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IRAQ - KURDISTAN REGIONAL GOVERNMENT (KRG)

COMPREHENSIVE REVIEW OF LEGISLATION
(TRANSITION PHASE REPORT)

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Executive Summary

This report presents the initial summary of work done to prepare for a comprehensive review of KRG legislation. It was carried out in the transition phase between two projects, namely the previous *KRG Shura Council Capacity Building Project* (P148897) (which included seminars, the drafting of a manual, and a scoping mission), and the work to be done at both the federal and regional levels under the new European Union (EU)-funded and World Bank-managed *Strengthening Public Financial Management (PFM) Oversight and Accountability Institutions in Iraq Project* (P164405).

The desirability and feasibility of a comprehensive review of the KRG legal order are confirmed by this first assessment of the KRG's legal instruments. The practical targets of such a project, as defined by the chairman of the KRG Shura Council in his January 2017 letter to the World Bank, are confirmed again as relevant and feasible, especially the urgent need to identify the "discrepancies and gaps" in the legal order of the KRG region. The same can be said regarding a similar project regarding Iraqi legislation at the federal level.

A more in-depth review of the legal situation confirms that the constitutional setup — and especially the practice since 2005 — give the KRG the appropriate competence to conduct the operation, provided the same support is offered in parallel to the federal authorities.

The texts of the legal instruments can be traced back over a 100-year period because of the consistent publication of the official gazettes at both the federal level and, when applicable, at the regional level. The existence of these texts helps to make this review possible.

However, there are obstacles to be overcome in undertaking this review. For example, there seems to have been very little consolidation of amended legislation. This makes it difficult to conduct any review of legal instruments, since consolidation is the first step toward building knowledge about which instruments and articles still have legal value. The Iraqi Legal Database, "the first comprehensive and electronic legal database to be created in the Arab region,"¹ needs to be made use of because the legal assessments for the KRG must also include relevant federal legislation.

The comprehensive review should focus on primary legislation, as requested by the Chairman of the Shura Council, because this is the area where the most urgent issues have been found. Importantly, the search for any missing legislation would include areas in which it would be desirable to incorporate international agreements and standards.

The project could be conducted by a small team of lawyers over a period of 4-6 months. The goal would be to deliver a useful list of "discrepancies and gaps" and recommendations for the most urgent "quick fixes". This supposes the team would receive suitable support from the KRG authorities with access to ministries, including their archives of legal instruments.

¹ As stated in the [Wikipedia article on the ILD](#). See Annex II for the full URL of the documents quoted in the report.

Acronyms

ICoR	Iraqi Council of Representatives
CPA	Coalition Provisional Authority (Baghdad)
EU	European Union
IKP	Iraqi Kurdistan Parliament
ILD	Iraqi Legal Database
KDP	Kurdistan Democratic Party
KRG	Kurdistan Regional Government
OECD	Organization for Economic Co-operation and Development
PFM	Public Finance Management
POGAR	Programme on Governance in the Arab Region
PPP	Public-Private Partnership
PSD	Private Sector Development
PSDP-I	Private Sector Development Programme for Iraq
PUK	Patriotic Union of Kurdistan
RCC	Revolutionary Council Command
TAL	Law of Administration for the State of Iraq for the Transitional Period
TOR	Terms of reference
UN Habitat	United Nations Human Settlements Programme
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
UNDP	United Nations Development Programme
UNIDO	United Nations Industrial Development Organization
WTO	World Trade Organization

Introduction

This document reports on work conducted in the first half of 2018 to continue preparations for a comprehensive legislative review of the KRG legal corpus. Such a comprehensive review is currently being developed as a component of the *Strengthening Public Financial Management Oversight and Accountability Institutions in Iraq Project*, with the objective to improve the legal and regulatory framework (component 3.1). This project will be funded by the European Union (EU) and managed by the World Bank. It comprises several activities in support of KRG institutions, including the Shura Council, with similar activities planned at the federal level.

For the purposes of this document, this work is referred to as "the transition phase". It builds on previous and ongoing World Bank support to the KRG Shura Council. This included a number of international seminars held since 2012, as well as the issuance by the Shura Council of a *Manual on Legislative Drafting*. This led to the request from its Chairman in January 2017 for World Bank support to engage in a comprehensive review of KRG legislation.

The ensuing scoping phase was primarily devoted to defining the possible scope and method for discussion and approval with the KRG authorities. The current effort represents a first attempt to consider the substance, that is, the legal instruments that comprise the body of primary legislation. With this information, the team can now better document the possible difficulties ahead, both conceptual and practical, and make a first estimate of the time and effort required to carry out the legislative review.

1. Building on the Outputs of the June 2017 Scoping Report

This is the first follow-up activity since the "scoping mission" was conducted in June 2017. It provided a range of outputs designed as resources for the KRG authorities in support of their comprehensive legislative review. The relevant resources form the conceptual and factual basis for the present phase, and include the following:

1. A procedure and methodology manual providing guidance on how to carry out the comprehensive review of KRG legislation.
2. A template for the inventory of relevant instruments within the scope of the KRG legal order, which had been extensively discussed and finally approved by the KRG authorities.
3. Relevant communications materials.
4. An outline of suggested contents to be included in a draft law allowing the KRG to conduct a comprehensive review of its legislation.
5. An end-of-phase report (the "scoping report" of June 2017) collecting the results, interim project-management lessons, and outlining the way forward.

These resources have been shared with the Shura Council. However, there have been no further official exchanges because of the internal situation in the Region. As such, the team has continued work on the initial basis of agreement.

2. Verifying and Substantiating the Shura Council's Analysis

The scoping report examined in detail the origin and background of the project. Specifically, it was based on the from the January 2017 letter from the Chairman of the Shura Council to the World Bank. It is important to quote in full some of its technical content because a fair amount of

the work in this phase was devoted to substantiating and contextualizing these premises, some of which seemed to raise sensitive issues.

In his letter of January 2017 to the World Bank requesting technical support, the Chairman of the Shura Council, identified several specific legal issues which in his view justify the need to conduct such a comprehensive review.

Iraq and the Kurdistan region continue to suffer from the accumulation of thousands of [pieces of] legislations, with some dating back to the days of the Ottoman state, British occupation and subsequent times. (...) A jurist who may examine this legacy would realize the impact of these contradictions on the Iraqi law heritage, ... [which] would constitute a challenging task if one seeks to grasp those laws.

Most of those laws are still in force in Kurdistan - Iraq despite ... the fact that the Region's constitutional position has changed in harmony with Iraq's current constitution. The change in the Region's legal and constitutional position would call for a comprehensive review of the applied laws in the Region with special reference to those not related to the federal government's exclusive jurisdiction.

Many of the laws applied in Iraq and the region of Kurdistan were amended after 2003 but those amendments are not yet operative in the Kurdistan region because of the decision [of] 11 of 1992 of the Kurdistan parliament which invalidates any legislations or amendments issued by the Central government after the withdrawal of the governmental administrations from the Region in 1991. That has created an additional problem as there are so many laws or amendments in Iraq that are not operative in Kurdistan because of the lack of a law to put them into effect. The peculiar nature of the Region and its legal position would necessitate a comprehensive review of the laws applied in the Region with the aim of excluding those which are not in harmony with that [of] the region's special characteristics.

All of the above-mentioned facts have contributed into creating ...[a] kind of ... legislative chaos in the Region, which can be seen as an outcome of having many contradictory legislations, insufficient legislative coverage of some areas at the Region, and continuation of some laws being applied despite the fact that they were revoked or replaced in Iraq.

The scoping mission report concluded that these views have been confirmed during the mission by other authorities. They were also taken into consideration in the recommendations concerning the objectives and scope of the project.

3. Objectives and Resources of the Transition Phase

The objectives of this phase were to pursue preparations for the comprehensive review. Based on the new findings, an estimate of the level of effort required to conduct such an operation in support of the KRG would be made. The main purpose has been to conduct additional research into the contents of the KRG legal framework, including its historical development and current economic and social impact, with a view to identifying, assessing and ordering its main constituent legal instruments.

To conduct this research, the international consultant has been assisted by a KRG law firm, Dara Mansur Legal Office, whose offices are in Erbil. The main constraint to the work was that the law firm had no access to the KRG ministries.

The law firm was tasked to deliver the following technical inputs under the supervision of the international expert:

- A typology of KRG legal instruments suited to the preparation of a comprehensive review.
- A (confidential) analysis of the legal issues and difficulties besetting the current KRG legal order in its constitutional context, examining the consistency and performance of the stock of instruments designed to support the definition of the screening criteria.
- An outline and a significant sample of the inventory of existing legal instruments that comprise the legal framework. The outline will list the sources of the information, their reliability and their potential for conducting a complete inventory. This deliverable will include structured lists of individual instruments.
- An estimate, of the cost of conducting the different phases of the comprehensive review, given their knowledge about the resources and methods of the KRG administration.

PART 1: DEFINING A TYPOLOGY OF LEGAL INSTRUMENTS

Introduction

The Kurdistan Region of Iraq inherited its legal system from the legal system of Iraq, itself the product of a long history of conflict and the cultural diversity of its people. It is often illustrated by a reference to the Code of Hammurabi, one of the earliest sets of written rules in the world. The modern state of Iraq was created in 1921 following centuries of foreign rule by the Ottoman empire and later under the British League of Nations mandate. Iraq was first a monarchy (1925), then following a turbulent interval (1958-1968), the Ba'ath period of rule began (1968-2003).

A general assessment of this legal heritage is provided by a study conducted by a German law firm operating in the region (Amereller Rechtsanwälte [Lawyers]²):

Compared to a number of other Arab states which established their legal systems within the past thirty years, Iraq has had an older and more developed legal system which was partly based on continental European models. Like most Arab countries, however, the Iraqi legal system was burdened by a vast array of regulations and administrative restrictions. As a result of the political turmoil of the past decade, numerous legal provisions are no longer applied in practice or were suspended by the [Coalition Provisional Authority] CPA legislation.

Iraqi law relies on various Arab (especially Egyptian) and Western laws and Islamic jurisprudence. According to Article 1 of the Civil Code, the written law takes precedence over custom, Islamic law (Sharia) and equity.

This short extract confirms the analysis by the Chairman of the Shura Council. Indeed, each ruling regime added a layer of legitimate and legal instruments, but only incompletely repealed or rescinded previous legislation. Federalism, which dates to the 1970 Iraqi Constitution, added a duality of levels of legislation, with a demarcation that has shifted under each regime — thereby adding a further level of complexity to the legal corpus. The Need for a Typology of Instruments

There are two reasons for including the construction of a "typology" during the preparatory phase, namely general methodological reasons, and KRG-specific reasons.

General methodological reasons

When reviewing a large body of law, it is common practice to group the items together. Indeed, a well ordered legal body would naturally have its own typology, as is the case in the European Union³.

The aim of the typology is to sort the legal instruments currently applicable (or not, as the case may be) in the KRG into groups that would each lend itself to a common approach in the review, with a single legal value or set of circumstances affecting their validity or relevance. The number of instruments comprising the KRG legal corpus is not known, and estimates vary widely. For the moment, the team is working on the assumption confirmed by the Chair of the KRG Shura Council on several occasions that the texts are quite numerous, and in his words, constitute a sort of "legal

² Amerelle Rechtsanwälte (Lawyers): [Legal Guide to Doing Business in Iraq](#) (2010).

³ See typology on the [EU Monitor webpage on "legal instruments"](#).

chaos". Solutions to legal issues of competence may then be applicable to a substantial number of instruments in one interpretation, thereby accelerating the achievement of results.

For part of the body of law, the determination of the level (legislative, executive, other) and time of enactment will be the key element in the screening process, as the KRG applies the principle of a "hierarchy of norms". The consistency of any norm with higher norms is key to its validity, as well as to the consistency of the general legal order.

KRG-specific reasons

As noted, the KRG Shura Council acknowledges the many layers of the current legal order, and the difficult legal issues arising from this situation.

In the 2017 scoping report, the team identified the need for a systematic study of the "types of legal instruments", known as "the typology" described in these terms to address the situation. This approach was then approved by the KRG interlocutors. An extract of the scoping report documents this approach:

Though the interlocutors all knew that the KRG and federal Iraqi legislations comprised many historical layers, there did not seem to be any available "ready-made" typology of the instruments that could be used to streamline the review. Some of these layers were:

- *[In] 2003 and 2004, before the federal constitution of 2005 was enacted, the Iraq Provisional Council law ("foreign occupiers' law) delegated powers to legislate to the federal and regional parliaments;*
- *Orders from the Revolutionary Council, legally binding, some of them in need of amendment, others could be revoked;*
- *Legislation from the Ottoman Empire, from the British mandate and from the Kingdom of Iraq.*

These first general indications have now been developed for the purposes of the project. However, in the KRG, the issue is further complicated by two other matters:

First, the historical succession of political regimes, with different institutions in each period, and the corresponding —and possibly divergent views — as to the order of precedence of several types of legislation (an uncertainty about the hierarchy of norms). The Chairman of the Shura Council mentioned little-known legislation that may or may not still be in force. It is also possible that these older texts may have been rescinded formally, or if not, then by more recent instruments.

