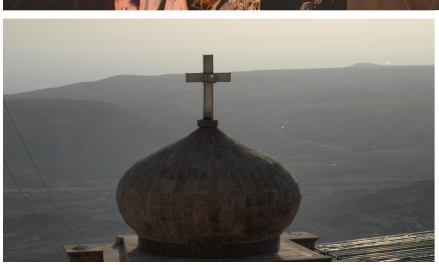
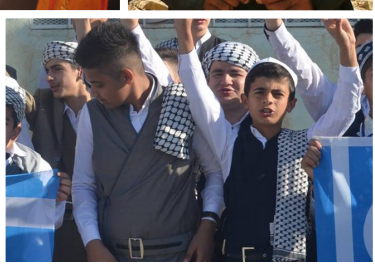
PROTECTING MINORITIES' RIGHTS IN THE KURDISTAN REGION

A TAILOR-MADE MODEL

MERI
Middle East
Research Institute

Dlawer Ala'Aldeen

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Registered at KRG – Directorate General for NGOs on 02/07/2013 – No. K843

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MERI Policy Report

October 2015

Acknowledgments

I wish to thank my colleagues at MERI for their feedback and useful discussions during the preparation of this report. I thank Mr Qasim Botani and Mr Mohammed Abubaker for designing the publication.

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Abstract

The Kurdistan Region of Iraq (KRI) should be proud of its reputation as a guardian of minorities, providing at-risk groups with security and shelter. However, despite its rich social tapestry, the political system within the KRI does not reflect its diversity. In order to give minorities a stronger voice in the KRI, this diverse ethno-religious constituency requires true representation in governance and civic life.

Currently eleven members of Parliament represent minorities (5 Turkmen and 6 Christian Chaldo-Assyrians), but they are only involved in crafting laws without real influence in decision-making and implementation processes in the Kurdistan Regional Government. One way to begin building upon existing mechanisms and ensure shared ownership of the system of governance would be via the establishment of two councils: one for ethnic minorities to represent Turkmen, Arabs, Assyrians, Chaldeans and Armenians, and another for religious minorities to represent Yezidis, Christians, Kaka'is, Zoroastrians, Mandaeans and Baha'is. Both councils should be integral parts of both the Parliament and the Government to guarantee them influence over the decision-making process at the highest legislative and executive levels.

Building the confidence of minority groups in the KRI's system of governance would ensure not only lasting stability and acceptance, but the preservation of the area's vibrant and rich social tapestry as well. Importantly, the future stability of the KRI, Iraq and the Middle East as a whole, is affected by the extent to which rule-of-law is implemented and human rights are provided and protected. Therefore, the formation of Minority Councils must be enshrined within the constitution to guarantee their participation in the process of legislation, implementation and monitoring.

Introduction

The Kurdistan Region of Iraq (KRI) has over time become home to a myriad of different ethno-religious groups due to a significant level of ethnic and religious tolerance. However, despite its rich social demography, the system of governance in KRI does not reflect this diversity. Positions of power are dominated by the majority, Kurdish Muslims, with inadequate representation for the smaller and more vulnerable minority groups.

The ethno-religious diversity in the KRI (including the current three governorates of Dohuk, Erbil and Sulaimaniyah and parts of the Disputed Territories) is remarkable. Its ethnic components comprise of Kurds, Turkmen, Arabs, Armenians, Chaldean Assyrian and Syriacs, while its religious groups, in addition to Muslims both Sunni and Shia, include Yazidis, Kaka'is, Christians and smaller groups, such as Zoroastrians, Mandaeans and Baha'is. Fortunately, there are many legal provisions for the protection of the political and cultural rights of Kurdistan's minorities. However, the years of sectarian conflict that have plagued Iraq have created rifts that are difficult to bridge. This now requires serious investment in building inter-communal confidence, a process that can guarantee the rights of minority groups while engaging them in the decision-making process.

One of the critical factors that contribute greatly to achieving peace and stability in any nation is a sense of shared ownership of the country, and its governance system, by all citizens including minorities. Countries such as Iraq, which have failed to invest in nation-building and unifying their ethnic and religious communities, are likely to face irreversible internal rifts. If the KRI aspires to maintain lasting stability where its communities can coexist harmoniously, it has no choice but to ensure the rights of its communities and invest in the institutions of democracy.

