

Frequently Asked Questions (FAQ) by Iraqis About the Constitution

The following Frequently Asked Questions (FAQ) were drafted in Arabic and translated into English by local Iraqis working for the International Republican Institute (IRI), a USAID partner. As a result, this is a rough but accurate translation of how the Iraqis understand their Constitution.

1. Was the draft of constitution made by Ba'ath Ideology or Practice? Was it against it?
2. Was the draft of constitution American or Iranian?
3. Will the draft make Iraq a religious country or secular?
4. Is federalism a step towards unity or division? Did the draft oppose federalism or licensed it?
5. Is the draft applying ethnicity?
6. Will the draft separate Iraq from Arabic Identity?
7. Will the draft deprive some of Iraqis from enjoying the resources of the country?
8. Was the draft fair to Iraqi woman?
9. If the draft was for a permanent constitution, would it be possible to reframe it or reconsider some of its parts?
10. Is it so important this constitution? Will Iraq be stable?

Question 1: Was the draft of constitution made by Ba'ath Ideology or Practice? Was it against it?

The draft of constitution mentioned the Baa'th issue in several places ,the item (first)from the article 7 stated: *Entities or trends that advocate, instigate, justify or propagate racism, terrorism, "takfir" (declaring someone an infidel), sectarian cleansing, are banned, especially the Saddamist Ba'ath Party in Iraq and its symbols, under any name. It will be not be allowed to be part of the multilateral political system in Iraq, which should be defined according to the law.*

We can see through this Item that the draft handled the some of the activities more than certain ideology for example it has mentioned some activities and called them several names like racism or terrorism....etc.Also the term Saddamist was added to the Baa'th as if there was a non Saddamist Baa'th or there is a Ba'ath ideology that differs from the Ba'ath concept which is related to the former regime's activities.

This conclusion is clearly stated in the article (131): *The Supreme Iraqi Criminal Court will continue its activities as an independent judicial agency, looking into the crimes of the dictatorial regime and its leading figures. The Council of Representatives can dissolve it by law once its work is finished.*

Where we find that the constitution refers clearly that it is against Ba'ath activities and not Ba'ath ideology, while separating it as a general concept from the exceptional activities of the former regime under the name of Ba'ath which is mentioned in this article as crimes of Dictatorial rule of former regime and it 's members, meaning that the court is taking it as a duty to judge these crimes and who ever committed it and that finishes here.

While the draft in another article is mentioning this issue but in a different way as the article (132:first): *The National De-Ba'athification Committee will continue its work as an independent body in coordination with the judiciary and the executive authorities in the framework of law regulating its work. The committee is linked to the Parliament.*

From revising this item we find that the draft have prevented Ba'ath considering ideology and not activity because in this item the word (Saddamist) wasn't not mentioned in relation with Ba'ath and that is what the item 3 from the article (132) emphasize: *It is a condition upon candidates for the positions of president of the republic, prime minister, ministers, parliament speaker and parliament members, head of the Federal Council and its members and all similar posts in the regions, and members of the judiciary and other posts included under de-Baathification, that they not be included under the provisions of de-Baathification.*

Question 2: Is the draft American or Iranian?

Among all the important issues stated in any constitution, the political system which is going to be applied by reviewing the draft of the new Iraqi constitution we find that the choice is Parliamentary system as it is mentioned in several items and article (1):

The Republic of Iraq is an independent, sovereign nation, and the system of rule in it is a democratic, federal, representative (parliamentary) republic.

The parliamentary system is based on free elections of a parliament or a council in direct mass elections to practice as a legislative authority. The parliament would nominate a leader or a president of the majority political party or candidate from allied parties inside the parliament to play the role of forming the government and there is also the position of the president whom he is a part of the executive authority practicing it honorary. We find the political system included in the constitution differs from both American and Iranian system. In the American constitution 1787 the political system is the presidential system which gives the president of the state wide authorities practicing as the president of the state and prime minister, while the Iranian constitution adopted a special political system which is jurist guardianship system which is based on a jury- Emam represent the highest spiritual authority existing in the country beside the president that is elected by direct elections and there is the constitutional reforming council, defining the system council which handles monitoring and supervising responsibilities as well as the parliament and this is also differs from what the new draft contains.