Second, there is the matter of the current federal constitutional structure of Iraq, and the disputed question of conditions of applicability of Iraqi federal legislation to the KRG.

These legal points are best considered according to each "type of instrument" (rather than for each individual legal instrument), primarily based on the level of the enacting authority. However, other considerations may also influence the outcome of the analysis.

The main body of this section presents the various types of legal instruments, with a short description and a few examples of each type.

The Eight Types of Legislation covered by the Comprehensive Review

As noted, the history of Iraq's laws enables a distinguishing of categories within the mass of legal instruments. Accordingly, this report follows the historical, chronological order.

To build this typology, it was necessary to obtain an insight into and working knowledge of the history of Iraq and the Iraqi Kurdistan region. An in-depth study of the evolution of civil law in the country, provided by Dan Stigall⁴, has been used for the division into historical periods. The report also relies on an excellent history of Iraqi law from the United States Library of Congress website⁵.

1. Legislation from the Ottoman Era (1534-1920)

The most important laws that have played a key role in the formation of the governmental administrative system in Iraq were issued by the Ottoman Empire authorities. These were formulated in Turkey and then implemented in Iraq. Specifically, they included the law of the Ottoman states for the year 1864 and the regulatory articles for the year 1871. These instruments were issued by the Ottoman Empire for the following purposes: (i) to reform the administrative situation of the states and countries under the Ottoman Empire; and (ii) to ensure the control and orderly management of the Ottoman empire and its constituent parts; (iii) to eradicate chaos and fight corruption; and (iv) to develop and modernize the administration in these countries.

These new laws were implemented in Iraq in the 1870s during the rule of Medhat Pasha (1869-1872), leading to a new administrative structure. Iraq was then divided in two major states (Baghdad and Mosel). Baghdad state included the cities of Baghdad, Basra, Emmara, Hilla, Karbala, and Montafic. Mosel state included the cities of Kirkuk, Mosul and Sulaymaniyah and the surrounding provinces.

With the implementation of the law of Ottoman states in Iraq, all villages, cities and provinces were connected administratively with the center of each state. This became the basis for the new modernized structure of governmental offices.

The result of the implementation of this law was the formation of local administrative councils in each district with an election system. The law of the year 1864 stated the principle for these elections.

This law helped in establishing and structuring the governmental offices and set forth the instructions to run these offices. To implement the new structure, a permanent civil service was established using the Turkish model.

The law was successfully implemented in Iraq. During this period, Midhat Pasha, one of the leading Turkish statesmen of the 1860s, sent an official report to the court of the Ottoman empire informing them about the necessity of issuing legislation to deal with the registration of lands in Iraq. He suggested that the current occupants (farmers, tribesmen) would have the legal right to use these lands as caretakers, with the right to sell — or inherit the right to exploit and use the land. However, the actual ownership would remain in the name of the Empire. The main reason for this arrangement was to encourage the Iraqi people to use the land and develop it for agriculture. This imperial decree was then issued by Sultan Abdul-Aziz to set the foundation and establish the principles of property registration of the agricultural lands in Iraq.

Stigall (2006) summarizes these various inputs or influences in the following terms:

⁴ [University of Florida, Journal of Transnational Law and Policy, 2006, vol. 16.](#)

⁵ Library of Congress, [History of Iraqi law.](#)

As the Ottoman Empire was declining, in the eighteenth- and nineteenth-centuries, Western Europe was experiencing an advance in legal development with the advent of comprehensive legal codification. The Ottoman Sultans of that period, wishing to emulate European states, began to enact various judicial reforms including legal codifications. These Ottoman codifications were mainly adaptations of French codifications and incorporated French substantive law. Exceptions to this reliance on French law were the areas of contracts and torts. There, the Ottoman government chose to attempt a European-style codification of Islamic law of the Hanafite school. This code, enacted in 1869, was to be called the Mejlle.

Operational conclusion. The texts of the original instruments from the Ottoman period do not appear to be readily available to the public — and perhaps not even to lawyers conducting research — although legal and historical books refer to them. The KRG consultant, Dara Mansur Law Firm, was not able to obtain them, stating that their main contents have been incorporated into later legislation. As such, they can be found in the articles of Civil Code № 40/1951, and in laws concerning real estate registration, such as Law № 43/1971 and its amendments. For the comprehensive review, it will be necessary to check the archives of the Ministry of Justice, and to examine in depth, instrument by instrument, if any of the available content may still be applicable.

2. Legislation issued under the British mandate (1920-1925)

Only a few important instruments were issued during the time of High Commissioner Sir Percy Cox, and even fewer, if any, remain in force with their original content. For example, on October 26, 1920, the British High Commissioner gave instructions for the formation of the first temporary Iraqi government, which included a Prime Minister and the Ministers of Interior, Finance, Justice, *Awqaf* (charity) and Religious Affairs, Health, Labor and Trade. This instrument is obviously obsolete. This text was later followed by the announcement of the coronation of the first king of Iraq (Feisal I) on July 11, 1921. This announcement stated that his government was to be constitutionally based on what was agreed upon in the Cairo conference that year.

On July 10, 1924 the Constituent Assembly of Iraq issued the country's first Constitution⁶, which was approved by the King on March 21, 1925. This legal instrument bears significant legal importance, as it defined the following:

- The rights and obligations of the Iraqi people.
- The structure of the Iraqi state and government.
- The structure of the Legislature (including the first Iraqi Parliament, consisting of the Senate and Chamber of Deputies). Article 28 of the Constitution proclaimed the Parliament's right to make laws, amend and repeal them, sharing this competence with the King.

The Constitution sets the structure of the judicial authority, including and the establishment and categorization of the court system, supervision and implementation of court verdicts and, most importantly, the principle that all court hearings should be public.

This 1924 Constitution includes Article 113 to preserve the continuity of earlier legislation.

⁶ See text in the [League of Nations archives](#) (United Nations, Geneva, Switzerland).

"Ottoman laws published before November 5th, 1914, and laws published on or after that date and which have remained in force in Iraq up to the time of the publication of this law, shall remain in force in Iraq so far as circumstances permit, subject to any modification (...)"

Such articles would be necessary in later changes of regimes. If they still exist, they should be carefully studied during the comprehensive review.

The purpose of these instruments was to stabilize and build a new country in Iraq after the fall of the Ottoman Empire. One of the important laws that survived in amended form from that period is⁷ the Law of Execution of Foreign Court Verdicts as shown in Table 1.

Table 1: Law of Execution of Foreign Court Verdicts

№	Name of the legal instrument	Type /enforced	Issued by	Iraqi Official Gazette	Source
1	The Law of Execution of Foreign Court Verdicts in Iraq, № 30/1928	Law /enforced in Iraq and Kurdistan	The Iraqi Parliament	№ 666 on 5/7/1928	This law can be found with the laws and regulations of the Execution Law № 45 /1980.

This law was used as a reference when Iraq signed the AL-Riyadh Convention for Judicial Cooperation in 1983⁸, which was amended by Law № 110/1983.

3. Legislation issued during the Iraqi monarchy (1925-1958)

An elected Iraqi Parliament was first formed following the establishment of a Constitutional Monarchy in 1924. The 1924 Constitution called for a bicameral Parliament whose lower house, the Chamber of Deputies (*Majlis an-Nuwwab*) would be elected based on universal masculine suffrage. The members of the upper house, the Senate (*Majlis al-A`yan*,) were appointed by the King. Ten elections took place between 1925 and the coup of 1958.

During this time, the Iraqi Parliament legislated, but not on a major scale. They tried to improve the regulations inherited from the Ottoman empire.

Table 2 provides a summary of some of the most significant legal instruments enacted, some of which are still in force.

Table 2: Legislation enacted during the Iraqi Monarchy (1925-1958)

⁷ All instruments quoted in the tables were provided by Dara Mansur Law Office

⁸ The 1983 Riyadh Convention for Judicial Cooperation. This Convention deals with the recognition and enforcement of foreign judgments and arbitral awards, without reviewing the subject matter of the underlying dispute, provided that such judgments or arbitral awards do not violate public order, morality or the constitution of the State in which enforcement is being sought, or the overriding principles of Shariah law.

№	Name of the legal instrument	Type /enforced	Issued by	Official Gazette	Significance
1	Iraqi Civil Code № 40/1951 and its Amendments	Law / enforced in Iraq and Kurdistan	Iraqi Parliament	№ 3015 on 8/9/1951	Concerns the legal actions in trade, labor, civil legal actions, land rights, and so on.
2	The Commercial Companies Law № 31 of 1957	Law repealed by Law № 36/1983	Iraqi Parliament	№ 4035 dated 9/1/1957	Concerns all issues related to the establishment and registration of companies

The Civil Code is still in force and is applied by all the Courts in both Iraq and the Kurdistan Region because it deals with a wide range of legal actions impacting different areas of life (trade, labor, civil legal actions, land rights, and so on). However, it should be noted that various laws were issued during later years amending some of the articles of the Civil Code.

4. Legislation issued during the Republic (1958-1968)

This period can be considered in two parts, with each differing in its institutional setup.

First part (1958-1963)

The First Republic was established under the government of Abdul Kareem Kassim, leader of the July 14, 1958 Revolution that ended the monarchy in Iraq. A temporary constitution was issued on July 26, 1958 in which the Sovereignty Council held the authority of the presidency on a temporary basis until a presidential election was held. The Council approved the legislation issued by the Council of Ministers. The purpose of the Sovereignty Council was to authenticate the legislation issued by the government. However, in fact, it only rubber-stamped it. It was later dissolved in the following the February 8, 1963 coup.

The Sovereignty Council took over the legislative competence from the previous (1924 Constitution) Parliament. Its chairman was also the head of the Iraqi state (in title only because the Prime Minister actually ruled the country).

Table 3 summarizes some of the most important instruments enacted by the Sovereignty Council.

Table 3: Sovereignty Council Laws, 1958-1963

№	Name of the legal instrument	Type /enforced	Official Gazette	Significance
1	The Law of Agriculture Reform, Law № 30/1958	Replaced by Law № 117/1970	№ 44 on 30/9/1958	The Law dealt with ownership and the rights of farmers and landowners of agricultural lands, specifying how much and what kind of land they could own.

2	Personal Status Law № 188/1959	Law enforced in Iraq and Kurdistan	№ 280 on 30/12/1959	This Law governed the matters of marriage, divorce and inheritance, with a combination of all Islamic doctrines.
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Second part (1963-1968)

After the "Ramadan Revolution" or "14 Ramadan coup" (February 8, 1963), the Sovereignty Council was dissolved and there was a five-year period of political turbulence during which no major laws were issued. This period ended with the military coup of July 17, 1968.

5. Legal instruments issued by the Ba'ath Regime (1968-2003)

The Iraqi Revolutionary Command Council (RCC) was established after the military coup in 1968, becoming the ultimate decision-making body in Iraq until the 2003 American-led intervention. It exercised both executive and legislative authority in the country. The RCC Chairman also occupied the position of President of Iraq.

The July 16, 1970 Constitution,⁹ also enacted by the National Assembly (*al-Majlis al-Watani*), recognized (Article 5) the Kurdish "nationality" as a component (along with the Arab nationality) of the nation of Iraq. Elections did not take place until June 1980, under Iraq's leader, Saddam Hussein. Several additional elections were held between 1989 and 2003.

The legislature was composed of the RCC, the National Assembly (called the National Council in the Constitution, Chapter 2) and a 50-member Kurdish Legislative Council (not mentioned in the 1970 Constitution). The National Assembly was largely a figurehead institution empowered only to rubber stamp the President's Decrees. The RCC was officially dissolved on May 23, 2003 by the Coalition Provisional Authority (Order № 2/2003). However, its legislative output remains valid, unless repealed or amended.

A new "Interim" Constitution was drafted in 1990,¹⁰ but was never promulgated due to the onset of the Gulf War. It did not introduce any major institutional changes. However, it did acknowledge the national rights of the Kurdish People (among other minorities). It also recognized the Kurdish language as an official language, alongside Arabic, in the Kurdistan region.

One of the most important legal instruments to emerge from this period is the Iraqi Civil Code dating back to 1951, which was amended on several occasions. This text is still in force today in both Iraq and the Kurdistan Region. Table 4 provides examples of laws that were issued by the Revolutionary Command Council, most of which are still applicable. A list of specific Revolutionary Command Council legislation concerning the judiciary is also available in English on the Global Justice Project website¹¹.

⁹ Available in English in an edition of the [Weekly Official Gazette](#), published by the Ministry of Information (archived by Columbia Law Library).

¹⁰ Published by Wuerzburg University: [1990 interim constitution of Iraq](#).

¹¹ Global Justice Project: [RCC resolutions](#).

