

Demographic Change in the Kurdistan Region of Iraq: A Constitutional Analysis of the Balance between Freedom of Ownership and the Protection of Population Identity

Dr. Sana Kamal



Sulaymaniyah, Ashty,
Opposite to Azadi Park



www.visionfoundationiq.org



+964 772 330 0005

Introduction

Since the fall of the previous regime in 2003, a phenomenon has emerged in Iraq that initially appeared to be a transient social or economic issue but which quickly transformed into one of the most controversial topics on both legal and political levels. This phenomenon is none other than the demographic shift taking place in the Kurdistan Region of Iraq, where increasing numbers of citizens from various governorates have flowed into the region, bringing with them their dreams of stability, security, and job opportunities that they lacked in their cities and villages due to years of conflict and economic decline.

However, this population influx, despite its legitimate humanitarian nature, has raised significant legal questions that challenge the fundamental principles of the Iraqi constitutional system. On the one hand, the constitution guarantees every Iraqi the right to own property anywhere in the country, a right that reflects the principle of equality and equal citizenship upon which the new Iraqi state was founded. On the other hand, the constitution imposes a clear restriction on this right when it becomes a tool for effecting demographic change that affects the historical population identity of a particular region.

This tension between individual rights and collective goals is what makes Article 23 of the 2005 Iraqi Constitution one of the most intriguing constitutional texts from a jurisprudential perspective and one of the most sensitive from an applied standpoint. How can the guarantee of citizens' freedom of movement and ownership be reconciled with the protection of the demographic characteristics of regions and governorates without slipping into discriminatory practices that contradict the spirit of the constitution? This is the question we will attempt to answer in this analysis.

First: Demographic Change, Legal Implications

Before moving to the details of the constitutional text, it is necessary to look at the concept itself around which the issue revolves. In political and media discourse, the term “demographic change” is often used loosely and, in the minds of many, reduced to a mere numerical increase of one population group at the expense of another. But the legal reality is entirely unique and far more complex.

From a strict legal perspective, demographic change is not simply the migration of people from one place to another. But it is a complex phenomenon. There are some elements that have to be present for an act to be considered illegal by the law. One is the existence of organized and directed planning, or policy. This implies that population movement is not spontaneous or individual, but rather subject to a collective will seeking to achieve a certain goal. The second is that there is a powerful authority behind this planning, be it a state, a government, or even an unofficial entity with the tools of influence and coercion. The third element is the declared will to change the national, religious, or cultural identity of a given territory; such a desire is the hidden motive behind either enabling or preventing population movement. The last and fourth element is the use of unnatural means to achieve this goal. For instance, such actions could involve the forced displacement of the original inhabitants, the targeted settlement of new groups, or the denial of the right of return.

It is these four elements that render demographic change a prohibited act, not only under the Iraqi Constitution but also under international humanitarian law, the Geneva Conventions, and the Rome Statute of the International Criminal Court. International law provides for free movement of individuals and prohibits the forcible transfer of populations or the replacement of one group with another in specific areas, particularly in the context of armed conflict or occupation.

This situation explains why it is important for a family to move to Erbil from Basra or Baghdad and also the importance of a careful reading of Article 23 of the 2005 Iraqi Constitution. Article 23 of the 2005 Iraqi Constitution needs to be read carefully.

Second: A careful reading of Article (23) of the 2005 Iraqi Constitution

When we read Article 23 of the Iraqi Constitution, we find ourselves before a legislative text that embodies a jurisprudential brilliance worthy of contemplation. This article was meticulously drafted to reconcile two seemingly contradictory principles, but the constitutional formulation skillfully harmonized them.

The first paragraph of the article enshrines the right of any Iraqi to own property anywhere in Iraq. This is a reflection of the constitutional philosophy based on equal citizenship and denial of any form of geographical or ethnic discrimination in fundamental rights. Paragraph 3, Clause B, provides a significant limitation; ownership is prohibited if it aims to bring about demographic change.