As for the rest of the draft like articles of rights and freedoms and supervision of the constitutional law and reforming the constitution etc.. That could be in any constitution in the world : Turkish constitution, Lebanese constitution, American constitution, Iranian constitution, German constitution and Saudi constitution.

Question 3: Will the draft make Iraq a religious country or secular?

The draft mentioned the Islamic religion in several articles , the item one of the article 2 stated *Islam is the official religion of the state and is a basic source of legislation*. Also item A from the same item and article stated: *No law can be passed that contradicts the undisputed rules of Islam*. And the Item 2 from article 2 stated: *This constitution guarantees the Islamic identity of the majority of the Iraqi people and the full religious rights for all individuals and the freedom of creed and religious practices*.

The item 3 stated *Iraq is a multiethnic, multi-religious and multi-sect country. It is part of the Islamic world and its Arab people are part of the Arab nation*.

By going through the draft, it is clearly stated that Islam is the official religion for the state at the same time it stated on the necessity of keeping the Islamic identity for the majority of Iraqi people without deleting the rights of other religions followers. From all the above we conclude that the draft is not applying for a specific religion to be imposed in the state in all daily activities and obliging Iraqi people to practice and act according to one specific and only religion ,that was stated in the draft in another article when all Iraqis are considered free in choosing whatever law concerning social issues as it is stated in the article 39: *Iraqis are free in their adherence to their personal status according to their own religion, sect, belief and choice, and that will be organized by law*.

Question 4: Is federalism a step towards unity or division? Is the draft opposing federalism or licensing it?

From many items stated in the draft ;the following statement:(We walk together to enhance national unity) or (committing to this constitution keep Iraq its free federalism, people, land and sovereignty).The article 107 stated *The*

federal authority will maintain the unity of Iraq, its integrity, independence, sovereignty and its democratic federal system. And from the other hand, included in the sixth item related to the regional authorities and governorates, the item 4 from the article 118 stated: *Offices for regions and provinces are to be established in embassies and diplomatic missions to follow up on cultural, social and local development affairs.* All these articles clearly shows that the draft have adopted the federal system, although it provided the regional councils wide authorities like opening embassy offices and diplomatic missions, while the draft insisted in several articles starting from the preamble on the national unity and obliged the federal authorities in a clear sentence on the necessity of keeping Iraq's unity, independency and sovereignty inside the federal frame that is adopted by this draft. From the other hand, it licensed the regional offices establishing embassy offices and diplomatic missions to follow up some educational, social and development issues without interfering in politics or military issues.

The article 1: *The Republic of Iraq is an independent, sovereign nation, and the system of rule in it is a democratic, federal, representative (parliamentary) republic,* clarify that the draft adopts the federal system while article 46: *The federal legislative authority is made up of the Council of Representatives and the Council of Union.* It refers to a natural result of federalism and that is clear in the existence of legislative, judicial and executive authorities practicing inside the state and similar inside each region.

From the other hand, the article 116 states: *The regions comprise one province or more, and two regions or more have the right to join into one region.*

2nd - One province or more have the right to form a region, based on a request for a referendum, which can be presented in one of two ways:

- a. *A request by a third of the members of each of the provincial councils in the provinces that desire to form a region.*
- b. *A request by 1/10 (one-tenth) of the voters in each of the provinces that desire to form a region.*

In the above item the word (have the right) is a clear an evidence that the draft licensed the federalism and not opposed it ,so each province have the right to form a region by itself or with other governorates or stay under this definition (governorate) and practice administrative non-central authorities inside the state. But the issue of turning a governorate to a region needs people's approval twice:

First: When the people approve the draft itself on 15 October 2005.

Second: When the majority of the citizens of the governorate want to turn to a region.

The conclusion is that the draft licensed the federalism and did not oppose it is supported by the draft itself in the second part from the fifth article (items starting from 119 till 120) called it (the governorates that is not included into a region) meaning that the draft assumed that there will governorates that would not be turned to regions.

Question 5: Is the draft applying ethnicity?