Table 4: Revolutionary Command Council Legislation (1968-2003)

№	Name of the legal instrument	Iraqi Official Gazette	Significance
1	The Civil Procedure Law № 83/1969 (amended)	№ 1766 dated 10-8-1969	It regulates the process of litigation before the courts and any judicial entity.
2	Penal Law № 111/1969 (amended)s	№ 1766 dated 10-8-1969	It regulates the actions and punishments that are considered illegal by the law.
3	Real Estate Registration Law № 43/1971	№ 1995 dated 10-5-1971	It regulates the registration process of lands and properties in Iraq in the name of individuals, or private or public-sector entity, and their rights.
5	The Law of Proof № 107/1979	№ 2728 dated 3/9/1979	It regulates the types of documents that can be considered as evidence before the courts.
6	The Commercial Law № 40/1984	№ 2987 dated 2/4/1984	It regulates the financial instruments that are used in commercial and civil contracts (for example, checks, promissory notes, and so on).
7	Company Law № 36/1983	№ 2935 dated 18/4/1983	It regulates all matters related to the establishment and registration of complaints.
8	Labor Law № 71/1987 (amended)	№ 3163 dated 17-8-1987	It regulates the worker-employer relationship, including their respective rights.
9	Companies Law № 21 of 1997	№ 3685 dated 1-9-1997	It regulates all matters related to the establishment and registration of complaints. Amended by Coalition Provisional Authority Order №64/2004.

Regarding the RCC period, Dara Mansur Law Office remarks: "We notice that in the first ten years, many laws were issued to help in the development of the country, and some were issued to serve the ideology of the governing party, like the Nationalization of Oil law № 69/1972. The texts of these instruments can be found in the Iraqi Official Gazette. These laws are all in force in both Iraq and [the] Kurdistan region."

6. Transitional Period (April 2003- June 2004): The Coalition Provisional Authority

Following the end of the second Gulf War, it was necessary to rapidly reform Iraq's legal system to introduce a modern legal and democratic framework to attract foreign investment, among other things.

The Coalition Provisional Authority (CPA) was the temporary governing body designated by the United Nations after the overthrow of the regime of Saddam Hussein. It was recognized as the lawful government of Iraq until such time as Iraq became politically and socially stable enough to

assume its sovereignty. As a first step, the Coalition Provisional Authority issued Regulations and Orders which were intended to suspend or replace parts of Iraqi law then in force.

According to the agreement of November 15, 2003 between the CPA and the Iraqi Governing Council, by June 30, 2004 the new transitional administration was to be recognized by the Coalition. It would then assume full sovereign powers for governing Iraq. Upon this transfer, the CPA would be dissolved. During the CPA's brief period of existence, several legal instruments were issued.

The CPA website¹² distinguishes four types of legal instruments: regulations, orders, memoranda and public notices. The first two types correspond to primary legislation and fall within the scope of this project. "Regulations" were instruments used to define the institutions and authorities of the CPA. "Orders" were binding instructions or directives to the Iraqi people, creating penal consequences or having a direct bearing on the way in which Iraq was governed, including changes in Iraqi law. The other two types of legal documents — memoranda and public notices — correspond to secondary regulations and information documents, respectively.

Following the adoption of the 2005 Constitution of Iraq and the transfer of power to the permanent Iraqi government, the validity of these CPA legal instruments was open to interpretation. The new Constitution does not expressly refer to these instruments. However, Article 130 extends the validity of existing laws, presumably including CPA orders that were not rescinded by the interim and transitional governments. This position is further supported by the fact that new laws being enacted expressly repeal certain conflicting legal instruments issued by the CPA. For example, this is the case with the new Investment Law which repeals CPA Order № 39. According to the "Iraq legal guide,"¹³ such an explicit repeal would not be necessary if the whole of the CPA legislation had ceased to be in force.

The comprehensive review will need to establish if there are any instruments or parts of any instruments from the CPA period still in force. Table 5 includes examples of important regulations and orders from this period.

Table 5: CPA Legal Instruments: April 2003- June 2004

	Name of instrument	Type and date	Applicable
1	Iraqi Property Claims Commission № 12	Regulation / dated 24-6-2004	Iraqi territory
2	Order No. 64 of 2004 to amend the Company Law № 21 of 1979	Order /5-3-2004	Iraqi territory

¹² <http://govinfo.library.unt.edu/cpa-iraq/regulations/>

¹³ Amereller Rechtsanwälte, [Iraq Legal Guide \(2010\)](#).

7. Iraqi (Federal) Legislation enacted since 2003

The transition period

The Law of Administration for the State of Iraq for the Transitional Period (Arabic¹⁴: إدارة قانون: الانتقالية للفترة للدولة) also (called the Transitional Administrative Law or TAL) was Iraq's provisional Constitution following the 2003 Iraq War. It was signed on March 8, 2004 by the Iraqi Governing Council. It came into effect on June 28, 2004 following the official transfer of power from the Coalition Provisional Authority to a sovereign Iraqi government. The Law remained in effect until the formation of the government in May 2006, when it was superseded by the permanent Constitution that had been approved by the Referendum of October 15, 2005¹⁵.

From the perspective of primary legislation, the TAL is important because it established the National Assembly, the predecessor of the current Council of Representatives. It also served as a kind of transitional Constitution. Importantly, it recognized the current government of Iraqi Kurdistan as the legitimate government of the Kurds, and allowed it to continue to exist within the new federal state.

The powers of the renewed Federal National Assembly

The National Assembly was created under the Law of Administration for the State of Iraq for the transitional period (TAL). It played the role of Parliament during a short time after the mandate of the Governing Council had come to an end. The National Assembly's prime task was to write the new Constitution for Iraq and to prepare for the first election to elect the new Iraqi Parliament and Government. It consisted of 100 members, 19 of whom had been members of the Governing Council.

The National Assembly was governed by the Law of the National Assembly № 3/2005 published in the Iraqi Official Gazette (№ 4002, dated August 16, 2005), which spells out the obligations and rights of the members of the Assembly. The National Assembly drafted a Constitution which was approved by the Iraqi people in a referendum held on October 15, 2005 and enacted in 2006, thus becoming the first Constitution chosen by the Iraqi people.

Under the permanent 2005 Constitution, legislative authority is vested in two bodies, the Council of Representatives (ICoR) and the Council of Union, as described below. Only the ICoR is the source of primary legislation that could be included in the scope of this Review. As such, it will be subject to further analysis.

The Council of Representatives

Under the 2005 Iraqi Constitution¹⁶, the Council of Representatives (also called the Iraqi Parliament) has the same name in Arabic (النواب مجلس, *Majlis an-Nuwwab*) as the lower legislative houses of Bahrain, Jordan, Morocco and Yemen, as well as the unicameral legislatures of Lebanon and Tunisia. It comprises 325 members elected for four-year terms. It holds two sessions in each annual term. The Council passes federal laws, oversees the executive, ratifies treaties, and approves nominations of specified officials. It elects the President of the Republic, who then selects a Prime Minister from the majority coalition in the Council. During an initial period, a

¹⁴ Web archive, [TAL translated into English](#).

¹⁵ Wikipedia: [Transitional Administrative Law](#).

¹⁶ [Text in English](#) on the official KRG site

three-member Presidential Council elected by the ICoR carries out the duties of the President of the Republic.

Elections for the Council of Representatives were held on December 15, 2005. The Council first met on March 16, 2006, exactly one year after the first meeting of the transitional National Assembly.

The extent of the exclusive "authorities" of the Council of Representatives is defined by subject matter (*ratione materiae*) in Article 110 of the 2005 Iraqi Constitution as follows:

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.

The second national parliamentary elections took place on March 7, 2010. Voters elected the members of Iraq's Council of Representatives. After this new Iraqi Parliament was elected, some of the laws enacted by the preceding National Assembly were amended, such as the Law of Property Claims Commission № 13/2010. This reform was not motivated by the dissolution of the National Assembly. Rather, the law required changes to meet new conditions and facilitate the settlement of disputes placed before the courts.

Table 6: Examples of Iraqi Federal Legislation enacted since 2003

№	Name of the legal instrument	Issued by	Iraqi Official Gazette	Significance
1	Law to solve Real Estate Property claims, Law № 2 of 2006	National Assembly	№ 4018 Dated 3-6-2006	It regulates the process of litigation concerning the claims of properties that were taken by the Saddam Hussein regime.
2	Law of Property Claims Commission № 13 of year 2010	Council of Representatives	№ 4147 dated 9/3/2010	It regulates the process of litigation concerning the claims of properties that were taken by the Saddam Hussein regime.

Much of the legislation enacted by the permanent government has dealt with these and other essentially political or security-related matters, such as the October 2006 Federalism Law, the January 2008 Accountability and Justice Law (also known as the de-Ba'athification reforms), and the February 2008 General Amnesty Law. To date, the permanent government has not modified the existing legal system very much. It stands as amended by CPA legislation. The main body of current Iraqi business-related law, such as the Civil Code, also remains in force¹⁷.

The Council of Representatives recently drafted, with assistance from the United Nations Development Programme (UNDP) - Programme on Governance in the Arab Region (POGAR), a Guide to legislative drafting.¹⁸ It is similar to the one issued by the KRG Shura Council, which may be of assistance in the forthcoming comprehensive review.

The Federation Council

The Council of Union or Federation Council consists of representatives from Iraq's regions. Its precise composition and responsibilities are not defined in the Constitution and will be determined by the Council of Representatives. It is not clear how it will intervene in the legislative process and what its influence or authority would be in the process.

In 2012, a conference under United Nations auspices¹⁹ took place to draw attention to the need to complete the parliamentary setup. It took note of the fact that the Federation Council was "broadly analogous to senates or upper houses in other parliamentary systems and is intended to represent regions and governorates." The Federation Council can enhance the separation of powers, serve as a buffer between the executive branch and the lower legislative chamber, and afford the regions and governorates and their constituents a greater voice within the central government. However,

¹⁷ Amereller Rechtsanwälte, [Iraq Legal Guide \(2010\)](#), page5.

¹⁸ Portal for Parliamentary Development, [Iraqi Drafting Manual](#) (Arabic only).

¹⁹ United Nations Office for the Coordination of Humanitarian Affairs, [OCHA report](#).

due to a lack of consensus among Iraqi political leaders regarding the composition, powers and procedures of the Federation Council, the enabling legislation that must be enacted by the ICoR to establish this Council remains pending.

8. Primary Legislation enacted by the KRG National Assembly and Parliament

This section describes the successive assemblies of elected representatives at the level of the Iraqi Kurdistan Region. It will help to determine what legislative instruments the comprehensive review will need to consider.

KRG primary legislation before 2003

Between 1970 and 2003, an Iraqi Kurdistan Parliament gradually emerged, although its first experiences were laden with difficulties. The fundamental year is 1992, when an autonomous assembly began to function.

There has been a Parliament in the Region since 1970, although it did not function effectively until much later. The Iraqi Interim Constitution that entered into force in 1970 provided that the Iraqi people consist of the Iraqi and the Kurdish nations, and that Kurdish is one of the two official languages of Iraq. In addition, the Constitution acknowledged "the national rights of the Kurdish people," without further specifying these rights. The Interim Constitution of 1990 contained the same provisions.

In March 1970, the Iraqi government and representatives of the Kurds in Iraq entered into the Iraqi-Kurdish Autonomy Agreement. This Agreement was to be implemented within four years. It provided for the creation of an Autonomous Region consisting of the three Kurdish governorates (Duhok, Erbil, and Sulaymaniyah) and other adjacent districts that had been determined by census to have a Kurdish majority.

A Legislative Assembly was established in the capital Erbil with theoretical authority over the autonomous region. In practice, however, the Assembly created in 1970 was under the control of Iraqi President Saddam Hussein until the 1991 uprising against his rule following the end of the Gulf War.

The June 1992 elections in Kurdistan produced an inconclusive outcome, with the legislative assembly (called also the National Assembly) divided almost equally between the two main parties: the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). Tensions between these two parties ultimately led to the division in 1996 of the Kurdistan region into two parts: the governorate of Sulaymaniyah governed by the PUK, and the governorates of Erbil and Duhok governed by the KDP. The division only ceased on January 21, 2006, when the KDP and the PUK entered into the Kurdistan Regional Government Unification Agreement.

On July 15, 1992, the Kurdistan National Assembly convened and passed Law № 1 establishing the Assembly as the Region's legislature. To date, there have been four region-wide parliamentary elections in 1992, 2005, 2009, and 2013. In 2009, the Kurdistan National Assembly was renamed the Kurdistan Parliament.

KRG legislation in the transitional period

The Transitional Administrative Law or TAL (2004) gave new strength to the recognition of the Kurdistan Region's autonomy, soon to be formalized in the 2005 federal Constitution.