The drafting the constitution of KRI constitutes a unique opportunity to review the region's system of governance while fostering an increasing level of democratisation. This can be achieved through the provision of rights for all who reside within the region, irrespective of their religious and ethnic background. This will lead to an improvement in levels of social justice, a vital factor required to maintain peace, stability and security.

To achieve this, a unique mechanism which guarantees true representation of a diverse ethno-religious constituency is required. This must be designed with the specific aim of engaging minorities in the decision-making, implementation and monitoring processes. A product of rigorous research involving key representatives of the variegated ethnic and religious groups of the KRI and the disputed territories, this report aims to provide such a mechanism.

Protecting ethno-religious groups in the Kurdistan Region

With the process of drafting the new constitution of the KRG already underway, advocating the incorporation of the rights and demands of the ethno-religious groups in the constitution could have no better timing. The system of governance in Kurdistan should reflect the mixed composition of its community, at all levels. This should also include cultural and national symbols.

The rights of all the communities residing within the KRG should be enshrined in the constitution. There should also be legal provisions to ensure that all of the KRI's communities are provided with the opportunity to engage in the system of governance.

A number of symbolic steps should be undertaken to build confidence between the KRI's diverse communities. These could include the alteration of the flag and the national anthem of the KRI to incorporate such symbols. Also, an effective mechanism to protect the various distinct cultures and languages should be developed. For larger groups, there should also be provisions to make their languages official. For instance, the Turkmen Language in Kirkuk should be officially recognized for administrative communications alongside Kurdish and Arabic. Finally, depending on population ratios, senior positions in local government should be granted to representatives of those communities.

Genuine Partnership

Constitutional recognition and legal enshrinement do not always translate into true access to rights, which requires the presence of a dedicated institution that is representative of, and trusted by, all minorities. For any such institution to have legitimacy and impact it needs to be legally and administratively embedded in the structure of governance of Kurdish Regional Government (KRG). Such an institution would provide assistance to the government in matters related to the ethnic and religious groups, particularly in the process of legislation, implementation and monitoring. Such a body does not currently exist in Kurdistan.

Representation in both Parliament and Government Institutions

There is no accurate census data on the total population of different communities in the KRI, therefore, numbers and rations of ethnic and religious components remain as estimates.

Following the Kurdistan National Council (Parliament) elections in 1992, the Parliament was formed with one hundred general seats, in addition to five protected seats (quota) for the Christians who were largely members of the Armenian, Chaldean Assyrian and Syriacs communities. It was not until 2005 when the number of protected seats for minority groups was increased to eleven, five for the Turkmens and five to the Chaldeans, Syriacs, and Assyrian and one for the Armenians. However, no seat was allocated for the Arabs, Yazidis, Kaka'is or other smaller minorities.

The KRG Council of Ministries (Cabinets) have so far failed to assign any specialised ministerial positions to the minority representatives. To demonstrate their good will and their commitment to democratic rights of minorities, the ruling parties have regularly appointed members of different ethnic or religious communities in various ministerial positions. These were done for symbolic reasons, without taking into account the individual Ministers' professional competence or leadership qualities.

Consequently, the participation of minorities in KRG remained inadequate and at times counter-productive, because it failed to build sufficient trust and confident between the KRG and the various minority groups. Often the selected Ministers were not perceived as legitimate community representatives; rather they are viewed as affiliated to the ruling Kurdish parties which promoted them.

Taken together, the system of governance in Kurdistan has not only failed to develop into an inclusive and democratic model, but also it did not provide an attractive model for minority communities living in Iraq's Disputed Territories, the majority of which are now under the control of the KRG. Such failure will become a major barrier should a referendum on the Disputed Territories take place in the near future. Even if areas of the disputed territories were formally integrated into KRI, the fears and concerns of these communities could undermine stability and create unbridgeable gaps in the future.