What distinguishes this wording is that it does not prohibit ownership itself, but rather the illicit purpose that may lie behind it. In other words, the constitutional legislator shifted the analysis from the physical act to the intention and purpose, a remarkable shift in constitutional jurisprudence, as it establishes a qualitative rather than a quantitative standard for evaluating the legitimacy of ownership. The problem is not that someone bought a house in a Kurdish area, but that their purchase of that house is part of a bigger plan to change the area's demographic composition.

This point in particular is what makes the article difficult to implement in practice, as proving intent is one of the most challenging aspects of legal proceedings. We will discuss this dilemma in detail later on. If an individual freely chooses to move to Sulaymaniyah for a better life, it is a permissible demographic change.

Third: Supreme Federal Court Decision on Demographic Change in Iraq

The importance of Article (23) of the Iraqi Constitution is more evident when looking at the court rulings related to it, especially the ruling of the Federal Supreme Court, No. (65/Federal/2013), which followed the request of the Council of Representatives to clarify Article (23/Third/B), which stipulated that "Ownership for the purpose of demographic change is prohibited. This decision, although issued years ago, remains the primary reference in this matter, as it states, "It is prohibited for individuals or groups to

own or possess real estate of all types and categories anywhere in Iraq, whether at the village, district, sub-district, or governorate level, and by any means of acquisition or ownership if the aim or purpose behind such acquisition or ownership is to alter the demographic composition and its national, ethnic, religious, or sectarian characteristics.

This decision set down three clear rules:

First: The prohibition stipulated in Article 23 is not limited to one region over another; rather, it is a comprehensive prohibition extending to all parts of Iraq. This means the Kurdistan Region follows this rule, just as Nineveh and Kirkuk governorates do.

Second: Constitutional protection is not limited to the Kurdish nationality alone but includes all Iraqi components without discrimination. The constitution protects the demographic characteristics of each region, whether it has an Arab, Kurdish, Turkmen, Assyrian, or Yazidi majority. This is an important principle that prevents any political exploitation of the text to serve narrow agendas.

Third: The criterion for the prohibition is intent, coupled with demographic impact. That is, it is not sufficient for the population of a particular component in a region to increase. Even to describe it as a prohibited demographic change, it must be proven that this increase resulted from a deliberate plan or policy aimed at altering the area's demographic identity.

These three principles, despite their theoretical clarity, present significant practical challenges, as we shall see.

Fourth: The Dilemma of Proving Intent and How to Overcome It

If intent is the fundamental criterion for prohibition, the pressing question arises: how can this intent be proven in the matter of demographic change? Intent is behind action and is difficult to observe directly or prove with clear material evidence, especially in the case of collective policies and behaviors rather than individual ones.

The dilemma has produced more flexible legal standards that consider effects as well as intent, rather than intent alone. But where there is widespread and sustained purchasing that results in a substantial and genuine change in the demographic character of an area, then there may be a case for regulatory action even in the absence of conclusive proof of an organized political plot.

This approach is not to accuse individuals of malicious faith, but the state, responsible for maintaining social stability, can intervene to stop such actions from continuing. Such effects could cause serious social and political imbalances. This approach follows the constitutional principle of prevention, which gives priority to proactive protection over reactive measures.

We find support for this approach in other constitutional articles, such as article (7), which prohibits entities and approaches that adopt racism and discrimination; article (14), which, like article (7), prohibits entities and approaches that adopt racism and discrimination; article (14), which guarantees equality among Iraqis; and the articles that guarantee freedom of movement and residence. These articles collectively form a network of principles that allow for a balanced reading of Article 23 of the Iraqi Constitution regarding any means of acquisition or ownership, as long as the aim or purpose of such acquisition or ownership is not to change the demographic composition or its national, ethnic, religious, or sectarian characteristics.

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Fifth: Distinguishing Between Two Types of Demographic Change

To move beyond the ambiguity surrounding the discussion of this topic, it is useful to distinguish between two different patterns of demographic change, each with its characteristics and legal provisions.