The draft handled the ethnic problem in several articles starting from preamble which stated on *(a society of peace and brotherhood and cooperation so we can create a new Iraq, Iraq of the future, without sectarianism, racial strife, regionalism, discrimination or isolation)* . Also item 1 from article 7 *(Entities or trends that advocate, instigate, justify or propagate racism, terrorism, "takfir" (declaring someone an infidel), sectarian cleansing, are banned ...)* and article 14 *(Iraqis are equal before the law without discrimination because of sex, ethnicity, nationality, origin, color, religion, sect, belief, opinion or social or economic status)* article 20 *(Citizens, male and female, have the right to participate in public matters and enjoy political rights, including the right to vote and run as candidates).*

From all the above, it is clear that the draft considered Iraqi community members as equal individuals and stated the establishment of equality among Iraqis in all aspects of life especially in political life so the draft did not clarify neither directly nor indirectly to the forming of state administrations according to a specific structure that refers to ethnics , for example the parliament is formed by direct elections ,where each member represent 100,000 votes ,also for the prime minister position, there is a condition that he should be the majority party leader in the parliament or the majority candidate or allied candidate, and for the president of the state position and the chairman of the parliament,

there was no condition referring to ethnicity

Question 6: Will the draft separate Iraq from Arabic Identity?

Before answering this question and going through the draft, there was two articles referring two the Arab identity of Iraq:

1. Article 3 *Iraq is a multiethnic, multi-religious and multi-sect country. It is part of the Islamic world and its Arab people are part of the Arab nation.*
2. Article 4 item (1): *Arabic and Kurdish are the two official languages for Iraq. Iraqis are guaranteed the right to educate their children in their mother tongues, such as Turkomen or Assyrian, in government educational institutions, or any other language in private educational institutions, according to educational regulations.*

From those two articles it is concluded that the draft handled the nationality issue whether it was Arab or other nationalities already existed in Iraq like Kurdish or Turkman ... etc. without apposing to the identity of the whole state of Iraq meaning that the focus was defining the origin of each identity separated from the others giving back the Arab nationality to the Arab nation and mentioning the rest related to the other nations without stating them. Also the draft enhanced this idea by mentioning each language of these identities keeping the relation between them.

In conclusion, the draft didn't precise the status of Iraq in relation to the whole Arab homeland or the Arab states league, as a result there is no way that one can says if the draft intended to separate Iraq from its Arab identity simply because there is no statement mentioning that.

Question 7: Will the draft deprive some of Iraqis from enjoying the resources of the country?

The draft handled the issue of the natural recourses in several articles stating ownership of these natural resources managing them and distributing them as the following:

1. article 109 stated: *Oil and gas is the property of all the Iraqi people in all the regions and provinces.*

clarify that the draft defined the ownership of the Iraqi resources (oil, gas) is for the whole Iraqi people, meaning that the ownership is shared for all iraqi and the regions in governorates are equal in the ownership, while the draft didn't specify other resources (lead, phosphate, mercury, etc..)

2. article 110: *The federal government will administer oil and gas extracted from current fields in cooperation with the governments of the producing regions and provinces on condition that the revenues will be distributed fairly in a manner compatible with the demographical distribution all over the country. A quota should be defined for a specified time for affected regions that were deprived in an unfair way by the former regime or later on, in a way to ensure balanced development in different parts of the country. This should be regulated by law.*

This article clarifies that managing natural resources (oil and gas) is shared between the federal government and the regional government.

3. the draft obliged that the natural resources must be distributed equally taking in consideration the population all over Iraq, also taking in consideration regions that have suffered more than the rest, needs development in a balance way compared with other parts of Iraq. To specify appropriate technique for that, the article 104 stated: *A general body shall be established by law to monitor and allocate federal incomes; the body shall consist of experts from the federal government, the regions and the provinces and representatives from*

them. It should shoulder the following responsibilities:

- 1st - verifying fairness in distribution of international grants, aid and loans based on what the regions and the provinces that do not belong to a region deserve.
- 2nd - ensuring that federal financial resources are being used and distributed in the best way.
- 3rd - ensuring transparency and justice when allocating money to the regional governments and provinces according to the decided ratios.

Question 8: Was the draft fair to Iraqi woman?

The draft handled women issues in several articles that could be divided according to the rights:

1. civil rights: the article 14 *Iraqis are equal before the law without discrimination because of sex, ethnicity, nationality, origin, color, religion, sect, belief, opinion or social or economic status.*

Also the article 18: *An Iraqi is anyone who has been born to an Iraqi father or an Iraqi mother.*

These two articles state women civil rights equally with the man in rights and freedoms, the draft refers to women rights in giving Iraqi nationality for her children regardless her husband's nationality.

