

Letter to the Editors

The Kurdish Self-Rule Constitution in Syria

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1. On 21 July 2013, the Democratic Union Party (PYD, *Partiya Yekîtiya Demokrat*) announced a new Kurdish Constitution of ninety-six articles based on a “social contract” proclaiming Kurdish Autonomous Regions composed of three cantons in a “decentralized federal” Syrian State. Its fundamental basis is the equality of groups and communities. The Rojava is “not a Kurdish State nor a Kurdish administration”, as observed by Evangelos Aretaios in *The Rojava Revolution*¹ (hereinafter, Aretaios), but it is made up of all different ethnicities and religions that have a prominent role in the system of democracy. The people created institutions and organizations composing of obligatory equal quota of women and men of Kurds, Arabs, Christians, Yezidis, Armenians, and Chechens with the vision of a new different multi-ethnic, multi-religious democracy. The fight for survival is in the front lines but the “ultimate fight for democracy is behind the front lines” (Aretaios, 118).

2. Since the beginning of the Syrian uprising, people in Syrian Kurdistan have been fighting not only against Assad’s regime forces but also other extremists. At the same time, they have been trying to establish a democratic government through the implementation of a model of hybrid political system; federalism and the “rejection of the nation-state structure” (ibid., 124). The denial of nation-state is a sign that the Kurds in Syria “don’t want an independent State but an autonomy within a democratic Syria” (ibid., 104). This is a new regime in keeping with the principles advanced in

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1 Evangelos Aretaios, *The Rojava Revolution* (2015): (www.opendemocracy.net/arab-awakening/evangelos-aretaios/rojava-revolution), 138 (last visit: 12 May 2015).

modern international law and also was formed by the relevant people as a whole. The importance of the Rojava experiment is undeniable.

3. On 12 December 2011, the PYD founded the 320-member People's Council of Western (Rojava) Kurdistan (PCWK) (Crisis Group interview, January 2012). It also founded the local people's committees (PLCs), linked under a twenty-four member Central Coordination Committee established in 2007 and divided into functional departments.

4. Following the considerable political upheaval of recent times, on 21 July 2013, the PYD announced a new Kurdish constitution of ninety-six articles,² proclaiming a Kurdish Autonomous Region in a federal, democratic Syrian State; The Rojava, or Syrian "Western Kurdistan" would have its capital in the town of Qamishli. The Kurdish Center for Legal Studies and Consultancies published a draft of the Constitution on 21 December 2013 in Erbil (Hewlêr). A day before the second Geneva Conference on Syria (16 January 2014; Kurdish representatives were not invited), the Kurds declared the establishment of Kurdish cantons: Cezîrê (meaning island pronounced Jazira) in the East, Kobanê in the centre, and Efrînê (Afrin) in the West. The administrative centers of each canton are Qamishli city, Kobane city, and Afrin city, respectively. Unlike the Iraqi Kurdistan region, these three cantons are not geographically contiguous but recently a new canton, Girê Spî (Tel Abyad), has been declared by a local leadership council including representatives of the Arab, Kurdish, Turkmen, and Armenian communities. In June 2015, the town of Girê Spî was recaptured from ISIS by the YPG militia with help from U.S.-led air strikes, and on 21 October 2015 declared officially as an entirely new canton. Perhaps ominously, this was a "move likely to deepen Turkish concerns about the Kurds' expanding role just over the border".³ The new canton Girê Spî will connect Kobanê and Cezîrê, and thus strengthen and solidify the Kurdish position alongside the Turkish border. The Kurdish cantons work almost like the Swiss cantons.⁴

5. The Constitution is the architecture of equality because of its foundation in principles that are enduring. It is exemplary of the dramatic changes in the type of democracy in the Middle East. Most think that it is more like the Federal Constitution of the Swiss Confederation as Executive/Legislative federalism but there are some differences that should be noted.

2 With Inspiration from Iraq, Syrian Kurds Publish a Draft Constitution: (www.gulfanalysis.wordpress.com/2013/12/26/with-inspiration-from-iraq-syrian-kurds-publish-a-draft-constitution/); English version of Constitution of the Rojava Cantons (www.civiroglu.net/the-constitution-of-the-rojava-cantons).

3 Town joins Kurdish-led order in Syria, widening sway at Turkish border: www.reuters.com/article/2015/10/21/us-mideast-crisis-syria-kurds-idUSKCN0SF1BD20151021.