- The first pattern: Direct forced change, which Iraq experienced in previous decades through the policies of displacement and population replacement implemented by previous regimes. This pattern is characterized by direct government intervention, the use of state apparatus, and the adoption of authoritarian decisions aimed at altering the demographic composition of entire regions. Both a constitutional and humanitarian perspective undoubtedly prohibits this pattern. Internationally, there is no disagreement among jurists regarding its illegitimacy.
- The second pattern involves gradual, cumulative change. This pattern may occur as a result of the accumulation of large-scale population movements over many years, without a direct political decision or clear government plan behind it. This pattern cannot be described as illegitimate in itself, as it is an inevitable result of natural economic, security, and social factors. However, at the same time, if it continues and reaches a certain level, it may compel the state to adopt preventative regulatory policies aimed at controlling the pace, not preventing the movement.

Completely rejecting the demographic effects of accumulated internal migration is scientifically inaccurate, just as exaggerating these effects is unobjective. The optimal solution lies in balancing the right of individuals to move and own property with the right of communities to preserve their demographic identity.

Sixth: The Kurdistan Region's Powers in Regulating Property Ownership

One of the most controversial questions in this file is the extent of the regulatory authority that the Kurdistan Region possesses in the field of regulating property ownership. The answer is clearly that the region possesses broad regulatory powers, but within certain limits. Clear constitutionality.

The powers of the region are not to be understood as an authority to restrict or diminish constitutional rights. Instead, they are regulatory powers derived from the constitutional prerogatives granted to the region to manage its internal affairs, especially in the areas of local administration, urban planning, housing, land use, regional development, and regulation of the work of real estate registration offices in compliance with the applicable laws. There is a basic distinction between regulating the exercise of a right and derogating from the substance of that right. The former is the foundation of administrative and legislative work; the latter runs counter to constitutional guarantees.

Based on these principles, the Kurdistan Region, within the limits of its constitutional powers, can adopt a range of regulatory tools that do not infringe upon the fundamental right to property ownership but rather regulate its exercise in a way that serves the public interest. These tools include the development of rules for real estate registration; the adoption of modern systems for documenting property transfers; the obligation of relevant authorities to conduct demographic impact assessments of major housing projects; the regulation of land use according to urban plans; the strengthening of oversight of the sources of funds used in real estate transactions; and the establishment of accurate databases to monitor population shifts. This information can also be used to develop public policies.

The region is also able to generate objective criteria within its regulatory framework to avoid disproportionate concentration of population in certain areas through urban and regional planning tools that do not consider the national or religious affiliations of its citizens. The planning must be based on planning, effective governance, and public interest. The more they meet the public interest, the population density, the infrastructure, and the sustainable development needs, the more effective they are. Planning is more effective if it corresponds to the public interest, the population density, the infrastructure, and the needs of sustainable development.

On the other hand, the region lacks the legal authority to issue legislation or directives that deprive any group of Iraqi citizens of their right to own property based on nationality, religion, or region of residence, as such measures are incompatible with the provisions of Articles 14, 23, and 44 of the Constitution, as well as the principles of equality and the rule of law. Moreover, any regulation that imposes an absolute or permanent ban on property ownership, without an explicit constitutional basis, is subject to challenge before the Federal Supreme Court.

The real problem is not to discover ways to restrict rights but to identify legal and regulatory tools to balance the constitutional right to own property and the duty of public authorities to protect the demographic character of the region. This balancing act may result in exceptional restrictions on constitutional rights, and adopting discriminatory policies will not effectively create exceptional restrictions on constitutional rights or address the challenges associated with demographic shifts. Only through neutral legislation and administrative procedures based on the principles of necessity, proportionality, and non-discrimination and subject to judicial oversight. This approach is in line with the constitution and safeguards social and demographic stability.