Articles 53 and 54 of the TAL renewed the legal basis for legislation by the regional authorities. Article 53 stated that the Kurdistan Regional Government (KRG) was recognized as the official government of the governorates of Diyala, Duhok, Erbil, Kirkuk, Nineveh, and Sulaymaniyah. Article 54 stated that the KRG had the right to continue to perform its "current functions," except with regard to those questions which fall within the exclusive competence of the Iraqi federal government. Although there were a few uncertainties as to the interpretation of this provision, it is arguable²⁰ that the Kurdistan Regional Government had the right to issue legislation in the fields of commercial and company law, among others. The Kurdistan Regional Government has indeed exercised this right. In addition, to a large extent, the CPA legislation was *not* applied in the Kurdish region of Iraq.

KRG legislative competence in the 2005 federal Constitution

The 2005 Iraqi constitution recognizes Kurdistan as a "federal region", including its right to exercise executive, legislative, and judicial powers in accordance with the Constitution — except for those powers stipulated as falling within the exclusive competence of the federal government (Article 110).

The outcome of this situation is that there are three origins for primary legislation applicable to the KRG, according to which Article of the federal Constitution that they come under:

- Article 110, which lists a number of areas of competence such as defense, security and foreign affairs, in which the legislation is enacted by the Council of Representatives for the whole of the Iraqi territory (see section 7 above);
- Articles 111 to 114, which provide for shared legislative power for a number of listed domains; and
- Articles 115 and 120, which provide for exclusive regional competence for all domains not covered in the two previous categories, including the duty to adopt a Constitution.

Shared powers and competencies

In the course of the comprehensive review, it will be necessary to obtain a robust interpretation of the respective prerogatives of the federal and regional levels to amend existing instruments, or to draft new legislation.

One major difficulty at this stage will be to interpret Articles 112-115 regarding shared "powers". These Articles list areas in which the federal government and regional governments share powers. These include oil and gas development, antiquities, customs enforcement, water resources, education, environmental policy, electric energy distribution and health policy. The full text of these Articles in English, which belong to section 4 on "powers of the federal government," are provided below — with the usual caveats concerning translation.

Article 111 Public Ownership of Oil and Gas

Oil and gas are owned by all the people of Iraq in all the regions and provinces.

Article 112 Management of Oil and Gas

- (1) The federal government, with the producing provinces and regional governments, shall undertake the management of oil and gas extracted from current fields,

²⁰Amereller Rechtsanwälte, [Iraq Legal Guide](#), page 6.

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.

- (2) 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 113 Antiquities, Archeological Sites, Cultural Buildings, Manuscripts, and Coins

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 provinces, and this shall be regulated by law.

Article 114 Shared Competencies

The following competencies shall be shared between the federal authorities and [the] regional authorities:

- (1) To manage customs, in coordination with the governments of the regions and provinces that are not organized in a region, and this shall be regulated by a law.
- (2) To regulate the main sources of electric energy and its distribution.
- (3) To formulate environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness, in cooperation with the regions and provinces that are not organized in a region.
- (4) To formulate development and general planning policies.
- (5) To formulate public health policy, in cooperation with the regions and provinces that are not organized in a region.
- (6) To formulate the public educational and instructional policy, in consultation with the regions and provinces that are not organized in a region.
- (7) To formulate and regulate the internal water resources policy in a way that guarantees their just distribution, and this shall be regulated by a law.

Lastly, two very important clauses provide for the precedence of KRG law over federal law except in areas of shared powers (as cited in the second sentence of Article 115 and 121-2):

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 121-2: 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.

Operational conclusion concerning shared competencies

While the Iraqi Constitution limits the legislative activity of the Iraqi Kurdistan Parliament in areas that are exclusively federal (Article 110), subject to an Iraqi expert lawyer's confirmation, it seems that Articles 111-115 place few limits on the legislative activity of the Iraqi Kurdistan Parliament (IKP) in shared domains of competence. The federal "powers" under shared competences seem to be primarily managerial, involving policy-making rather than legislation. The power to "regulate" is used to mention the management of networks of national assets such as electricity and water, in which context "regulation" usually does not refer to the production of legally binding instructions, but rather to designate the effective use of such resources.

The most powerful clause is Article 115-2, which rules that in the case of two instruments belonging respectively to the federal and regional levels being at odds, it is the regional instrument that takes precedence. This is a clear rule to apply in any comprehensive review.

Regional exclusive primary legislation

The 2005 Constitution recognizes the region of Kurdistan as a federal region (Article 117) and gives regions "the right to exercise executive, legislative and judicial powers" in areas not reserved as exclusive of the federal government (Article 121-2°), starting with a Constitution (Article 120). The KRG even has a special article²¹ to provide for the preservation of all legislation already enacted since 1992 (Article 141). In this context, it is best to quote the articles *in extenso*:

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 117-1: This constitution, upon coming into force, shall recognize the region of Kurdistan, along with its existing authorities, as a federal region.

Article 120: Each region shall adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, if it does not contradict this constitution.

Article 121:

(1): The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this constitution, except for those authorities stipulated in the exclusive authorities of the federal government.

(2): 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.

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

²¹ Sometimes called a saving clause, which according to the United States Legal Online Dictionary is defined as a clause in a statute limiting the scope of repeal of prior statutes".

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.

Box 1: An Illustration of Autonomous Law-Making in the Iraqi Kurdistan Parliament

An example taken from the sensitive topic of marriage law²² will illustrate the extent of the legislative competence of the Iraqi Kurdistan Parliament better than any constitutional analysis. This example is based on extracts of two instruments found online:

Federal Law № 188/1959 on Personal Status Law²³ prescribes in its article 3 (4°):

Marrying more than one woman is not allowed except with the authorization of the *qadi* (judge). Granting this authorization is dependent on the fulfillment of the following two conditions:

- a- The husband should have the financial capacity to provide for more than one wife;
- b- There is a legitimate interest.

KRG Law, Act № 15/2008²⁴ amending the amended law №188/1959 on Iraqi personal status law, in the Iraqi Kurdistan Region, prescribes in article 1 (2°):

The validity of Paragraphs 4, 5, 6 and 7 of the Article 3 of the amended law № 188/1959 shall be suspended and replaced with the following:

- Marrying more than a woman is not allowed unless authorized by the judge.

The authorization depends on meeting the following conditions:

- a. The first wife has to agree before the court on her husband's marrying a second wife (...)

Thus, the KRG law introduces a fundamental condition for polygamous marriages that does not exist in the federal legislation (namely, the consent of the first wife).

Operational conclusion concerning the typology

The complexity highlighted by the variety of "types" of legislation confirms the usefulness of the projected comprehensive review. Once the instruments have been listed and attributed to each authority and "type", it will be easier to classify them into the categories outlined by the Chairman of the Shura Council, and/or others to be created, after the legal analysis of the types has been fully endorsed. A first list of such categories would include the following:

- Reforms made at the federal level, but "not operative in Kurdistan because of the lack of a law to put them into effect" after an amendment or not;
- Existing laws requiring changes because they "are not in harmony with the region's special characteristics" or that should be explicitly repealed;

²² To quote just one article, see [Heinrich Böll Institute article in 2014](#).

²³ Iraq: Law № 188 of 1959, [Personal Status Law and amendments](#) [Iraq], 30 December 1959. The text of the law was consolidated and translated by the American Bar Association.

²⁴ KRG Prime minister's website: [law amending Iraqi Personal Status Law](#).

- Laws that are no longer applicable, but are still present on the statute book and should be explicitly repealed; and
- Gaps in the legal order that need to be filled by new legislation.

PART 2. DEFINING CRITERIA FOR THE SCRUTINY OF THE LEGAL INSTRUMENTS

The second deliverable under this tasking is to "define a set of criteria suitable for application to legal instruments during the screening phase of the comprehensive review".

According to the OECD definition, review criteria should be based on "clearly defined policy goals, including consideration of the costs and benefits". They must also match the goals and objectives of the review, which in this case are defined in the January 2017 letter from the Chairman of the Shura Council to the World Bank.

Before making a recommendation based on the objectives of the comprehensive review, it will necessary to examine the criteria most frequently utilized in legislative reviews.

1. Standard criteria for legislative reviews

The simplest set of criteria, which is the one usually applied in the so-called "guillotine" tool, as for example applied in Vietnam²⁵:

- Is the instrument necessary? The question is whether the instrument is required in the legal order to produce the policy outcomes that it claims, or whether these outcomes would be possible without a legally binding text, by way of information — or because the businesses and citizens would do the right thing even without a text.
- Is it legal? The question is whether the instrument was taken by the competent authority and does not violate any higher norm in the hierarchy of norms. It also checks that the legal base has not been repealed at some stage in the past. The legal basis criterion naturally includes consistency with the constitutional framework of Iraq, and particularly with Articles 110, 111 and 116 concerning the distribution of competencies between the federal and the regional levels. All powers not exclusively granted to the federal government are powers of the regions and governorates that are not organized in a region. Priority is given to regional law in case of conflict between other powers shared between the federal government and regional governments.
- Is it business-friendly? This criterion was chosen to indicate that, although compliant with the two preceding criteria, the instrument could be too complex, or badly enforced, and should probably be amended.

More complete sets include a wider set of criteria, as in the case of an advanced review conducted in Australia²⁶:

- Is the instrument still in force? Beyond knowing whether it is just "legal" (see above), the screening checks whether the instrument is being correctly applied and enforced?
- Is it compatible with European Community (EC)/international standards?
- Is it cost-benefit compliant? The instrument may be legal and efficient, but too complex or costly for companies or other actors when compared to the benefits it brings.
- Is it consistent with competitiveness or other objectives? This is an example of a general criterion that the government may add to ensure that the screening is appropriate. The

²⁵ Source: OECD, Administrative Simplification in Viet Nam (2010)

²⁶ Source: OECD, Reviews of Regulatory Reform (Australia, 2010)

proposal of "adequacy to the needs of the KRG" is an example of such a legitimate, specific criterion.

It is necessary to develop a specific set of objective and technical criteria for the KRG review, which would accommodate, in the words of the Chairman of the Shura Council, the "need to check whether the instruments correspond to the situation and need of the KRG population" in addition to some or all of the other criteria.

2. Specific constraints of the KRG Comprehensive Review

The rule is that the criteria applied during the review must reflect the context and the objectives of the exercise, if it is to yield the best results. Some of the specifics of the KRG situation to consider include the following:

- The constitutional distribution of powers between the federal and regional levels, with the principle of primacy of regional law except for federal reserved or shared "powers";
- The wide range of legislative competence of the regional parliament, which is not normally expected in a federal country;
- The complexity of the historical layers of legislation inherited from the successive regimes until 1992, although the nature/legitimacy of some of the instruments may be difficult to establish (for example, the Revolutionary Council).

3. Proposal for the KRG Comprehensive Review criteria

Taking into account the specific constraints, the standard criteria applied in future activities need to be adapted and re-prioritized, with a heavy emphasis on legal analysis:

The first would be the formal (and standard) criterion: "*Is the instrument legal?*" this would be used provided it is adapted in the following manner:

- For most of the older types of instruments, the screening would establish whether the instrument carries primary or secondary legislation, especially when emanating from authorities such as the Revolutionary Command Council (RCC).
- CoR legislation since 2003 would *a priori* be presumed not to be legally valid in the KRG, unless it had been "ratified" by the IKP, with or without amendments.
- At this stage, it may be possible to determine in bulk, type-by-type, the legality of the instruments, except for the RCC and similar bodies with dual competence (executive and legislative) where a case-by-case check would be required. However, it would be preferable to compile lists to explicitly recognize (or eliminate) acts for which there may be a doubt as to their applicability to the KRG.

Second, it would then be possible to apply a substantive criterion: "*Does the instrument apply to the situation of the KRG?*" This was a criterion was proposed by the Chairman of the Shura Council. With the exception of the exclusive federal competences and the federal powers under shared competences, it is within the prerogatives of the IKP (except for "federal reserved powers"). This entails examining the contents of each instrument, which is a difficult process, with a potential for disagreement and politicization between the federal and KRG levels.

A third criterion "*Is the instrument compatible with international standards?*" would be optional, because of the difficulty of already applying the first two priority criteria above. To meet the

expressed desire of the KRG, it is suggested to have a legal order more in tune with the rest of the world. The international standards would be chosen as those congenial to the KRG authorities, as currently no legal commitments have been incurred.

Comment

This is a very short list of criteria compared to others in practice in other countries. However, it seems necessary in view of the many obstacles and legal difficulties specific to the KRG. Also, given the relative paucity of resources, it would be best to keep the exercise as simple and focused as possible.

PART 3. DIRECTING THE INVENTORY

The Terms of Reference (TORs) called for the international expert to "direct the production of an outline and a significant sample of the inventory of existing legal instruments that compose the KRG legal framework. The outline will list the sources of the information, their reliability and their potential for conducting a full-size inventory. This deliverable will include the first structured lists of individual instruments."

The national consultant (Dara Mansur Law Firm) was entrusted with listing the legal instruments under the close guidance of the international expert. At this stage, it should be stressed that this inventorying activity is an input to help define the future architecture and resources of the project, and not an end in itself. In this context, its prime purpose is to determine the feasibility and degree of difficulty of the comprehensive review — and not to immediately produce an exhaustive list of instruments. This means that the inventory should be as broad-ranging as possible. It should also pin-point any practical or legal difficulties that may hamper the future operation. Given the immensity of the task to be performed in a short time, it is intended to tap information from any previous attempts to catalogue KRG and Iraqi laws.

