. Yet other parties, including Sunni groups such as the Iraqi National Dialogue Front and the Al-Tawafuq Front accept Kurdish autonomy as a status quo, but strongly oppose the formation of additional regions.

Some groups in Iraq support federalism in principle, but argue that there are too many difficulties with regard to its actual implementation, particularly if the constitution is weak. There are also those that virulently oppose federalism in principle and practice, as they believe it will lead to a domino effect of secession in Iraqi Kurdistan and other regions. These groups, including the Ba'ath Party and the Association of Muslim Scholars in Iraq (AMSI), believe federalism to be an imported form of governance, which will have either no value or will be detrimental if adopted in Iraq.

Criticism of the 2005 Constitutional Process

The Iraqi Constitution was drafted under chaotic conditions and under the occupation of foreign forces. It was approved in October 2005 by means of a referendum in which close to 63 percent of eligible Iraqis voted, giving the constitution relative legitimacy. The Independent Electoral Commission of Iraq reported that the referendum was approved by 78 percent of voters, while 21 percent rejected it.² A large percentage of those who rejected the constitution were Sunni, due to their unease with the constitutional allowance for governorates to form regions. However, many Sunnis finally did approve the constitution due to a last-minute clause stating that the constitution could be modified via referendum in the next elections, which were due to be held in December 2005.

The lack of a common vision for the future of Iraq was and remains a critical challenge. This was evident during the drafting of the constitution, as each party worked in its own interest and determined safeguards for their own group without much consideration of the national interest. This has resulted in an uneven and unsettled power structure, which many fear may lead to the break-up of Iraq.

Negative perceptions of the constitutional process cast a long shadow over discussions of federalism today. All of these factors combined have resulted in an antipathy towards and, in some cases, dismissal of the constitution. This continues to be a major barrier to reaching an agreement on the future of Iraq. There are also important aspects of the constitution that remain unresolved, including territorial disputes, the passing of a hydrocarbon law, and the approval of an elections law. These unresolved issues have led to greater frustration with the constitution and are proving to be grave threats to Iraqi stability.

Power-sharing in the New Iraq

There needs to be a general consensus on how power in Iraq should be distributed. For some, there is a natural gravitation towards a 'strongman' to resume total control of the country. Iraq, like most formerly authoritarian regimes, has unitary authoritarian practices embedded in its society. This makes the concept of the diffused power that exists in federal systems seem at odds with the traditional political culture.

Many in Iraq believe that having a strong, single executive will translate into a strong, unified government. However, absolute centralization could also stifle regional autonomy and identity, leading to secession pressures. In these debates, a key issue is what a 'strong' state actually means. Is strength derived from a strong head of state and military? Or could a strong state be defined as having the rule of law, a strong education system, and internal security? These differing perceptions of strength are at the heart of the debate over the future of Iraq.

This tension between centralization and de-centralization is evident in most debates, and particularly when it comes to security-sharing arrangements. The demarcation of security power-sharing arrangements is specified in the constitution. While the federal government has authority to execute national security policy to "guarantee the security of Iraq's borders and defend Iraq", the regional governments have the authority to establish and organize internal security forces such as the police, security forces and guards of the region.³ This issue is particularly sensitive when discussing the KRG and its peshmerga forces, who provide internal security for the KRG and contribute to Iraqi national security missions. Additionally, the prime minister is also the commander-in-chief, which many fear will give the person holding office too much military and political power.

Implications for the Electoral System

Ambiguities in the power-sharing between levels of government and between the various groups in Iraq are also reflected in the recent controversies about the establishment of an elections law. One cause for fierce disagreement is related to Kirkuk, and involves discrepancies over voter lists

and if Kirkuk should be allowed to vote at all.⁴ Following weeks of debate, the Iraqi parliament recently approved an electoral law giving Kirkuk the right to vote, but it includes a provision for the central government to investigate any suspicious voting pattern.⁵

At the time of writing, the law's passing has once again been put into jeopardy. Vice President Tariq al-Hashemi vetoed the law in opposition to a clause giving only 5 percent of parliamentary seats to minorities and Iraqi refugees abroad. He has called for an increase in representation to 15 percent as most Iraqi refugees are considered to be Sunni. Additional debates about allocation of seats have also surfaced from Kurds residing in northern Iraq.⁶

All of these issues indicate the necessity of developing an equitable and mutually satisfactory power-sharing agreement. Iraq needs to develop an election law with clear guidelines for voter registration and parliamentary seat allocation and clearly defines the rights and responsibilities of citizens living in all regions.