4 Who Controls Which Areas in Syria, The New York Time, The Carter Center ; Syrian Observatory for Human Rights: UPDATED Oct. 1, 2015 www.nytimes.com/interactive/2015/09/30/world/middleeast/syria-control-map-isis-rebels-airstrikes.html.

6. The preamble sums up what the Constitution wants to accomplish. The preamble uses the “We, the people”, first employed in the Constitution of United States. In fact, “the people” empowers the national government. It shows a revolutionary way to announce the Kurds’ new form of ruling, formed by all ethnicities and minorities. These opening words specifically acknowledge the rights of all people living in the four cantons: not only Kurds, but “Arabs, Syriacs, Arameans, Turkmens, and Chechens”. The Charter does not name the Kurds as the leading group or their religion as official. The same preamble declares the Kurdish Autonomous Regions to be grounded “in the spirit of reconciliation, pluralism, and democratic participation” so that all may express themselves freely in public life. In building a society free from authoritarianism, militarism, centralism, and the intervention of religious authority in public affairs, the Charter recognizes Syria’s territorial integrity and aspires “to maintain domestic and international peace”. Using these clauses, the Constitution asks to form a perfect union of the people in the cantons composing many ethnicities and religions and thus secures the liberties of them. For achieving this end, the governing councils and public institutions emanate their authority from “popular vote” (Article 2) by the people of the Autonomous Regions. According to Article 2b, “the people” constitute the sole source of legitimacy, and all governing and public institutions are founded on “democratic principles essential to a free society”.

7. The Constitution is called the Charter of Social Contract. Article 1 terms it a “contract between the peoples of the Autonomous Regions”. Intent on leaving behind the old beliefs and ideas, and replacing them with a “social contract”, the preamble carries “all strands of society” closer to perfection.

8. The Constitution makes the cantons the replacements of the centralization imposed by the Ba’ath party. Decisions are transferred to the lowest level. Each canton, indeed, has its own constitution, laws, government, and parliament. Each has a great deal of administrative autonomy over education, social services, and police functions.

9. The principle of Cantonal Autonomy is set forth in Articles 8 and 11. The broad autonomy and the equality of the cantons, as well as their involvement in the decision-making of the Federal Authority constitute the most important components of the Kurdish Federal system. Thus, all State tasks allocate to the cantonal sovereignty. Pursuing the rights and approving laws necessitate a majority in a cantonal vote insofar as it “does not contravene the articles of the Charter” (Article 8). The objective of this article to further strengthen cantonal independence is however limited by the Charter.

10. Article 6 extends equality, liberty, democracy, and fundamental human rights to all—a principle seen in most constitutions in the Middle East, but one not nearly so widespread in practice (one needs only look at neighbouring Turkey and Iraq). Gender equality is a core value structuring the content of the Constitution.

11. Article 9, arguable the core of the Constitution, secures self-governance to all people in the Kurdish regions, and makes Kurdish, Arabic, and Syriac the languages of government and education. In contrast to the Syrian Constitution, the Arabic language is no longer the only official language of the Autonomous Regions and the Kurds and other ethnicities that have long been discarded are recognized through the new Constitution.

12. Article 12 specifies that the Kurdish Autonomous Regions will only be as one in a future decentralized federal Syria. Such a move would likely precipitate the full federalization of Syria. The question here is how does the Constitution predict the outcome of the 2011 uprising? May it be acceptable to Sunni political forces and to minorities such as Alawites and Druze? Do the other ethnicities tend to favor a federal system? Some minorities would prefer to remain united within a secular republican Syria and some may rather form Swiss-style. The future of Syria will answer these ambiguities. Recently, other commentators talk about Syria as “a second Yugoslavia” breaking down. It is hard to predict whether a robust Kurdish Autonomy and power-sharing at the federal level will be represented at the central level. The reconfiguration of Syria is highly unpredictable and potentially volatile.

13. The 2013 Constitution sets out a list of rights that were not included in the Syrian constitutional text. Unprecedented articles guarantee the rights of youth (Article 17) to public participation. Within the Middle East, no development issue is perhaps more pressing than that of finding opportunities for inclusion of the region’s large youth population. The Constitution has given aspirations for inclusion of youth in “political, social, economic and cultural life” in their communities. Continued political instability and economic hardship facing youths in the Middle East cause them to join Kurdish armed groups against ISIS and other terrorist rebels. Unlike neighboring States, the Kurds want their youths to engage in effective policymaking and program development through “the effective realization of equality of women and men” (Article 27, 28) and youth-serving organizations.