1. The outline and the sample of the inventory

The comprehensive review is intended to ultimately deliver an inventory of the totality of the legal instruments comprising the in-scope body of law — whether they are applied and/or enforced or not. The inventory would be presented as a list of all instruments enacted at one time or another in the KRG or in Iraq, with application in the Region, for further treatment.

Given the probable size of the KRG legal corpus, and the large number of attendant instruments dating from successive Iraqi Parliaments, it cannot be guaranteed that all texts could be found in a few weeks of work. Therefore, the idea is to deliver an outline of the whole inventory, with a sample of instruments representative enough to base the analysis of the scope and nature of the future project.

The results of the 2018 research are presented in two parts. First, the sample of the inventory compiled by Dara Mansur Law Firm, is presented in a separate report. The sample adopts the same format as the future comprehensive inventory, using the template (Excel spreadsheet) discussed and approved by the KRG authorities during the 2017 scoping mission (see annex 3 of scoping report). Second, it includes the list and analysis of the sources (as described below).

2. Analysis of the sources of KRG legislation

The first stage of the review is to take stock of existing "sources" of information regarding KRG legal instruments. The word is not used here in its legal sense with the meaning of inspiration or origin (such as "Islam as a source of Iraqi law"), but simply as a way of designating the publications or places (sources of information) where the texts can be found, preferably in electronic format.

The analysis of the sources is justified by the need to define the scope and cost of the future project. It will assess the ease of retrieval and reliability of the texts of the legal instruments that will later be screened according to the criteria defined in Part 2 of this report.

Questions that need to be answered in the analysis of these sources include: Is it possible to find all the texts, or is there access only to the titles and dates? How reliable is the printed material?

How has the issue of succeeding texts on the same issue been handled? Have the texts been "consolidated" into up-to-date codes or compilations, or does that work still need to be done before a scrutiny of the substance can be carried out?

The sequential steps in the 2018 inventory phase were intended, according to international usage, to include the following:

- Cataloguing and using the available sources of information about the instruments; collecting existing lists, such as indexes, tables of contents of legal volumes; or exporting information from databases;
- Drawing up new lists of texts not identified in the existing sources by conducting the necessary legal research;
- Merging these lists into the 'inventory' proper in a unified format;
- Sorting the instruments according to the typology defined during the preparatory phase; and
- Collecting a sample of the texts of the most important instruments in paper form and electronic format.

In the 2018 phase, the team's purpose was to collect a significant sample of instruments, not necessarily including the full spectrum of all instruments enacted. This is also an opportunity to document difficulties that anyone trying to find such instruments could encounter.

For legal and practical reasons, the Official Gazette should be tapped first. It consists of two publications: The Federal or Iraqi Official Gazette, and the KRG or regional Official Gazette. The other sources, such as the Iraqi Legal Database, have yet to be fully appraised for prospective use.

3. The Official Gazettes

In a country with good legal traditions, it is not surprising to find that there has been an official Gazette recording executive and legislative activity for more than a century. Under different names and formats, the Official Gazette has always been considered an indispensable tool for public authorities in validating their decisions. Indeed, it is often mentioned in the Constitution itself. For this reason, it is a prime source for the retrieval of KRG and Iraqi bodies of law, including instruments dating from more than a century ago.

This publication was and will be a key element in the legal research required as part of the comprehensive review. The Dara Mansur Law Firm confirm that "most of the Iraqi official gazettes can be found to the early sixties; also, hard copies can be found in specialized book stores in Baghdad or you can ask the ministry of Justice in Baghdad to provide you with a copy of a law".

The comprehensive review will provide an opportunity to look more intensively into each Official Gazette, with the help of Dara Mansur Law Firm. For the moment, the English version of the Weekly Official Gazette will not be considered because it was published only for a short time in the 1970s²⁷.

²⁷ A number of national libraries around the world hold copies of some of the issues. See the [national library of Australia](#). The 1970 interim constitution was issued in Law № 10 dated March 10, 1971.

The Iraqi Official Gazette²⁸ :

The Official Gazette of Iraq (Arabic: العراقية الوقائع / ALA-LC: *al-Waqā' i 'al- 'Irāqiyah*) has been the official source of laws and resolutions passed by the Council of Representatives of Iraq and previous Parliaments since August 1922. Article 125 of the 2005 Constitution mandates that laws shall be published in the Gazette and shall take effect on the date of their publication, unless otherwise stipulated. The Gazette is published by the Ministry of Justice²⁹.

The previous historical incarnations of the Official Gazette at the national level are as follows:

- In 1912, during the British occupation of Iraq, the first Gazette was issued. It contained declarations signed by the British commander in Mesopotamia. The first edition was in English and was later translated into Arabic. Also, in 1912, the Iraqi government issued a gazette under the name "Gazette of the Iraqi government". This publication, managed by the Ministry of Finance, was issued in both Arabic and English.
- In August 1922, the first Iraqi Official Gazette was established. From December 8, 1922, it was published by a directorate of editors with three issues per month. It usually contained the following information: announcements from the British High Commissioner; announcements from the Ministry of Interior; laws; regulations; announcements from courts concerning inheritance cases; public announcements; and news of the world. In later years, it specialized in the publication of laws, regulations and official announcements of the Iraqi Parliament. It continued to be published until the July 14, 1958 revolution, reaching issue number 4168.
- After the July 1958 revolution, the Official Gazette was restarted on July 28, 1958 with a new name "the official Gazette of the Republic of Iraq" instead of "the official Gazette of the Iraqi government". Numbering restarted at №1, instead of carrying on with the previous sequence. On July 26, 1958, the temporary constitution was issued, proclaiming Iraq as a republic (no longer a monarchy) The first edition of the Gazette highlighted the change of regime. During the period 1958-1968, the Gazette was published first by the Ministry of Finance, then by the Ministry of Interior, and later by the Ministry of Guidance and Culture.
- From 1968 to the present. After the Ba'ath revolution, the Revolutionary Command Council issued Decree № 477 on May 6, 1975 stating that the publication of "the official gazette of the Republic of Iraq" is entrusted to the Ministry of Justice. The first issue, № 2469, was dated May 12, 1975. Rules applying to this publication were set out in a "publication law" № 78/1977, which was later amended by Law № 34/2007. According to Article 1:

"The official gazette of the Republic of Iraq is published by the Ministry of Justice in both Arabic and Kurdish. Whatever is published in this gazette is the official text that will be recognized by all and is valid from the date of publication, unless stated otherwise."

Article 2 of the amending Law (№ 34/2007) defines the contents, including: (i) laws; (ii) the text of treaties and conventions, with the laws that follow to ratify and join these treaties; (iii)

²⁸ The Iraqi Ministry of Justice [website in English](#) contains only news about workshops and field visits, but no texts.

²⁹ Wikipedia, [Iraqi Official Gazette](#).

regulations; (iv) Republican decrees; (v) internal regulations and instructions; and (vi) Specific additional content of the legal instrument requiring publication.

Article 7 of initial Law № 78/1977 states that "the Ministry of Justice has the right to republish the official gazette and no other party or person has the right to do so unless it is authorized and supervised by the Ministry of Justice".

KRG Official Gazette

The KRG Gazette was established by Publication Law №.4/1999 dated November 2, 1999, and subsequently published in the May 14, 2000 issue № 2. The KRG Gazette is published on a weekly basis by the Ministry of Justice every Monday. The first issue was published on May 4, 2000.

Article 2 defines what it should contain, including: (i) laws and decrees of the National Assembly of Kurdistan-Iraq; (ii) regulations; (iii) Presidential decrees and orders; (iv) instructions; and (v) statements.

Article 3 states: "Whatever is published in this gazette is the official text that will be recognized by all and is valid from the date of publication, unless stated otherwise".

Article 7 provides that "no party or person has the right to republish the official Gazette unless it is authorized and supervised by the Ministry of Justice in the Kurdistan Region". These rules were confirmed by Law № 13/2007 of the Ministry of Justice dated September 27, 2007 (and published in the Official Gazette № 74 dated October 25, 2007).

According to Article 2, Section 6 of this law: "one of the main tasks of the ministry of Justice is issuing, publishing and ...distributing the Kurdistan Official Gazette both in Kurdish and Arabic in order to ensure that both the governmental offices and the citizens in Kurdistan Region have knowledge of enacted legislation".

Legal value of the Official Gazettes

It is clear from this overview that this is the main location (source) for finding the texts of the legal instruments to scope. To study a specific instrument, it will be necessary to find the text published in the Official Gazette of the corresponding period.

This point was also stressed by the Dara Mansur Law Firm in its report: "the legal validity of the issues of the Official Gazettes is enshrined in both Publication Laws at [the] federal and regional levels. 'Whatever is published in this Gazette is the official text that will be recognized by all and is valid from the date of publication, unless stated otherwise (...)' The only source recognized by the courts and the public and private sectors is the Official Gazette. The legal value of the publication in the Official Gazette suffers no exceptions."

However, from the point of view of this comprehensive review project, this statement does not answer all questions or end all difficulties. For example, can the existence of legal instruments *not* published in one of the Official Gazettes be entirely discounted? There are very few, if any countries, where no text ever fails to be published for one or another reason, yet the instrument is still perfectly valid — provided it can be ascertained that it was issued by the legitimate authority within its sphere of competence. One of the underlying objectives of a comprehensive review is to precisely establish that no instrument has remained uncovered. In this way, it can be assured that the review will produce a clear and transparent legal order. This means that the search cannot be limited to the Official Gazettes.

Another important aspect to consider is that it seems that there are very few electronic versions of the instruments, which will make retrieval and compilation of texts related to the same issues quite time-consuming. There may exist a good series of PDF/electronic documents on hand, but that may only be a small part of the review work which involves checking the legal and substantive consistency of the whole (full-text searches can facilitate this process);

Furthermore, just because an instrument is found in an issue of the Official Gazette does not mean that it is automatically legal, or that the text is published. All subsequent texts on the same topic will have to be retrieved and compared to establish that the instrument has not been explicitly or implicitly abrogated. In addition, it will be necessary to produce the final "consolidated" text, including all amendments. This is a lengthy and difficult operation, especially if the whole body of law is unconsolidated. This point will be further developed in Part 4.

4. Other legal publications containing lists or full texts of legislation

The Dara Mansur Law Firm advises:

Concerning other publications, there are law books which contain certain laws like the Civil Code, penal law, etc., but for the court to recognize an unknown law or instruction, the lawyer has to provide a copy of the official Gazette. Concerning the internet sources, always check the pdf file where the original text of the law is published to check the date and the number of the edition.

Other sources cannot be relied on, even when checking with the ministries. They do not have [nor can they] share the text of the regulations or laws. They just give the name of the law and sometimes the date of issue, but the lawyer has to obtain the Official Gazette by buying it from the Ministry of Justice in [the] Kurdistan Region if the law concerns [the] Kurdistan Region, or he will have to approach the Ministry of Justice in Baghdad if the law is a national one".

Recommendation: For the purpose of the comprehensive review, it is suggested that all existing sources such as "law books" be used if they contain useful compilations, such as the Civil Code. The purpose of the exercise is not to go to court, but to draw up as efficiently as possible an inventory of all existing legislation as a base for further scrutiny work.

Later, it may be the case that the accuracy of the published codes will need to be verified. However, this will only occur in scoping legislation, and if there are doubts as to the quality of the publication.

Lists of instruments produced by previous legislative reviews

During the 2017 scoping mission, the team endeavored to take stock of past efforts to catalogue the KRG legal corpus both in general and specific priority areas. The point of the investigation was to contribute to the quantification and, at least, provide an order of magnitude of the project. Checking previous inventories would help in identifying practical problems and avoiding later duplication of effort, especially if their results could be tapped and imported in bulk into the new comprehensive review.

The list of such resources was submitted in the scoping report and included both international projects such as the UNDP assessment of legislation and KRG initiatives like the Parliament's

database of instruments. During this 2018 phase, the team made a new effort to verify the existence, scope and usability of such resources for the current project.

The following sections report on progress made in tapping these resources.

The Iraqi Legal Database (ILD)³⁰

This online resource looks impressive, but it has limitations that may reduce its usefulness to the project. In 2017, the Shura Council pointed out that it “suffered from multiple faults”, For example, it was too “pro-Iraq”, that is, it was focused on federal legislation, although it also contained some KRG instruments. Although it was now being regularly updated, it could not serve as a reliable source for legislation, because it was incomplete. In addition, it did not connect to case-law, nor did it include the decisions of the KRG authorities. However, it would be helpful if a similar tool could be implemented for the KRG. The Bar Association also considered it useful, but not user-friendly.