The Role of the Kurdistan Regional Government (KRG) in Iraq

The 2005 Constitution gives Iraq official status as a federal republic, while also sanctioning Iraqi Kurdistan as an independent federal region in Article 117. The Kurds have their own sovereign constitution and if there is a contradiction between the constitutions of Baghdad and KRG, the KRG has regional legal supremacy. Even though KRG-governed areas are considered to be autonomous, certain rights and responsibilities afforded to the KRG are still ambiguous and contested. Kurdish regions under KRG administration are allowed several privileges such as cultural rights and their own peshmerga forces to defend their territory. Yet much needs to be done to institutionalize this relationship in order to ensure that both the central government and the KRG are satisfied. It is also necessary to prevent issues such as territory and revenue-sharing disputes from leading to violence.

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Territorial Disputes with the KRG

The territorial boundaries of the KRG are a particular source of contention and a key threat to Iraqi internal security. Kirkuk is one of the major flashpoints in relations between the different groups in Iraq, as the city is claimed by Arabs, Kurds and Turkomen alike. Another equally important but often overlooked territory-sharing dispute centers on the city of Mosul.

The recurring issue of both Kirkuk and Mosul continues to prevent stable relations between the KRG and Baghdad. Kurds claim that forced migrations and a gradual Arabization of Kirkuk under Saddam Hussein eroded artificially what had been a demographic majority of Kurds in Kirkuk. The Iraqi Constitution sought to address this issue, calling for a referendum by 31st December 2007, which would have determined whether Kirkuk should be part of the KRG or not. The referendum was postponed due to two pre-requisites that failed to be implemented: conducting a census and redrawing Kirkuk's boundaries to return them to the status before the former regime's gerrymandering.⁷ The issue of holding the referendum continues to be stalemated as most Arab and Turkomen groups are delaying the process.

Reversing Saddam's forced migration is also a source of contention. There is a debate about whether the federal government should seek to re-settle Kurds back to their original homes. Many Arab and Turkomen groups maintain that Kurdish claims of population numbers are inflated and that Kurds have only migrated en masse to Kirkuk in the last few years. Some claim that those currently moving to these disputed territories were not originally residents of the region. They see this inflated number as a tool by the KRG to increase their territorial demands. An influx of new migrants could bring about cultural and linguistic changes as well, a concern of Kirkuk's current residents.

Several solutions have been proposed to resolve the various territorial disputes between the federal government and the KRG. One recommendation has been to set the boundaries of Kirkuk to their pre-1968 status, before the Ba'ath Party solidified its power. There would be absolute freedom of movement for all citizens – anyone who wished to stay or leave would be permitted to do so.

Federalism in Canada: The Case of Quebec

Quebec, a major province of Canada, has been home to one of the most powerful secessionist movements in the world. Yet after two referendums on sovereignty (1980 & 1995), Quebec remains a key part of a unified Canada and a shaper of Canadian identity. While not perfectly analogous, the history of Quebec is a uniquely interesting case study as Iraq works to satisfy its largest minority constituency, the Kurds.

Throughout most of its history, Canada has struggled to manage the challenges of Quebec separatists. Today the situation is much improved, although there are some existential realities to be lived with for generations.

Several factors have accounted for the successful reduction in tensions:

- 1) The use of violence was relinquished by both parties early in the negotiations process
- 2) Both parties were and remain committed to the rule of law and the peaceful negotiation of claims
- 3) There was a lack of outright oppression of French-Canadians, and they were not treated as traitors
- 4) A positive federal response to Quebec's demands (e.g. adoption of French as one of Canada's official languages)

Canada has recognized that the key to reaching a level of stability and success in accommodating minorities is through an open political process of dialogue and response. Furthermore, both English and French Canadian societies have changed over the course of the past three decades and the societies' values and cultures are not as disparate anymore. Canadians in general now see a diverse Canada as a source of strength and national pride.

Those who leave would be paid for re-settlement in another region of Iraq. Another option would be to allow ethnically homogenous sub-districts of Kurds or Arabs to opt-out from being governed by the KRG through referendums. However, as it currently stands, many of these solutions are unacceptable to many in Baghdad, in part due to the economic importance of Kirkuk as a hub for northern Iraqi oil production. A broader solution put forward has been for the central government to appease and satisfy KRG's demands for territory. This would make the KRG's jurisdiction more ethnically heterogeneous, making territory-sharing a political necessity. However, others fear that this would open the gates to demands for secession and a further escalation of violence.