Successful models

In well-established democracies, such as USA and Western Europe, the rights of ethnic and religious minorities are guaranteed through protection of the right of individuals. Additional mechanisms are also in place for protecting cultural and linguistic identities of all components. Moreover, groups or caucuses have the ability to lobby in the parliaments, influence legislation and have access to decision-makers. Clearly, sovereignty of law and democratic values can help mitigate against the possibility of ethnic and religious inter-communal conflicts.

In the recently emerged democracies, such as Eastern Europe, a number of models have emerged in countries that have diverse demography. Romania, Serbia, Bosnia and Croatia all created special councils for minorities in their parliaments. These advisory bodies were established with the aim of influencing legislation and monitoring implementation for minority groups. While there are clear cultural and social differences between the KRI and the Eastern European countries, such a model based on democratic principles can be adapted for KRI but further modified, or tailor-made, to ensure adequate minority representation within the legislative and executive bodies.

A tailor-made Model for Kurdistan Region

MERI's proposed model for the Kurdistan Region of Iraq consists of the creation of two separate but identical bodies (Councils) for both ethnic and religious minorities:

- **A Council for Ethnic Minorities**, to represent Turkmen, Arabs, Assyrians, Chaldeans,Armenians
- **A Council for Religious Minorities**, to represent Yezidis, Christians, Kaka'is, Zoroastrians, Mandaeans and Baha'is

The structure and functionality of these Councils would be tailor-made as to take the local system of governance and power dynamics into consideration, while also being culturally sensitive. The overall objective is to guarantee that each Council meets the expectations of all ethnic and religious minorities while providing access to both the parliament and government processes.

The establishment of these Councils is not intended to replace the current process of minority representation within the Kurdistan Parliament. It conflicts with neither their objectives nor authority. In fact, it reinforces the influence of current minority representatives by institutionalising the rights of minorities.

In the Kurdistan Region there are a number of similar bodies (Councils and Boards) which represent specific groups or sectors, such as the High Council for Women Affairs, Council for Human Rights, the Investment Board and Tourism Board. These are all bureaucratic executive bodies that are responsible to the KRG Cabinet. The administrative structure of these organisations varies, depending on their specific objectives. However, there is none that adequately address the needs or aspirations of minority groups.

Considering the rights of minorities, any new minority council should be an integral part of both the Parliament and the Government to guarantee them influence on the decision-making process at the highest legislative and executive levels. Such a mechanism can assist in the protection and promotion of their cultural, educational, linguistic and religious rights.

Aim and role of the Councils

1. Assist in the resolution of issues that affect ethnic and religious minorities residing within the KRI. This includes drafting of legislation, policies, and long-term strategies that address the provision of the rights for ethnic and religious minorities.
2. Lobby on behalf of minority groups with the aim of influencing the policy- and decision-making processes at the highest level.
3. Play an active role in monitoring the implementation of legal provisions that are designed to protect and promote minority rights. Each Council should produce a quarterly report on the status of ethnic and religious minorities which would be submitted to the parliament and the public.
4. Communicate the views and needs of minority groups residing within the KRI to relevant authorities in order to ensure greater levels of social equality.
5. Engage both governmental and non-governmental institutions locally and internationally in order to exchanging information promote the protection of minority rights.

The Administrative Structure of the two Councils

1. The Councils would be administratively embedded within the Parliament. A small secretariat would be required to run the Councils affairs. New legislation would be required to formalise this arrangement.
2. The current representatives of ethnic and religious minorities in the Kurdistan Parliament should become members of the two Councils, as appropriate. These MPs will then be able to influence and monitor the legislative process within both the Parliament and the KRG.

3. Representatives from relevant Cabinet ministries, at the level of Director General (DGs), will be permanent members of both Councils. These representatives need not be from minority groups themselves as their role is to represent specific ministries in order to exchange information.

4. Any future Ministers or holders of sovereign positions, for instance Vice-President of KRG or Deputy Prime Minister, who might be appointed via future political agreements, will also become Council members.

5. A chairman and two deputies should be elected on a rotational basis among the MPs or holders of sovereign positions for each Council. The chairmen will attend KRG Cabinet meetings in order to influence the decision-making processes at a governmental level. These positions will not be ministerial level which will facilitate rotation without the need for parliamentary approval.

6. The creation of a number of specialised sub-committees will be required to address issues of data analysis, coordination and policy formulation. It should be made possible for external experts to join the sub-committee as members.