The Iraqi Legal Database (ILD) is the first comprehensive and electronic legal database to be created in the Arab region. The project to create the ILD was launched in 2004 by the United Nations Development Programme through its POGAR Program. It is being implemented in coordination with the Higher Judicial Council. The objective behind the project is to make the entire corpus of Iraqi law available in a single, freely accessible source. As such, it would be accessible by judges, lawyers, academics, lawmakers and all other individuals or institutions that rely on legal knowledge. In keeping with this objective, the ILD was published online in September 2008, and made available to users. It includes a total of 27,433 legal texts, including 7,136 laws, 4,265 ministerial instructions, 3,268 regulations, 5,029 declarations, and so on. In short, it includes every Iraqi legal text that has been passed since 1917.

The ILD is entirely free-of-charge and does not require users to subscribe in any way. The UNDP Iraq country office is the source of most of the funding for the ILD. The ILD is available only in Arabic. Iraqi law was not translated into any other language in a systematic manner. Therefore, legal researchers and other jurists that are interested in Iraqi law must carry out their research in Arabic.³¹

The ILD was checked by Dara Mansur for the purposes of this project. The full account is in provided in their report, which is summarized here. The ILD is supposed to have included the laws and regulations of the Kurdistan Region that were published in the Kurdistan Region’s Official Gazette from 1992-2007. However, based on three searches using the name of the law, its date and number in the Iraqi official Gazette, Dara Mansur found that the database was not exhaustive. In none of the three cases was the instrument found in the ILD.

Dara Mansur concludes: "The IDL includes the most famous legal texts, but some of the links do not work properly and there are differences in the text on the screen and the original text of the law, so that is why most lawyers prefer to use the Official Gazette as [a] reliable source of information".

Operational recommendation: Despite of its limitations, it would still be necessary to download the contents of the Iraqi Legal Database for the purpose of this project, with approval from the

³⁰ See [ILD site managed by the Iraqi Judicial Council](#).

³¹ See web archive for the [UNDP POGAR presentation](#), including a PowerPoint presentation of the functions of the database.

Judicial Council. It is important to do so for a very important reason. The Chairman of the Shura Council has reported that one of the problems that the KRG faces is the absence of implementation of federal legislation in the KRG, after verification of suitability. To map these gaps, it will be necessary to have a good knowledge of the Council of Representatives' legislative activity. The fact that the KRG texts may be missing is not a major problem, as they will come to light from the review of the KRG Official Gazette.

Coalition Provisional Authority

An archive of the instruments enacted by the Coalition Provisional Authority in 2003-2004 has been preserved by the University of Northern Texas³².

Most of these instruments dealt with immediate security concerns, but some of the "orders" seem to be of permanent value. The CPA was also making legislation from Baghdad at a time when the KRG was enacting its own legislation, that is, before the 2005 Constitution. It will be necessary to examine each instrument from that period to establish if any of the clauses still have any legal value, despite the constitutional profile of the CPA. Within the comprehensive review, it may be possible to compile a list of CPA orders to make a definitive determination as to whether or not they are applicable to the KRG.

The UNDP database

The UNDP database³³ may have been a possible source for much of the in-scope texts. Although some connection could be found with the current project (the list of laws may be useful), the project has a very different inspiration (State intervention) and a different methodology (no consultation of national authorities reported in the online report).

The possible use of this resource could not be verified and confirmed during the 2018 phase. The final report, which is not online, needs to be obtained and studied in detail — especially the parts dealing with the "assessment of the legislative framework". In the meantime, an analysis of the possible contribution of these reports is offered in Annex 1.

KRG official websites

There are two sites that contain a small number of KRG laws, which are useful in determining the authorities' interests.

The Government's site. There is a page called "Legislation" listing a small number of "landmark legislation."³⁴ However, only five legislations are translated into English.

The Parliament's site. It includes a page³⁵ offering links to a number of texts from 1995 to 2011. There are about 250 legal instruments listed, comprising both acts amending federal legislation and KRG laws. Only a handful are provided in English (for example, the Investment Law, the Ban on Smoking, and so on). In 2017, team consultant, Kurda Daloye, wrote about this site: "Kurdistan Parliament has a site listing all the laws from 1992-2015, but it is not very user-friendly to non-Kurdish speakers and it is only updated until 2015. currently the parliament is on hold due to

³² Archive of [defunct agencies \(CPA\)](#), University of Northern Texas.

³³ In reality, a UNIDO-led initiative of several United Nations agencies to assess and amend Iraqi private sector development legislation.

³⁴ KRG (Prime Minister), [Legislation page](#).

³⁵ IKP website, [Legislation tab](#).

political conflict in Kurdistan region". A recent visit to the English part of the site confirms this assessment. For 1995, only one law is mentioned (Law № 1/1995 of the Iraqi Kurdistan National Assembly on the first extension of the electoral law), but for some other years, there are up to 30 instruments (in 2007). However, when clicking to view the text of a law, a message appears saying: "Access denied". Law № 8/2011 against domestic violence is not accessible, nor is Law № 15/2008 on personal status — although both are published on the Prime Minister's site.

5. Ministries and other regulating agencies

With the Official Gazettes, a mass of legal instruments has already been found and listed for the project. However, to ensure that no sources have been overlooked, it will be necessary to contact the ministries about any unpublished documents. This could not be done during the 2018 phase, but it will need to be done at a later stage. It is precisely because lawyers know that not all texts are collected in publicly available publications that the comprehensive review has been considered necessary by the Shura Council. Therefore, further research is required to guarantee to the regulatees and practitioners of law that an in-depth search has been conducted for less well-known, forgotten or hidden instruments that may still be applicable or enforceable. As such, it will also be important to ensure that the list of past instruments is now completely transparent.

The files of the ministries are naturally the first place to look for such instruments, as the ministries are in charge of enforcing the rules, and occasionally amending them. They may be aware of decisions or other instruments that are not published in the Official Gazette but are implemented and enforced. These too will need to be included in the inventory. An instrument that they would not know about would *de facto* be inapplicable. Ministries would also know about the connection between laws and their implementing regulations and instructions, if such exist.

6. Overall conclusions concerning the inventory and the sources

The Official Gazettes at both the federal and regional levels will greatly facilitate the work of the comprehensive review by providing a mass of primary legislation, which is clearly recognized as enforceable.

However, it seems that no practice of consolidation has been instituted, which means that all the material will need to be studied in detail to provide an up-to-date picture of which clauses and articles are currently legal for all of the in-scope legislation. This will be developed in Part 4.

PART 4. ESTIMATING THE COSTS OF CONDUCTING THE REVIEW

The TORs call for the international expert to "develop an estimate, given realistic assumptions about the resources and methods of the KRG administration, of the cost of conducting the different phases of the comprehensive review, including if need be options regarding the scope of the exercise, and the matching degree of commitment of KRG resources".

Now that a clearer picture of the structure of the KRG legal order (the typology of legal instruments and the difficulties attached to each type) has been achieved — and a sample of the inventory gives us an idea of the quantitative dimension of the operation, and ease of retrieval and treatment of the material — it becomes possible to reflect on the practical feasibility of the project and its corresponding costs, which may rely on a number of assumptions.

As indicated in the general introduction, the transition phase purported to build on the 2017 scoping phase, which had been primarily concerned with seeking clarification from the KRG authorities about their objectives, sharing knowledge about options for a comprehensive review, and making suggestions about a possible approach and methods.

The transition phase has included a first scrutiny of the substance of the legal corpus, which allows us to further specify some of the assumptions.

Using the new facts collected about the substance of the legal corpus, including a brief literature review, it will be necessary to take into account some constraints that had not been apparent last year. These will need to be factored into the costing exercise, as they greatly influence the level of difficulty of the project. The next phase will need to take account of the following:

- Constitutional constraints that could have a bearing on the scope of the project: A clearer picture has emerged from the new research, affirming the need for a technical verification about the consistency of the KRG legal order.
- Availability of instruments: The search for the texts of the legal instruments has highlighted the problem of the absence of any consolidation of legislation.
- The availability of inputs from the KRG (and federal) ministries in terms of staffing, which unfortunately is limited.

1. The constitutional constraints

The current situation is best summarized by the KRG Prime Minister on his website, though the nature of the "unresolved issues" is not specified in that text:

"The constitution of Iraq clearly delineates the rights of governorates and federal Regions, and the KRG remains unwavering in its adherence to the constitution as the highest authority in the land. The KRG continues its good faith effort to resolve a number of unresolved issues with the federal government³⁶".

This position was further clarified in a statement by the Prime Minister on May 17, 2018 after the Iraqi country-wide parliamentary elections³⁷:

³⁶ KRG site, ["Relations with the federal government"](#).

³⁷ KRG site, [Prime Minister Barzani on Iraqi parliamentary elections](#).

"The people of the Kurdistan Region deserve the Presidency of Iraq and other posts in the next government, but the issue for Kurdistan's people in Baghdad is primarily not related to posts. We, in the Kurdistan Region, have waited for the implementation of the Constitution for 13 years, but [the principle of] partnership had lost its sense in Iraq".

He also noted that the people of Kurdistan held the Independence Referendum after they were left with no choice in attaining their constitutional rights. He hoped that the constitution will be fully implemented, and that all Iraqi people will live in a peaceful and prosperous environment.

During the current 2018 phase, a more in-depth analysis of the contents of the Constitution (see Part 1 of this report) and of KRG policy documents has been conducted to help define the scope of the comprehensive review. This is to be done with a more robust definition of options open to the KRG authorities, but without exposing them to new difficulties with the Council of Representatives or other federal authorities.

The fact that there are "unresolved" constitutional issues should not be a major hindrance to the project. In all countries that have constitutions, interpretations and practical implementation most often take on a life of their own, with various opinions in play (such as in the United States). The KRG is no exception. With its long history of struggle, it is not surprising that official policy and communication documents present an interpretation that is not fully endorsed by the federal authorities, as shown below. However, it means that the project must limit itself to the purely legal issues, which are sufficiently clear to provide a sound basis for the operation. An offer of working with the federal level must also be confirmed.

It is not the place of this report to enter into an analysis of the political situation in the KRG. However, it should be noted that general elections are scheduled to take place in Iraqi Kurdistan on September 30, 2018 to elect both the President and a new Parliament. They were originally scheduled for November 1, 2017, but were postponed by eight months because of the security situation.

Interpretation of the 2005 Constitution by KRG authorities

In Part 1, it was determined that the IKP had been granted wide-ranging law-making competence. This should not be viewed as a general authorization to ignore Iraqi federal laws, which benefit from a long history of good procedures, as well as recent international assistance in improving its contents. So, what is the current official position of the KRG authorities regarding their legislative competence?

The starting point is to check official documents and declarations to determine how the KRG interprets the relevant articles of the Constitution.

The first policy document is the often-quoted decision №11/1992:

Article 1: All ministries and bodies of Kurdistan region that are not linked to a ministry shall examine laws, decisions, regulations and instructions issued by the central authority, [to] determine what is not compatible with the interest of the people of Kurdistan, and present it to the National Council to determine the legitimacy or not of the validity of its provisions within the region.

Article 2: The provisions of the laws, decisions, regulations and instructions issued or to be issued by the authorities of the central government shall not be applied after the withdrawal of the governmental departments from the Kurdistan Region on 23/10/1991,

unless [the] National Assembly of Iraqi Kurdistan approves the legitimacy of their validity in the region.

The same ideas are expressed in non-legal terms on the website of the IKP:

This [May 1992] regional election led to the formation of the first Kurdistan National Assembly and the establishment of the Kurdistan Regional Government. The leadership and the people of the Kurdistan Region decided to adopt and abide by all Iraqi laws except for those that violated human and universal rights.

As provided in the federal constitution of Iraq, parliament has considerable power to debate and legislate on policy in a wide range of areas: health services, education and training, policing and security, the environment, natural resources, agriculture, housing, trade, industry and investment, social services and social affairs, transport and roads, culture and tourism, sport and leisure, and ancient monuments and historic buildings.

The Kurdistan Parliament shares legislative power with the federal authorities in the following areas³⁸, but priority is given to the Kurdistan Parliament's laws: customs, electric energy and its distribution, general planning, internal water resources.

In addition, under Article 121 of the Iraqi federal constitution the Kurdistan, Parliament has the right to amend the application of Iraq-wide legislation that falls outside of the federal authorities' exclusive powers.

As an example of how the Constitution is interpreted even in an area of shared competency, the very important Law on Oil and Gas³⁹ (№ 28/2007) should be considered. It does not leave much room for co-management of oil and gas with the federal government:

Article 2: First, this Law applies to: (a) Petroleum Operations, whether carried out by public companies or by private sector companies, whether Iraqi or foreign; and (b) all activities related to Petroleum Operations. Second, pursuant to Article 115 and paragraphs (1) and (2) of Article 121 of the federal Constitution, no federal legislation, and no agreement, contract, memorandum of understanding or other federal instrument that relates to Petroleum Operations shall have application except with the express agreement of the relevant authority of the Region.

