

ARTICLE 140 OF THE PERMANENT CONSTITUTION

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READING, NOTIONS, AND IDEAS

Introduction

After the fall of the former regime in 2003, Iraq has witnessed a new political phase within an international legal context; namely the establishment of the coalition authority to manage matters in Iraq, with Mr. Paul Bremer as its Civil Governor, who prepared and enacted the draft of the provisional code pertaining to managing the State of Iraq, that was composed of (62) articles. This code has won the support and approval of some of the active political blocs in the Iraqi arena, with some reservations from the side of other blocs. However, this code has passed because of the circumstances Iraq was going through thence.

Among the articles that were met with reservations by the political forces is Article (58) of the abovementioned code, which underwent a heated argument that deprived the article its legal frame and endowed it with a political characteristic. At that time, the attitudes of the Arab and Turkmen, especially in Kirkuk, were not taken into consideration, both their opinions and views about the present and future, where they historically live, were considered.

Overview on

Article (58) of the State Administration Provisional Code

The following are a number of items constituting Article (58):

- A) The transitional Iraqi government, especially the Supreme Authority for Resolving Real Estates Ownership Disputes and other related bodies, hastily undertakes the measures required to lift injustice caused by the practices of the former regime, as represented in changing the population status in some certain place, including Kirkuk, by deporting people and denying them their residencies, and through forced migration from within and outside the area, as well as the resettlement of strangers, and depriving the residents the opportunity to work. This is in addition to correcting nationalism and addressing this injustice.
- B) As for nationalism correction, the government has to cancel all related resolutions, granting affected people the right to decide their national identity and ethnicity, with no coercion or pressure.
- C) The former regime has manipulated the administrative limits, and others, seeking to achieve some political goals. Hence, the Iraqi transitional presidency and government has to work on submitting recommendations to the National Assembly, addressing these unfair changes. In case the presidency could not reach an entire approval to some of the recommendations, the Presidency should then unanimously appoint a neutral arbitrator for the purpose of studying the subject and make recommendations. In case the Presidency could not agree on an arbitrator, the Presidential Council is to submit a request to the UN Secretary General to appoint an eminent international figure to perform the required arbitration.

- D) Final settlement of the disputed territories, including Kirkuk, is to be deferred till completing the abovementioned procedures, as well as conducting a fair and transparent census, and till the permanent constitution is ratified. This settlement has to be processed consistently with the principles of justice, and taking into consideration the will of the inhabitants in these territories.

Our vision regarding these items:

First: Viewing item (A) as given above, it is indicated that the responsibility of applying this Article rests with the Iraqi Transitional Government, and that after the elapse of the period specified to this government, along with its inability to implement Article (58), the said responsibility shifted to the Permanent Government, which emerged from the first legislative elections. After the approval of the Iraqi Permanent Constitution, Article (58) was entirely shifted to Article (140) of the Permanent Constitution, despite the existence of Article (53) of the provisional core pertaining to the Administration of the Estate of Iraq, which recommends against including Baghdad and Kirkuk to any territory, because of their ethnic and ideological special nature, as well as their national and sectarian diversity. Hence, the new elected government, as per the Permanent Constitution, undertook the responsibility of implementing Article (140), and, consequently, formed a supreme committee, as per ministerial decree (46), as issued by the Prime Minister, entailing the following:

Ministerial Decree (46)

1. Mr. Hashim Abdul-Rahman Al-Shibli / Minister of Justice	Chairman
2. Mr. Jawad Kadhim Al-Baulani / Minister of Internal	Member
3. Ms. Nermin Othman Hassan / Minister of Environment	Member
4. Mr. Jassem Mohammed Jaafar / Minister of Youth and Sports	Member
5. Mr. Ahmed Babakr Seddiq / Kirkuk Governorate Council	Member
6. Mr. Mohammad Khalil Nassif / Kirkuk Governorate Council	Member
7. Mr. Tahseen Mohamed Ali Kahiah / Kirkuk Governorate Council	Member
8. Mr. Ashur Yelda Benjamin / Kirkuk Governorate Council	Member
9. Dr. Mohammed Ihsan Al-Solaifany / Representative of Kurdistan Region	Member

Note:

- After the resignation of Mr. Hashim Al-Shibli, the Committee's Chairman, Mr. Raed Jihad Fahmy, the Minister of Science and Technology, has been appointed the new Chairman of the Committee.
- The member, Mr. Jasim Mohamed Jaafar, the Minister of Youth and Sport, has been replaced by Mr. Anwar Berqadar.

Second: With regard to paragraph 4 in Item (A), which mentioned the issue nationalism correction, worth mentioning is that this resolution (the correction), which was issued during the former regime (1997), has included the Turkmen nationalism solely, as well as practicing pressure on Turkmen, forcing them to correct their nationalism; otherwise, they will be exposed

to plundering their rights, grapping their properties, shifting their jobs, or even depriving them their citizenship rights.

Third: In item (B) of Article (58), the reference is made to the manipulation and change that took place in Kirkuk and its administrative map. It is understood that any solution to this problem, or any change in the province's administrative boundaries, as per the law, is subject to the unanimous approval of the Presidential Council on the recommendations of the Supreme Committee as formed by the Prime Minister, to be remitted to the Parliament for legislation and ratification. However, this has not been achieved up to date, in spite of the fact that the Committee has finally submitted a comprehensive study about the administrative changes being disputed because of the existence of political and legal conflicts regarding the Article.

Fourth: Item (C) of the abovementioned Article stresses that that any settlement regarding the disputed areas, including Kirkuk, would only be processes according to a fare and transparent census, consistent with the principles of justice and the will of the inhabitants of that region.

Article (140)

Text of Article (140) – Iraqi Constitution:

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.