It may be argued that the protection of demographic character is not an exceptional prerogative that justifies restricting rights but a regulatory function exercised by public authorities within the limits of the constitution. The more these procedures are based on planning, good governance, and the public interest, the more they will align with the constitution. However, if they are based on purely nationalistic or political criteria, they lack constitutional legitimacy. Thus, the success of the Kurdistan Region in solving this problem depends not on how much it restricts but rather on how much it can erect a balanced legal framework that preserves its demographic identity while guaranteeing the constitutional rights of all Iraqi citizens. This approach is the true practice of the principles of the rule of law and effective governance.

Seventh. Experiences of demographic change abroad

In the practices of comparative constitutionalism, countries and regions with diverse geographical or demographic features have employed legal tools to regulate certain aspects of property ownership or residency. These mechanisms aim to maintain their cultural, linguistic, or demographic identity without denying the principle of citizenship or restricting constitutional rights. The most representative examples are the Åland region of Finland, which has a special legal system to protect its linguistic and demographic identity; the South Tyrol region in Italy, which adopted a constitutional and

administrative system to protect the national and linguistic balance among its constituent groups; and Quebec in Canada, which adopted legislative policies to protect its cultural and linguistic identity within the framework of the federal state. These instances: These examples serve as lessons rather than models for the Kurdistan Region, given the differences in constitutional and legal frameworks. The Kurdistan Region does not have similar examples due to the differences in its constitutional and legal framework. Instead, the objective is to learn from their legislative philosophy that seeks to balance the protection of demographic characteristics while upholding constitutional rights and freedoms in accordance with the provisions of the 2005 Constitution of the Republic of Iraq and the principles of equality, non-discrimination, and the rule of law.

In the context of these comparative experiences, the Kurdistan Region can learn from them not by adopting or copying them in the exact way but by taking inspiration from their legislative philosophy and regulatory mechanisms in a manner consistent with the provisions of the Constitution of the Republic of Iraq. This method includes the use of neutral legal and administrative tools, including the development of an integrated system for the monitoring of demographic changes, the conduct of demographic impact assessment studies for large housing projects, the promotion of urban planning policies for a balanced population distribution, and the establishment of objective and transparent regulations for specific procedures for property ownership and registration in areas with specific demographic characteristics. Such regulations shall take account of the public interest and sustainable development and not ethnic, religious, or sectarian grounds. In addition, the region can strengthen the oversight of real estate transactions, combat money laundering, and build a modern population database to support public policy decisions based on scientific evidence. Such regulations would constitute a balanced "constitutional equation" for the protection of the demographic distinctiveness of the region, which would take into account the principle of equality and the constitutional rights of citizens to own property and to freedom of movement and would strengthen social stability and demographic security under the rule of law.

Eighth. Demographic Security Concept in the Context of the Iraqi State and Society

This analysis implies that the concept of demographic security is relevant to Iraq's constitutional jurisprudence. This analysis suggests incorporating the concept of demographic security into Iraq's constitutional jurisprudence. in the constitutional jurisprudence of Iraq. The analysis shows the need to include the notion of demographic security in the Iraqi constitutional jurisprudence. This concept means the ability of a state or region to preserve the demographic balance and the historical and cultural identity of its territories through legitimate legal and administrative measures without violating the constitutional rights and freedoms of its citizens. Demographic security does not mean that internal migration should be banned or that citizens' right to migrate and own property should be curtailed. Instead, it is about controlling population flows in such a way as to not, in the long run, endanger social stability or the demographic balance safeguarded by the Constitution. The role of public authorities here is preventive and regulatory, based on continuous monitoring of demographic changes, balanced urban planning, monitoring of patterns of population growth, and preparation of periodic studies to assess the demographic impact of major investment and housing projects. This approach allows for early intervention when indicators emerge that may affect the population structure of areas with specific national, religious, or cultural characteristics.

The concept is not necessary. The concept of demographic security is not only limited to the population dimension but also plays an important role in national security in the broadest sense. The demographic balance brings about political and social stability, lessens conflicts over identity and belonging, and contributes to civil peace in societies that are multi-ethnic and multi-religious, including Iraq. Thus, the demographic security should be ensured not by the discriminatory restrictions of the citizens but by the neutral legislative and administrative policies based on the principles of necessity, proportionality, and equality, implemented within the framework of the judicial supervision and respect for constitutional guarantees. Thus, demographic security is an addition to national security and a mechanism for ensuring constitutional stability, not a way of limiting the rights and freedoms guaranteed by the constitution.