Decision №11/1992 and its use in practice pose legal issues for the comprehensive review:

This Decision is closer in essence to a declaration of principle than to a legal instrument, which would be enforced by a clearly identified parliamentary procedure; however, there is no doubt that it is consistently respected.

The Decision seems to have been aimed at triggering a review of all Baghdad/federal legislation before it could be enforced in the KRG. As such, the project would need to establish the practical outcome of this mechanism. For example, how many federal texts were found incompatible? What

³⁸ Characteristically, the online text contains a gap where one would expect to see the list of competences drawn up in Articles 111-114 of the Iraqi Constitution.

³⁹ The text in English is posted on the Presidency website, "[Legal and official documents](#)" page, along with the Investment law.

reforms were introduced on this legal basis? As The Chairman of the Shura Council has indicated, there have been delays in implementation of this principle, resulting in gaps in the legal order.

Difficulties in KRG law-making

Whether the official KRG interpretation is legally sound or not, it is a clear expression of a will for autonomous legislation. However, it has not been entirely satisfactory in practice, as the KRG authorities themselves indicate. There have been difficulties at every stage, starting with the Iraqi Kurdistan Constitution, but also for ordinary legislative procedures.

The issue of the Regional Constitution

As noted, the Regional Constitution is not only authorized, but seemingly mandated by the 2005 Federal Constitution. This would be an important legal instrument for the comprehensive review, but it has apparently suffered mishaps of a political nature.

Though approved by Parliament on June 24, 2009, the draft has yet to be voted on in a referendum before it can enter into force. The text⁴⁰ may still change, judging by the presentation on the KRG official website, which seems to announce a new round of consultations:

The draft Kurdistan Region constitution contains many good articles and resolutions, and it was approved by the previous session of parliament. But we believe that this constitution needs to be reviewed by all political parties, legislators, experts, social and religious components of our society so that we will have a constitution that brings all the people of Kurdistan together and which will develop a system for the future of our people. Because this will be the first constitution of Kurdistan, it should be put up for referendum and the people should be able to freely choose to either vote for it or not. A proper timeline should be established to achieve this goal⁴¹.

Delays in vetting and enacting Baghdad/Federal legislation

As noted by the Chairman of the Shura Council in his justification of the comprehensive review:

Many of the laws applied in Iraq and the region of Kurdistan were amended after 2003, but those amendments are not yet operative in the Kurdistan region because of the decision 11/1992 of the IKP which invalidates any legislations or amendments issued by the central government after the withdrawal of the governmental administrations from the Region in 1991. That has created an additional problem as there are so many laws or amendments in Iraq but are not operative in Kurdistan because of the lack of a law to put them into effect.

This analysis is shared by the national consultant, the Dara Mansur Law Firm, in their report for the project:

After 2003, decision 11/1992 started to hold the Region back when it came to accepting new laws that help the region to move forward, taking into consideration that Iraq is a recognized member in the international community and part ...[of] important international organizations and treaties, but Kurdistan region is not a member ...[of] any international

⁴⁰ The full text in English and a historical article are offered by [State Penn Legal Review 2010](#).

⁴¹ KRG site, [Factsheet](#).

organization or treaties and that is why the region is facing a dilemma because the KRG government and people want to develop the laws according to international standards.

So, the legislator in Kurdistan region sometimes takes its time to adopt any new laws and amendments, especially concerning the new laws issued in Baghdad and that is completely understandable because of the dark history between the central government and region during the old regimes. But holding back is not good for the development of the region, since it takes years to accept and adopt new laws that were issued by the Iraqi parliament.

The Dara Mansur Law Firm notes the following example. The new Labor Law №. 37/2015, which was issued by the Iraqi Parliament on October 19, 2015, was published in the Iraqi Official Gazette №.4386 dated November 19, 2015. This Law is more compatible with the international standards concerning the rights of workers, whereas the KRG still applies the Labor Law №.71/1987 and its amendments, an earlier law enacted by the Revolutionary Command Council.

Difficulties in joining international agreements

In his list of issues, the Chairman of the Shura Council mentioned "gaps" in the legal body enforced in the Kurdistan Region. One of those gaps is the absence of competence of the KRG to sign and implement international agreements. The Amereller Rechtsanwälte report lists a few of these gaps⁴²:

Another area for further legislative development lies in Iraq's international legal treaties. For example, Iraq is not currently a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (although there are indications that the Iraqi government will sign the New York Convention soon), and has not signed many of the relevant international treaties and conventions for the protection of intellectual property and foreign investment, and it has no bilateral agreements for the avoidance of double taxation. Iraq became an observer at the World Trade Organization (WTO) on January 24, 2007 and is reportedly making steady progress in its efforts to become a full member soon. The Iraqi government is also considering signing the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention). This would allow international investment disputes against the Iraqi State to be determined by [International Centre for Settlement of Investment Disputes] ICSID rules.

2. The availability of the legal instruments

In part 3, it has been reported that the Official Gazettes at both the federal and regional levels will greatly facilitate the work of the comprehensive review by providing a mass of primary legislation. However, it seems that no practice of consolidation has been instituted, which means that all the material will need to be studied in detail to provide an up-to-date picture of which clauses and articles are currently legal for the in-scope legislation.

Consolidation of legal instruments

⁴² Amereller Rechtsanwälte, [Legal guide to Doing Business in Iraq](#) (2010), page 8.

Most official gazettes around the world are sensitive to the need for citizens and users to establish the current state of legislation in a particular area of interest, even if it has undergone extensive reforms. Accordingly, they produce "consolidated texts" or codes which incorporate later amendments into the original text of each and every instrument that has been enacted. Some countries have organized the publication of legislation in codes,⁴³ which makes accessibility even easier as the subject matter is organized by theme and level of instrument (for example, laws in the first part, regulations in the second). In the common law countries, there are procedures for consolidation of legislation, sometimes with accelerated procedures in Parliament for enactment of consolidated texts⁴⁴.

This practice is based on the convention that to simplify the memorizing and referencing of legislation, one could continue to use the name of the original text. This could be done even after many changes have amended its constituent articles, and until a new (more fundamental) reform introduces a completely new un-amended text. Therefore, in practice, users will always work on the consolidated, up-to-date text incorporating all amendments, and only refer to the original enacted texts when in doubt.

In advanced systems, access is often provided to users online. It includes both the original enacted texts and the consolidated versions. The consolidation is operated as soon as the new text is published (the same day) for the ease of interested parties (lawyers, the public, and so on).

There is an important principle involved here. Although the "administrative" consolidation is useful and nearly always accurate, in the last resort, the courts are the only authority to decide on issues of consolidation (if litigation arises) as they involve legal interpretations of individual articles. For example, the courts may need to answer the question "Is a new article (which does not refer to the modified instrument) an amendment of the older text, or is it a new free-standing instrument dealing with some other matter?" It can be quite difficult to answer.

The practice of legal consolidation is often assisted right from the start by the inclusion of clear reference in the new instruments of their relationship (reform, abrogation, or no effect) with existing items of legislation. This serves to make the consolidation easier, and can help avoid many legal disputes in court. Normally, the ministry in charge would take stock of existing legislation before preparing a new bill, and so would be in an appropriate position to decide the issue. However, this work is not always done accurately, and is sometimes forgotten at the time of drafting the last articles of a bill where such matters are treated.

Legal consolidation techniques were presented to the Shura Council judges and lawyers during the World Bank program devoted to "Strengthening the capacities" of the agency. Specifically, the program introduced better regulation principles and practices.

It is possible that these techniques are little known to, or practiced by, the legal professions in Erbil outside of the Shura Council. If this is the case, the comprehensive review will be greatly complicated by the need to carry out all the legal research into consolidation in order to obtain a picture of the currently applicable legislation. Once this has been achieved, inconsistencies and gaps can be determined.

⁴³ Belgium, France, Spain, and so on.

⁴⁴ See, for example, the procedures of the Parliament of the United Kingdom. Ireland has a more complex process called restatement, which is similar to the Australian process of reprinting consolidated texts.

3. Definition of proposed scope and priorities of the Comprehensive Review

This section offers a set of assumptions on which to base the costing of the Comprehensive Review. It takes into account all available inputs, including: (i) the wishes of the Chairman of the Shura Council and the Minister of Planning; (ii) the in-depth analysis of the constitutional background, indicating the extent of the legislative competence of the IKP, which, subject to legal confirmation, is wider than had been assumed until now; and (iii) the fact that there may currently be almost no consolidation of existing legislation.

The proposed scope and activities for the comprehensive review

It is proposed to define the scope of the comprehensive review, at least in a first phase, solely in terms of the request of the Chairman of the Shura Council, that is, to search for a better consistency of the KRG legal order, and to end or temper the "legal chaos" by identifying what he calls "inconsistencies and gaps". This approach has the advantage of adopting a strictly technical approach to legislation.

Secondly, it seems that the review should initially be limited to primary legislation, and not, at least at this stage, aim to cover the totality of instruments including secondary legislation, that is, regulations, and ministerial and/or administrative decisions. Instruments concerning the organization of the public administration would also be given low priority.

However, many of the existing problems relate to secondary legislation (that is, regulations and administrative decisions). For this reason, at some later stage, the scope should be enlarged to include secondary legislation, in part to complete the gap analysis requested by the KRG Shura Council. Furthermore, it is likely that critical regulations or administrative rules needed for the functioning of the KRG government will be found to be no longer legally valid following this review. Ultimately, what is important in such reviews is not the legal form of the rule, but its impacts. As noted in the report, the chaotic legal situation in the KRG has resulted in many cases from regulations and administrative rules having very significant impacts.

It is possible to define three sub-activities for the first stages of the review:

1. Federal law post-2003: One of the most pressing issues, as formulated by The Chairman of the Shura Council and confirmed by the Dara Mansur Law Firm, is the delay in ratifying, with or without amendments, legislation issued by the Federal Council of Representatives. This means that the review would first need to take stock of Iraqi federal legislation post-2003, and then identify the gaps in the "transposition" (to use the term used in the European Union when member-States "import" EU directives). This should be done in cooperation with the federal Shura Council, which may be interested in supporting the operation.

World Bank support should limit itself to the identification of the gaps, while supporting the technical process. This does not extend to the discussion of the merits of possible substantive reforms, which should remain the prerogative of the Erbil authorities.

2. Pre-1992 instruments: The second task would be to address the old stock of primary legislation, and to identify which legal instruments must now be officially considered obsolete, either for purely legal reasons or because they refer to circumstances that have entirely disappeared. This is a routine stock management operation practiced in most developed countries, sometimes called

"house-cleaning."⁴⁵ However, the long legal history and complexity in the KRG context justifies the need for World Bank support.

3. International agreements: The third task would be to examine the current status of international agreements signed by the Iraqi government to identify the most pressing gaps compared with other countries of the region. This would provide a documented basis to approach Baghdad at a later stage to propose a joint effort to bring about a better alignment comparable with standards prevailing in other countries of the world in general, and the Gulf region in particular.

Notwithstanding the significant political dimensions and sensitivities of the relationship between KRG and the central government, undertaking this review would be much easier and significantly more successful if there was consultation and coordination with the central government. This would include addressing questions about the stock of existing federal regulations (which may or may not apply in KRG), what central government laws currently apply (and have been ratified by KRG), and what the implications of the planned "stock" review are for the federal State Council. Furthermore, the federal authorities have legal responsibilities for treaties and international agreements, so coordination on this issue is also important.

Therefore, in conducting this review, it would be necessary to establish some form of communication, cooperation and coordination with the central government. It would also improve the quality and chances of success of both the KRG and central government legislative reviews. This is a critical issue that needs to be explicitly considered and addressed prior to launching this review.

Finally, to provide continued legal certainty, it is important that once the review is completed, surviving laws are placed on a central database that is publicly accessible. This can be achieved by passing a law after completion of this review. The law would state that if a (surviving) law is not listed on the central legal database, it has no legal validity. This is essential in the KRG. Indeed, without this measure, there is a high likelihood that the existing legal chaos will continue after the review.

4. The formulation of legislative reforms

Once the legal gaps and areas of duplication or conflict have been identified, a more difficult phase awaits the project. The teams in charge will need to make proposals to introduce the necessary reforms, fill the gaps, and eliminate discrepancies and contradictions. The techniques that will need to be utilized at that stage are presented in detail in the June 2017 report. It was written by the same World Bank team and entitled "Methodology and Procedure Manual" (part 4), including successful examples taken from other countries. This report has also been shared with the KRG authorities.

Options presented for clearing the legislative stock were listed and discussed in this Manual. It includes the most sweeping technique of implicit abrogation, where only the instruments that the KRG authorities would like to preserve are listed, closing with a general statement. It would also contain the appropriate legal precautions that all other instruments are repealed.

At the end of this review of legal techniques to draft reforms, the Manual stressed that repeals and amendments must respect, at all times, all the legal constraints in force, starting with the

⁴⁵ For example, until recently, several European countries still had legislation about horse-drawn carriages.

Constitution and the hierarchy of norms. In this context, it would be necessary for the Legal Affairs directors of the ministries to carefully check the reforms proposed by their administrations.