Oil and Gas Revenue Distribution

Resolving the issue of wealth-sharing between and among the regional and federal levels of government as specified in the constitution, particularly in terms of revenues associated with oil and gas production, is essential to the future stability of Iraq. The constitution does not explicitly grant oil production rights or ownership over oil fields to any one entity, but rather, states that “[o]il and gas are owned by all the people of Iraq in all the regions and governorates”.⁸ This has led to some confusion as a result of the vagueness of such phrasing, with each province having different demands and qualms over revenue distribution.

In the case of the KRG, a separately negotiated agreement was signed giving the federal government sole authority over oil production and contracts with foreign oil companies in exchange for the KRG routing its revenue to Baghdad and receiving 17% of national oil revenue. Baghdad at one point allowed the Kurdish government some control over oil exports from the Kurdish region and use of the national pipeline, but maintained that Irbil would be responsible for paying companies it individually struck deals with. The payment of oil companies has recently devolved into a major conflict between the KRG and Baghdad, resulting in being partially frozen until the conflict has been resolved.

Basra is also representative of how complicated the revenue distribution issue is. Due to the region's oil wealth, many Shiite factions in Basra have been pushing for a larger share of oil revenues and have threatened to cut exports if demands are not met. Some inhabitants of Basra fear that a Shiite Arab and Kurdish-led central government will not distribute oil revenues in a fair manner throughout Iraq.⁹ As a result, political factions such as the Islamic Supreme Council of Iraq (ISCI) have endorsed Basra becoming a separate region similar to the KRG.¹⁰

Oil is the heart of the Iraqi economy. Solving the issue of revenue distribution is key for a successful federal system of governance in Iraq.

Sunni-dominated Anbar province is especially concerned over oil revenue distribution due to the province's lack of proven oil reserves as compared to other regions. Anbar's concerns have therefore centered on the equitable distribution of oil revenues, with opposition to significant regional control over oil production and revenue allocation.

Oil is the heart of the Iraqi economy. Solving the issue of revenue distribution is therefore a key issue for successfully implementing a federal system of governance in Iraq. Catering to the various demands of the governates and regions is crucial towards alleviating sectarian violence, and will provide for a legitimate federal political process to be safeguarded.

The Future of Federalism in Iraq

There are positive signs that Iraqis are starting to adopt and adapt the current system of governance. While the electoral law is still pending approval, most indicators suggest that there will be more widespread participation in the 2010 elections than in 2005. Yet issues of contention still abound, as is evident in the debates about the KRG's role, the issue of revenue-sharing and the elections law.

Federalism is just one option that could help provide long-term stability and accommodate Iraq's diverse citizenry. It is important to recognize that federalism is a process, not an endgame. Issues of borders and constitutions are not set in stone. The process is often complex and there will be some failures along the way. The key to ensuring Iraq's long-term stability is instituting appropriate power-sharing mechanisms and establishing a culture of trust within the state. While some may fear that federalism will encourage secession, others worry that the great danger is centralizers who seek to amass power without the consent of all citizens. The weight of Iraq's past political culture continues to dominate the discourse in present day politics. Citizens in and out of the government are in the midst of deciding what a 'strong' government entails and how respect for human rights, the rule of law and due political process can be incorporated into this vision of governance.

Sectarian tensions can be overcome by encouraging a national reconciliation process that will uphold an Iraqi identity rather than a local, ethnic or sectarian identity and help to build trust. This inclusive national reconciliation project can be carried out simultaneously with the process of understanding which governance system can fit Iraqis' needs best. No matter what form of governance Iraqis decide to adopt, the principles of citizenship and pluralism should be upheld in every capacity. In this way, Iraq could stand to be a symbol of good governance for the entire region of the Middle East.

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*Prepared By
Asfia Tareen*

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The Stimson Center
1111 19th Street, NW, 12th Floor
Washington, DC 20036
Phone: 202-223-5956 | Fax: 202.238.9604
www.stimson.org

The Centre for International Governance Innovation
57 Erb Street, West
Waterloo, ON, Canada N2L 6C2
Phone: 1 (519) 885-2444 | Fax: 1 (519) 885-5450
www.cigionline.org