2. Political rights: the draft stated in the article 48: *the electoral law requires no less than %25 for women representation in the parliament.*

In this item Iraqi women get one of her political rights which is related to the representation in the parliament not less than %25, meaning that it could be more, noticing that the draft mentioned women representation in the parliament and not in the government and other political positions.

3. social rights: the article 29 item (1:B) : *The state shall guarantee the protection of motherhood, childhood and old age and shall take care of juveniles and youths and provide them with agreeable conditions to develop their capabilities.*

Article 30:

The state guarantees social and health insurance, the basics for a free and honorable life for the individual and the family - especially children and women - and works to protect them from illiteracy, fear and poverty and provides them with housing and the means to rehabilitate and take care of them. This shall be regulated by law.

The draft secures social rights for each member of the family and specially for women obliging the state to provide means of living and social security for women as well as health security for her and for her children as an example the state is obliged to provide working opportunities that suit different roles women play which enable her to handle her responsibilities equally.

Question 9: If the draft was for a permanent constitution, would it be possible to reframe it or reconsider some of its parts?

Article (123) stated: *The president of the republic and the Cabinet together, or one- fifth of the members of the Council of Representatives, can suggest amending the constitution.*

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2nd - The basic principles of the constitution mentioned in Chapter One of this constitution cannot be amended, except after two consecutive parliament cycles and based on the consent of two-thirds of the members of the Council of Representatives, a public referendum and the endorsement of the president of the republic within seven days.

3rd - Other items not covered by the 2nd clause of this article can only be amended by two-thirds of the members of the Council of Representatives, the consent of the people in a general referendum and the endorsement of the president within seven days.

4th - No amendment is allowed that lessens the powers of the regions that are not among the exclusive powers of the federal authority, except with the agreement of the legislative council of the concerned region and the consent of a majority of its population in a general referendum.

5th - An amendment is considered in effect upon the date of its publication in the official gazette.

By going through this article, it is clear that the draft has been licensed

1. Proposing amendment if there is a need by two sides.
 - The president of the state with the cabinet together.
 - One fifth of the parliament
2. ratifying the amendment (the absolute majority of the parliament 2/3 after studying it)
3. the approval of the amendment (through referendum under the condition that the results should prove that the majority of the registered voters approve in this way any constitutional amendment must be decided by the Iraqi people.
4. The final approval: the draft authorized the president to give final approval in seven days period, if there was a delay or the president refused to approve, the amendment would be considered approved after 7 days automatically.
5. applying the amendment (through publishing it in the official gazette)

Could all the statement be possibly amended? The constitutional draft prevented amending some of the statement temporarily and others permanently.

1. the temporal prevention related to the articles in the first part (basic principles) and the second part (rights and freedoms) are prevented from being amended before a period of 8 years to be passed (2 rounds)
2. permanent prevention related to the articles that disgrace the authorities of regional councils although such amendment could be done after the approval of the majority of the related regions and after the approval of the legislative authorities in these regions.

Question 10: Is it so important this constitution? What will be after the constitution? Will Iraq be stable?

The drafting of the constitution represents the first step towards building the state of law and the state of institutions but the role of the Iraqi citizens in making this process successful is by the majority approval, in another way the success of this constitution in the future and the stability of this country is not ended here but the role of the Iraqi citizens will begin from the moment that the draft is approved through monitoring the violations of the contents of the constitution by following the attitude of lobbying and monitoring the laws that are stated in the item 1 from the article 91 which determine the role of the supreme federal court

Overseeing the constitutionality of federal laws before they are issued.

And that requires from the Iraqi citizens a full knowledge of rights and freedoms of rights and freedoms which means preventing any project of dictatorialship to be back.

Democracy requires the existence of a constitution which clearly expresses rights and freedoms of the citizens, from

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the other hand to be able to face any violation of this constitution by exposing it.

The draft presents solutions for the problems that results from the applications of federal laws, decisions and instructions as in article 91 item 3: *settle matters that arise from application of federal laws, decisions , regulations , instructions and procedures issued by the federal authority, the law shall guarantee the rights of each of the Cabinet, the concerned individuals and others of direct contest with the Court.*

The article above clarifies that the citizens have the right to apply direct complains to the supreme federal court stating that there is misapplication or violating in application of federal laws decisions and regulations by the federal court which supposed to be applied on all Iraqi citizens.