The Manual made several recommendations tailored to the KRG situation:

- The experience of other countries showed that it is desirable to confirm (“save”) useful instruments as explicitly if possible, especially if they are ancient and little-known, rather than implicit.
- Because of the historic layers of legislation, the review should target instruments without jeopardizing the legal security of existing situations (a general disclaimer should be included to avoid creating new enforcement problems).
- The review can lead to a variety of outputs, each requiring a specific technique:
 - Repeal/delete or “save” old instruments by a single "omnibus" new instrument using lists for each category;
 - Simplify priority instruments in force;
 - Reform work need not always be in the form of new legislation. Informal compilations, and publication of new consolidations can be made available much faster (without a vote in Parliament). They can still be very useful in tidying up the stock of legislation.
- It may be possible to devise some safeguards, such as have been enacted in countries practicing the Statute Law Revision technique, where instruments could be "resuscitated" at a later stage. This would mean that the implicit collective abrogation could be reversed more easily than an explicit one. However, this is not an ideal situation, as it may generate a climate of legal uncertainty which is not desirable.

Three more issues concerning the future substantive work have surfaced during this transition phase. First, there is a need for the reform work to include the search for alignment with international norms consistent with Iraq’s treaty obligations.

Second, sequencing and prioritization in addressing identified gaps and areas of duplication will be needed on the basis of the substantive priority areas defined in the next section. This will also include an agreed order of urgency of the reforms.

Third, an impact analysis of the proposed reforms should be implemented to ensure that the new rules are effective, efficient and feasible given existing budgetary and administrative constraints. It is well documented globally that sweeping reforms, sometimes initiated by comprehensive legislative reviews, bring about legislation of poor quality — thereby generating a whole range of new legal, administrative and economic problems and challenges.

Proposed priority areas

No single agreed list of priority areas, deemed crucial by the authorities and other stakeholders for the improvement of the KRG legal order and economy, emerged from the June 2017 scoping mission, though several proposals were made and recorded in the scoping report.

The consensus was that the Comprehensive Review would entail a lot of work and that efforts needed to be focused on the most relevant legislation requiring reform. It was also agreed that in the first phases at least, the emphasis would be to determine which instruments were still in force and appropriate when examined against general policy criteria.

To focus the efforts, it would be good to obtain a first idea of what would be the substantive (policy) priority areas, if possible before the end of the preparatory phase. To renew the discussion of a list of priority areas, it would be appropriate to start from the breakdown used by the UN agencies under UNDP-coordination (see box below), as it has shown that it is relevant to the overall development of the national economy. It should however be checked and perhaps reconfigured in agreement with the KRG authorities to reflect priorities as they now see them. In this context, it may be worthwhile to add one priority area: Public Finance Management.

The suggested priorities will be submitted and discussed with the KRG authorities during the upcoming World Bank mission to Erbil in August 2018, to be finalized before the main phase of work commences.

Box 2: UNDP-led Project Priorities (2010-2012)

- | | |
|---|---|
| 1. Basic legal framework
(Constitution and civil code) | Arbitration) promotion |
| 2. Commercial status | 8. Labor code |
| 3. Investment regime | 9. Agriculture regime |
| 4. Public Procurement | 10. Intellectual property rights |
| 5. Privatization | 11. Property rights related to the land
regime |
| 6. Public-Private Partnerships | 12. Taxation and customs |
| 7. Litigation (Conciliation and | 13. Banking. |

5. Availability of staff resources to carry out the project

Traditionally, a public governance project requires two inputs: political will at the top, and an adequate level of human resources with the right skills to do the work.

There is a strong determination at the highest levels of the KRG government to conduct some kind of comprehensive review, as was demonstrated by the personal involvement and advocacy of the Chairman of the Shura Council, the originator of the project for the past three years.

Despite this determination, which expressed itself also in Decree 94/2016 of the Prime Minister to launch the operation, it seems that not much has happened even on the first (easy) part, the inventory. Of course, this can largely be attributed to the challenging times that the Region is experiencing.

The availability of qualified lawyers and their fees represent one of the biggest challenges. Also, the Shura Council's legal or legalistic concerns are not fully shared by the line ministries who are caught up in more pressing daily management issues. As such, their engagement is not a given. There is however a real interest on the part of civil society, professional organizations, academia, and so on.

It would be far preferable that the work be conducted by lawyers in the ministries working under the guidance of a central unit located in the Prime Minister's office and supported by the Shura

Council. The KRG's private sector lawyers could be contracted to do the compilation and consolidation work for the ministries.

The World Bank should consider employing an external team of expert lawyers, probably from outside the region, only if lawyers in the KRG ministries are unable to perform this task.

6. The estimated level of necessary resources (costing)

Considering the availability of the legal material (official gazettes and law books)lack of experts in Erbil, it may be necessary to entrust the comprehensive review to a team of Arabic-speaking lawyers (with at least one proficient in Kurdish). The KRG administration should designate a senior official, located either in the Shura Council, the Ministry of Justice or the Prime Minister's office, to provide guidance to the team and support their efforts to mobilize ministry assistance.

The number of lawyers needed would depend upon the volume of legislation to be inventoried and screened. Even when limited to a legal (formal) scrutiny, there remain several difficult tasks, such as the large-scale consolidation, and the "transposition" (checking if a federal law has been imported), which have been discussed in detail in this report.

At this stage, it is estimated that a team of four lawyers, suitably backed by the authority of the Prime minister's Office — and authorized to access ministries and work with them on their archives of legal instruments — would take from 4-6 months to deliver a reasonably useful list of "inconsistencies and gaps" and, to some degree, compile a list of the most urgent "quick fixes".

The ultimate success of such an undertaking would be greatly enhanced if the Iraqi Kurdistan Parliament could be encouraged (by the government) to take an interest in the renovation of the KRG legal order and accept the need to speed-track the necessary legislation to implement the findings.

Annex I. Analysis of the 2010-2102 UNDP Assessment of the Legislative Framework

To avoid duplication of effort, the team has examined the potential of previous efforts to map the KRG legal order, among which, and often quoted by KRG interlocutors, was the UNDP report. It assessed the legislative framework in a number of priority areas which have an impact of private sector development (PSD). Two reports by this UNDP-led project are examined below: a detailed United Nations Industrial Development Organization (UNIDO) preliminary report (2010), and a shorter final report (2012) ⁴⁶.

Despite some points of resemblance, this operation was found, on balance, to be of limited use. It cannot be said to overlap with the currently planned comprehensive review. In this regard, it was more focused on PSD, and did not include KRG legislation. There was also an absence of any consultation with national or regional authorities. The economic focus does not correspond to the needs of a predominantly legal review with a comprehensive scope.

1. Assessment of the preliminary report of 2010

This first document is the preliminary report. Unfortunately, the scrutiny of KRG texts was announced for the year after (2010), and this complement, which would have been useful, seems not to have been implemented.

In short, the report does not meet the requirements of a "Better Regulation" style assessment of legislation. As such, it may be of limited use to the comprehensive review at the KRG level. The report does not mention an opinion expressed by an Iraqi authority (or even a KRG official position), an outcome which is contrary to the consultative approach to be used in the comprehensive review.

However, the report is quite detailed (286 pages), and offers a critical assessment of existing legislation — although mainly at the Iraqi federal level, which is often inapplicable in the KRG. It even laments the absence of a KRG representative on the working group, a limitation that severely hampers the usefulness of this report to the comprehensive review.

The review was conducted strictly from the private sector development perspective, which is not sufficiently wide-ranging to achieve a consensus among possible recipients of the recommendations. The "criteria" for assessment were limited to the legal text's ability to encourage more private sector initiative, whereas the comprehensive review intends to apply very different criteria primarily defined by the Shura Council, which are of a legal nature.

The consultations were nearly entirely conducted between international organizations and involved almost no national officials. They seem to have taken place in Amman, with only "verifications" in Baghdad. Also, they seem to have incorporated very few Iraqi opinions, whether official or from civil society. Even the list of acronyms does not seem to include any Iraqi agencies. The ideas for reform do not seem to have been discussed with any Iraqi representatives, and certainly do not originate in Baghdad.

⁴⁶ UNDP, [Private Sector Development Final report \(2010-2012\)](#).

There were numerous constraints (all understandable) to the collection of clear and updated information about legal texts (p. 19), especially for the Kurdistan region. These limitations are naturally encountered by any external, international or national investigator. They also severely impair the validity of the recommendations made in the report, which could be based on an external incomplete view.

The lists of legislation, with about 80 instruments, may be useful. However, they would need to be checked because all but one text is a federal level instrument. Specifically, it is not clearly indicated whether the assessed texts are applicable to the KRG region. However, the project has now established that, without ratification, they do not apply to the Region. Also, it is not guaranteed that these instruments are effectively implemented or even enforced, including in Baghdad. In addition, in the whole report, there is only one reference to a KRG instrument (Investment law № 4/2006), even if the domain (economic development) would seem to warrant some degree of KRG responsibility. As a result, it is possible that the KRG is burdened with irrelevant or ill-adapted federal legislation, a fact that would appear, if true, in a KRG-led comprehensive review.

The bulk of the UNDP report (from page 20 to the end) is devoted to an assessment of the content of the instruments as compared to an implicit international benchmark. On one occasion (p. 220), there is a reference to an international convention to which Baghdad is a signatory. There are very a few examples of successful benchmarks used to illustrate the points being made. However, there are no examples cited from the region. Nonetheless, the use of national examples is a welcome feature of all OECD and World Bank Group reviews of national policies. Gaps are easily identified, and the solutions are most often to import foreign legislation (but without indicating from which country). Inconsistencies between legislations on different topics are also identified (for example, with regard to Free Zones, p. 27).

One quite interesting issue (p. 37) concerns discrepancies and overlaps or contradictions between the respective investment laws at the federal and KRG levels. The KRG investment law is judged to be more investor-friendly, but there is no legal advice on how to exit this situation. The report offers only recommendations for amendments (pp. 44-46).

There are other conflicts between the levels of government (federal and KRG), for instance, regarding the limits of fiscal decentralization. For example, Law №21 of 2008 grants some autonomy to provincial powers, whereas federal laws preserve the centralized nature of the fiscal system (p. 111). The same thing occurs with the customs law.

The section on the gender perspective in Iraqi legislation highlights several instances of gender insensitivity (in the Constitution or the Civil Code, for example).

The annexes, from page 125, are detailed amendments to the laws or regulations previously assessed, or new drafts — probably drawn from other countries (but without indicating which ones). A detailed example is the Law on Free Zones (pp. 138-145).

Thus, the report consists of a number of assessments of Iraqi legislation by about 20 experts from different United Nations agencies, each pertaining to their domain of expertise. They are compared to implicit international criteria. However, no international "best practice" is offered as a template. Furthermore, the report does not contain any Iraqi feedback, or any explanation for the national specificities.

In conclusion, the contents may be useful as background for KRG officials in charge of the same issues (such as procurement, investment, food safety and many others), but there is little connection with the current parameters of the comprehensive report for the following reasons:

- The scope is much narrower as it covers only instruments likely to have an impact on private sector development; it is also focused on Iraqi federal legislation;
- The review does not seem to have found a single text to delete or repeal, which is improbable; in one instance, a legislative review is suggested, but not carried out (Land Law, p. 270);
- There seems to have been no consultation with stakeholders during the review, and perhaps even little participation; and
- The solutions, though presented in the form of draft amendments to existing texts, are not justified by an analysis of the Iraqi (or even KRG) context. It is difficult to imagine the Iraqi Kurdistan Parliament adopting documents of such origin, with no apparent national initiator or champion.

The currently envisaged comprehensive review would emphasize KRG participation and solutions. It would cover a much wider array of instruments and endeavor to clarify and streamline the whole body of primary legislation.

2. The 2012 final report (legislative and institutional assessment)

The final report⁴⁷ displays the same traits as the preliminary report. It provides few details concerning the types of legislation. It develops certain policy issues at length, but does not contain any analysis of specific items of legislation. In short, it is no closer than the 2010 interim report to the objectives of the comprehensive review.

⁴⁷ UNDP, "[Donor report C10-11 Final Narrative Project Report - PSDP-I](#)"

Annex II. Sources used to Research the Content of this Report

This is not a bibliography in the academic sense, but a list of the sites consulted. All were verified on May 31, 2018 to research the definition and costing of the KRG comprehensive review. The full list is provided here because the hyperlinks may not appear on a printed copy of the report.

A note about Wikipedia

It is common to discount Wikipedia as a source of accurate information. However, in some cases, it can be extremely beneficial, especially when verification by other sources is possible. Several pages have been very useful (as reported in the footnotes).

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- Global Justice Project, Resolutions of the Revolutionary Command Council.
<http://gjpi.org/library/primary/rcc-resolutions/>
- Iraqi Government, Law № 188/1959, Personal Status Law and amendments (text of the law consolidated and translated by the American Bar Association).
<http://www.refworld.org/docid/469cdf3011.html>
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