14. Article 24 guarantees freedom of opinion and expression, but is restricted as long as it does not have regard “to the security of the Autonomous Regions, public safety and order, the integrity of the individual”. Though these limitations could be interpreted in a fairly wide-reaching manner, it shows the PYD’s concern on the penetration of daily-based attacks on the Rojava from ISIS, Al-Qaeda, regime forces and Al-Nusra Front while being isolated by neighbors.

15. Article 27 establishes the fundamental right of women in the new political system, including a 40 per cent quota in all offices, and, remarkably, in a womens’ armed service, the Yekîneyên Parastina Jin (YPJ, Women’s Protection Unit). The Rojava has imposed a “40% quota of women, with the remaining 40% being for males and the remaining 20% being for whichever receives the higher number of votes” (Aretaios, 60) in every institution and organization even parliament and government and in many cases there is “an obligation to have women as vice-presidents or

co-presidents” (ibid.). The YPJ is the army of women in the autonomous administration of the Rojava, fighting side by side with men in the YPG (Yekîneyên Parastina Gel, People’s Protection Units). Both forces are under command of PYD fighting against barbaric indoctrination of ISIS; “the woman as an equal partner of the man, the woman as a human being” (ibid., 30). This attention to women’s rights makes the Kurdish Autonomous Regions stand out in the Middle East, where many countries guarantee their few inviolable rights to them, where some Arab countries do not allow women to vote, and where Saudi Arabia does not permit them even to drive. An effort has been made to change the status of women in a systematic way for the first time in the Middle East. The self-rule administration efforts in the Rojava to change the people’s old attitudes and traditions toward women and to give them a new position in society and the political decision making process. The equality of men and women in the eyes of the law is a move towards the “elimination of gender discrimination” (Article 28) breaking the previous Islamic tradition according to which the testimony of a man in front of a court was equal to the testimony of two women.

16. The recognition of the international conventions on human rights forms part of Article 20’s formal recognition of international treaties and laws; the “fundamental rights and freedoms set out in international human rights treaties, conventions, and declarations”, further specified in Article 21 to 44: “the Universal Declaration of Human Rights [1948], the International Covenant on Civil and Political Rights [1966], the International Covenant on Economic, Social and Cultural Rights [1966], and other internationally recognized human rights conventions”. One of the most important questions is how to guarantee the rights proclaimed above. Observing these rights means the breaking of numerous old beliefs. For example, the right to health care, social welfare, modern education, work, access to public service, and sustainable development all seem to depend more on “an individual’s means and ability to achieve them rather than on outcomes that will be at the expense of the public institutions and local authorities”.⁵

17. Notably, the Constitution does not declare any official religion in the cantons, a striking principle in this highly religious region, though practicing everyone’s religion alone or in community with others and freedom of worship have been guaranteed in Article 31. The Constitution gives to minorities a “participatory role” unprecedented in the Middle East. The only religion mentioned is the Yazidi religion, which is recognized and explicitly protected in Article 32(c). Also called Yezidi, Daasin, or Ezidi, the Yazidi are a Kurdish-speaking ethno-religious community based in Northern Iraq (“South of Kurdistan”) who practice a syncretic religion. Hunted by ISIS on 3

5 Rachid Touhtou, *Gender Codification in the Family Code and the Constitution in Morocco: Social Movement and Feminist Approaches* (2014) (a Collective book: promoting women’s rights & gender equality in the Middle East & North Africa. FEPS and SOLIDAR Publications).

August 2014, thousands of them have fled to the Iraq's Mount Sinjar where hundreds of Yazidi died by dehydration. Almost every country in the Middle East has declared a religion as official. It is clear that the Kurds do not want to encounter the same experiences in other neighboring States denying minorities' rights and freedom of religion and conscience. The history of the Kurds has shown that wherever they in the majority, there is great support of minorities as in north of Iraq under the ruling of the Kurdistan Regional Government (KRG).