Ninth: A Practical Test to Assess Any Regulatory Legislation

Based on the analysis of Article 23 (Third/B) of the Constitution of the Republic of Iraq and the Federal Supreme Court Decision No. 65 (Federal/2013), a practical legal test can be suggested to assess the extent of compliance of any law or administrative procedure issued by the federal authorities or the authorities of the Kurdistan Region with the provisions of the Constitution in relation to the regulation of ownership or residency. This test is based on a set of integrated criteria, which means that no procedure is considered from a single perspective, but rather a matter of assessing the availability of all of the following elements:

The first criterion is the existence of a legitimate public interest.

The law or decision shall have a legitimate constitutional aim, such as protection of the population's privacy, the balance of cities, the enhancement of demographic security, the fight against money laundering, the safeguarding of public order, etc., and shall not be aimed at restricting a category of citizens or limiting their constitutional rights. Any restrictions on rights and freedoms must be based on a real and verifiable public interest and not on assumptions or political calculations.

Second: The criterion of necessity

The criterion is to show there is a real need for legislative or administrative intervention. The measure should not be a response to theoretical concerns or abstract future possibilities but should be based on official data, statistics, and studies that show demographic impacts that need to be regulated. The fundamental principle is freedom in the exercise of rights. Restriction is only legitimate when imposed by a real need.

Third: The criterion of proportionality

The measure must be proportionate to its goal, even if it is necessary and in the public interest. General or absolute prohibition should be imposed only when less restrictive means cannot achieve the desired outcome. The principle of proportionality is known in comparative constitutional jurisprudence and requires a reasonable relationship between the measure taken and the objective sought to be achieved.

Fourth: The criterion of non-discrimination

Legal regulations must be general and abstract and are to be applied to all citizens without discrimination on the basis of ethnicity, religion, sect, or social affiliation, as per Article 14 of the Constitution of the Republic of Iraq, which stipulates equality before the law. Any regulation, therefore, based on the national or religious identity of a citizen and not on objective criteria is subject to a finding of unconstitutionality.

Fifth: The criterion requires reliance on evidence and data

Public policies should be based on accurate official information on population movements, ownership rates, population density, and urban expansion patterns and not impressions or political rhetoric. Effective laws are based on evidence and are subject to periodic review and evaluation whenever the facts change.

Sixth: The criterion of judicial oversight

In the regulation of ownership or residency, all legislation and decisions require judicial oversight, particularly by the Federal Supreme Court, to ensure their conformity with the Constitution and to prevent administrative regulations from becoming a tool for the curtailment of constitutional rights and freedoms.

A law's legitimacy depends on how well it meets these criteria, not on its rigidity or flexibility. The closer a regulation is to the provisions of the Constitution, the more it is grounded in legitimate public interest, necessity, and proportionality regarding the principle of equality, supported by scientific data, and subject to judicial supervision. On the other hand, the absence of any of these elements increases the likelihood of conflict with constitutional principles and makes it vulnerable to constitutional challenge.

Tenth: Effective Governance is the Optimal Solution

Addressing the challenges associated with demographic shifts cannot be achieved by imposing exceptional restrictions on constitutional rights or adopting discriminatory policies. Rather, it requires establishing the principles of good governance as the constitutional and administrative framework capable of balancing the protection of demographic characteristics with the preservation of public rights and freedoms. Effective governance is not limited to the sound management of resources and institutions; it extends to the effective management of population shifts, ensuring transparency, the rule of law, accountability, participation, and decision-making based on accurate data and statistics, not on fears or political considerations. In this context, the responsibility of public authorities is not to restrict freedom of movement or ownership, but rather to build an institutional framework capable of managing these phenomena legally and scientifically. This begins with establishing accurate national databases to monitor population movement and internal migration, linking them to the civil registry and the land registry. This allows for identifying the nature and trends of demographic shifts and provides decision-makers with realistic indicators to help them formulate public policies based on scientific principles.