Phases of Implementation

Phase One: During the Current Parliamentary Term

Currently, there are eleven MPs representing Turkmen, Chaldean, Assyrians, Syriacs and Armenians. These representatives coalesce to form the first Council for both ethnic and religious minorities. In collaboration with relevant parliamentary committees, legislation should be drafted in order to define the framework and future internal constitutions of the two proposed ethnic and religious Councils.

Phase Two: During Future Parliaments

A number of ethnic and religious minorities do not have representatives in the Kurdistan Parliament. They include Arabs, Yezidis, Kaka'is, Zoroastrians, Mandaeans and Baha'is.

To this end, it is essential to have a new draft law for allocating additional parliamentary seats to these minorities. This law should be effective from the next round of elections in 2018. Thereafter, the both councils should become fully developed.

Phase Three: After the Unification with the Disputed Territories

After the resolution of the Disputed Territories, through referendum or an overarching political agreement, the number and proportion of the different minorities within the KRG-administered areas will change dramatically. This is irrespective of which part of Disputed Territories will be integrated within the KRG administration. Conducting a census in these territories is therefore necessary to help legislators allocate the required number of seats for each minority in the Kurdistan Parliament. Consequently, the overall parliamentary seats and those allocated to minorities will change.

Finally

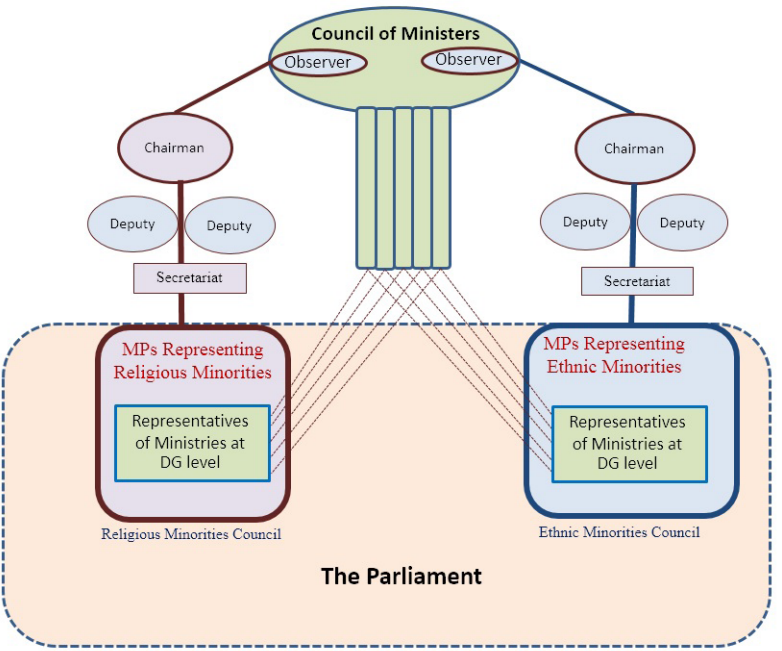
The future stability of the Kurdistan Region of Iraq, and the Middle East as a whole, is affected by the extent to which people rights are provided and protected. Typically this is undertaken through the enactment of legal provisions and regulations. However, constitutional rights will provide more powerful protection.

A constitution, despite its inflexibility, is deemed as a long-term social agreement between a government and its people, in order to protect and enshrine their rights. Including protection for minority groups can help ensure future stability, and the democratic development in the Kurdistan Region.

To enshrine the formation of minority councils within the constitution, **MERI** recommends that the constitutional committee in the Kurdistan Region should add the following section to the draft constitution:

MERI reccommends the insertion of the following article to the draft constitution of Kurdistan Region:

"The establishment of two councils for the ethnic and religious minorities within the Parliament to guarantee their participation in the process of legislation, implantation and monitoring".



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The Middle East Research Institute engages in policy issues contributing to the process of state building and democratisation in the Middle East. Through independent analysis and policy debates, our research aims to promote and develop good governance, human rights, rule of law and social and economic prosperity in the region. It was established in 2014 as an independent, not-for-profit organisation based in Erbil, Kurdistan Region of Iraq.

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