Back to the subject of this paper, which is the abovementioned Article (140), the following problems can be cited:

1. Was Article (140) sufficient to solve an intractable problem, like that of Kirkuk, around which revolve sharp differences, both historically and politically?
2. Is the formation of the Supreme Committee to implement Article (140) enjoys the power that qualifies it towards making decisive resolutions to determine the fate of Kirkuk? Or are there other governmental bodies, or international entities, ready to interfere at the emergence of any disputes on the three phases of implementation (Normalization – Statistics – Referendum)?
3. Constitutionally speaking, is it possible to determine a deadline to the application of any constitution? If yes, what is the legal status of the constitutionality of the article severely debated by political blocs in the Iraqi Parliament?

To answer these questions and problems:

1. Upon the elapse of the transitional period, approving the Permanent Constitution, and ending the period of time constitutionally specified to implement the article, it is obvious that the items in Article (140) were not sufficient to solve the problem of the disputed areas, including Kirkuk. This is due to the fact that the vision and political handling of this Article have dominated the legal and humanitarian aspects in it, which led to the creation of variation in the opinions, visions and attitudes of the people, Turkmen in particular; especially that Kirkuk is considered to be the center of their existence that has to be maintained, along with its history and heritage.

2. The Committee implementing Article (140) is considered to be a governmental committee with limited powers, as per the law. Thus, the Committee started with studying each article of the law after the formation of the administrative structure, developing work mechanisms, and raising recommendations to the Prime Minister to be submitted to the Cabinet; to be ratified and converted into enforceable resolutions. The following are the six resolutions approved by the Cabinet:
 - A. Returning the employees discharged for political reasons to their jobs.
 - B. Returning the deportees and immigrants to their original residencies.
 - C. Returning the Arab comers, as per their desires, to their original areas, granting them financial concessions of (twenty million dinars) for each family, in addition of a piece of residential land in case of not have a land previously allocated by the government.
 - D. Canceling the agricultural contracts that were signed within the policies of the demographic change (the police of Arabization) in the disputed areas, including Kirkuk.
 - E. Approving the payment of compensations for the families covered by the items of Article (140).
 - F. A special resolution related to (Tes'een & Hamza Lee) area, pertaining to returning their confiscated and usurped properties, by the former regime, with no compensations, or the properties which were not used for the public benefit. The greatest problem here is that this resolution has not been validated by the Cabinet, in spite of the assurances made by the Committee regarding their being of key importance in solving a great deal of ownership disputes and legal transactions in Kirkuk, noting that the resolution has been issued in 01/10/2007.

Specialized committees:-

Under the Supreme Committee decision to implement Article 140, on 12/9/2006, five subcommittees and three offices have emerged; the heads of those committees and directors of offices were named as indicated below:

1. Secretariat Committee: Headed by Mr. Mohammed Ihsan Al-Solifany
2. Financial Committee: Chaired by Ms. Nermin Othman
3. Fact-Finding Committee: Headed by Mr. Tahseen Kahiah
4. Technical Committee: Headed by Mr. Mohamed Khalil al-Juburi
5. Follow-up Committee: Headed by Mr. Raed Fahmi.

Offices

Office of Kirkuk - Managed by Mr. Babakr Seddiq

Office of Khanaqin - Managed by Adnan Kanginley

Office of Sinjar - Managed by Abdel Kader Sinjari

Mechanisms of Implementing the Resolutions of the Committee:

1. Mechanism pertaining to regulating forms for the comers and deportees willing to return to their previous original areas.
2. Mechanisms for transferring the records of the comers and deportees willing to return to their previous original areas, and in coordination with the General Directorate for Nationality, Passports, and Residency.
3. Mechanism for transferring ration cards for the comers and deportees willing to return to their previous original areas, in coordination with the Supplies and Planning Directorate, and with Ministry of Commerce.
4. Mechanism to address the implications of canceling the agricultural contracts, in coordination with the Ministry of Agriculture.
5. Identifying the tasks and functions of the Fact-Finding Committee.
6. New instructions have been issued regarding those covered by Article (140) of the Constitution, and they have been forwarded to the State Council to be edited and published in the official paper. The instructions have been discussed with the State Council as per their request.

Opinions and Visions

First: There is an unanimous agreement among the people of Kirkuk regarding the necessity of getting rid of the former regime's policy, and getting the city back to its original status, through normalizing the situation, and restoring rights to those affected by the said policy, since it is a normal right for every citizen to own his rights, practice his freedom, and live in his homeland. However, this normalization is not an easy process comprehending only the return of the deportees and immigrants to their areas and giving them privileges, but, as per the law, normalization requires solving all property ownership problems. Worth mentioning that Law number (2), pertaining to solving property disputes, is unable to solve all legal and judiciary disputes; constituting thousands of transactions, while only few hundreds of ten hundreds have been decisively arbitrated.

Second: It is essential to work on developing a mechanism and quick decision towards canceling the confiscation and usurpation decisions, replacing them with new ones to return the rights of the citizens. Without achieving this step, no move can be done towards the statistics stage, as per the law.

Third: As for the stage of statistics, experts from the Ministry of Planning were hosted to discuss how to conduct statistics in the disputed areas, as well as developing the related mechanisms. Discussions have been held around the necessity of determining the administrative boundaries for the disputed areas, without which the statistics will be impossible.

Fourth: As for the referendum, it constitutes a subject of great controversy that needs a political consensus to satisfy all the people of Kirkuk. There is an absolute Arab and Turkmen rejection to conducting a referendum to determine the fate of Kurkik due to the unstable circumstances in Iraq, both security and political wise, in addition to the easiness of manipulating the process, and hence resolving the outcome for one nationality than the other.