18. Article 29 prohibits the abuse or exploitation of children, who will not be subjected to "child labor, torture or cruel, inhuman, or degrading treatment or punishment, and shall not be married before attaining the age of majority". In the Middle East, many children are engaged in child labor and are more vulnerable to sexual exploitation through traditional marriages and also have been forced into domestic service. Even children in Iraq and Yemen continue to be used by armed groups as child soldiers. Despite the region's economic and political instability, the Kurdish self-rule adopted the new Constitution to strengthen legal and policy frameworks to reduce the forms of child labor and cruel exploitation and to enhance protections for children.

19. The other rights and freedoms are secured through Articles 32 to 42 including the right of peaceful assembly, right to vote, right to establish and to join any political party, etc.

20. The Kurdish system of government refers to a number of important political events since 2011. Following the changes of the last few years, some of which were drastic, the Kurdish democracy can be seen as an example of a federal democracy as depicted by the Swiss Constitution though not to the same extent. The Charter looks very much like the first Swiss Constitution. Möckli argues that Switzerland still is an extreme and "the perfect consensus-based model".⁶

Conclusion

21. News of the struggles of the Syrian Kurds has reached many houses in the world, as TV channels have covered the resistance of the Kurds against Daesh ("Islamic State of Iraq and Sham") in Kobanê. In contemporary Syria, the attempt to establish a legal system based on equality, secularism, and human rights is quite remarkable. Many flaws may be forgiven, considering the difficulties facing people in wartime. The Rojava's Constitution is a milestone in the history of the region. It is certain that it has evolved from the past experience of all the States in the region that have failed in satisfying their diverse population. The transformative "social contract" it offers would establish the most democratic constitution any people in the Middle East

6 Silvano Möckli, *Politische Stabilität als Standortvorteil* (2007), Konkordanz umfasst mehr als nur die Regierungszusammensetzung, *Neue Zürcher Zeitung* of December 6, 2007, at 17.

have ever had; protecting the liberty and rights of the people and safeguarding the independence and security of the cantons. It explains the revolutionary steps taken in favor of the people, especially women. The administration has adopted a law that forbids men from marrying more than one woman, a complete revolution for the traditional societies in the region.

22. The peaceful coexistence of various ethnicities and religions and their different ways of life under common organizations and the ability to peacefully manage and negotiate conflicts are other significant features under the Constitution.

23. Still, the Rojava is in the process of construction, and has been ignored by the Western media and the West in general. Perhaps not surprisingly, the Constitution and the local autonomy it promises have been recognized by neither Syria nor any other State, and the cantons have been recognized only by the parliament of the Kurdistan Regional Government (KRG).⁷ To strengthen cooperation with Moscow in fighting the ISIS", the PYD is about to open a diplomatic mission in Russia.⁸ But democratic autonomy is a flexible, multi-cultural, and anti-monopolistic system, offering the best form of self-administration for countries with multi-ethnic, multi-lingual, and multi-religious populations. This system to a large extent substitutes local administration for central rule. In a Middle East where all States have ruled multi-ethnic societies, the Rojava's Constitution could offer a realistic and democratic alternative for Middle Eastern populations.

24. The PYD, along with other parties, are now in effective control over Syria's Kurdish areas. Though with variations in goals and tactics, they all seek autonomy within a democratic and federal Syria guaranteeing minority rights.

25. The YPG and YPJ have lost, controlled, retaken, and defended Kobanê, territories and villages around it against ISIS for several months. Operating from bases inside Turkey, their de facto regional government (KRG in Iraq) has dispatched the *peshmerga* with heavy weaponry to help YPG. There are also many foreign veterans from Switzerland, USA, UK and other western countries fighting alongside the Kurds. Yet this is only a start, and only when the future of the Syrian regime becomes clearer, will the fate of the Kurds' plans make itself apparent through a radical break with the past and a version of direct democracy; "a third way between Islam and secular authoritarianism" (Aretaios, 101); on its own ground-breaking effort towards democracy between tradition and modernity, between war and peace. The Rojava's democratic credentials have not been proved; up to now, no general elections have been held in the Rojava, although the first cantonal election was held on 13 March 2015 in Cizîrê Canton.

7 Iraqi Kurdish government recognizes Rojava cantons (www.hurriyetaidailynews.com/iraqi-kurdish-government-recognizes-rojava-cantons.aspx?pageID=238&nID=73096&NewsCatID=352).

8 Syrian Kurdish group may open mission in Russia: www.reuters.com/article/2015/10/20/us-mideast-crisis-syria-russia-kurds-idUSKCN0SE0KC20151020.