Effective governance also requires integrating demographic impact assessments into urban and investment planning procedures. Major housing projects and new urban complexes should be subject to preliminary studies that demonstrate their potential effects on the demographic composition of the areas, similar to studies... Environmental impact assessments are common in much comparative legislation. This measure provides a preventative tool for addressing demographic changes before they escalate into legal or social problems.

Governance also necessitates enhancing transparency in the real estate market by developing real estate registration systems, tightening controls on the sources of funds used in property purchases, and activating mechanisms to combat money laundering and the financing of illicit activities. This prevents the exploitation of the real estate market for non-economic purposes or harm to the economic and social stability of the region.

Another requirement for effective governance is adopting balanced urban planning that prevents excessive population concentration in specific areas and directs urban development toward various governorates and districts. This ensures a fair distribution of services, infrastructure, and investment opportunities. Urban planning is not merely a tool for regulating land use; it is a constitutional and administrative means of maintaining social and demographic balance and mitigating the pressures that may arise from intensive internal migration. This framework cannot be complete without effective institutional coordination between the federal government and the Kurdistan Regional Government, particularly in the areas of exchanging population data, regional planning, and managing internal migration and housing issues. This coordination must align with the principle of cooperation between federal and regional authorities enshrined in the constitution and prevent conflicting or duplicated public policies.

Furthermore, effective governance requires strengthening judicial and administrative oversight of decisions related to property ownership and residency regulations. This ensures that such decisions adhere to the principles of legality, necessity, proportionality, and non-discrimination, thereby safeguarding citizens' constitutional rights while simultaneously serving the public interest and preserving the demographic character of areas with sensitive demographic profiles.

Thus, effective governance represents a constitutional alternative to exceptional solutions. It focuses on managing population phenomena rather than preventing them, regulating rights rather than confiscating them, and preventing demographic imbalances before they occur, rather than addressing them after they have worsened. Therefore, building strong and transparent institutions, adopting evidence-based policies, and upholding the rule of law are the true guarantees for achieving a balance between citizens' freedom of movement and ownership and protecting the demographic distinctiveness of the Kurdistan Region. This will enhance constitutional and social stability and preserve the unity of the state while respecting the diversity that characterizes Iraq.

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Conclusions and Recommendations: It is clear from this analysis that

- 1. The 23rd Article of the Iraqi Constitution does not establish a conflict between the right of property and the protection of demographic distinctiveness but rather establishes a delicate constitutional balance between the right and the objective.**
- 2. Legitimate internal migration cannot be equated with the forced Arabization policies of the past, as the former is based on free will while the latter was based on state coercion. Conversely, ignoring the cumulative effects of population movement is not a responsible solution; prevention is better than cure.**

4. We recommend the development of a legislative framework to regulate real estate ownership in the Kurdistan Region, consistent with the provisions of the Constitution of the Republic of Iraq, and that achieves a balance between the right of Iraqi citizens to own property and the protection of the demographic character of areas with a unique population, without any discrimination based on ethnicity, religion, or sect.
5. We propose to develop a national system for monitoring demographic changes using precise and current databases. It should also be able to track population movement, internal migration, and urban sprawl so that decisionmakers can implement data-driven measures rather than policies based on estimates or unsupported fears.
6. We suggest that relevant authorities be required to carry out a Demographic Impact Assessment (DIA) before approving major housing projects or urban development plans that could affect the demographic balance of regions. This should be comparable to the environmental impact studies carried out in many similar legal systems.
7. We propose to improve the transparency and oversight of the real estate market through the development of real estate registration systems, the fight against money laundering, and the verification of the sources of funds used for the purchase of real estate. This will protect the national economy and the integrity of the real estate market. We also suggest introducing objective legal controls to regulate property ownership in demographically sensitive areas. As the principle of equality is enshrined in the Constitution, these controls should be based on urban planning considerations and the public interest and not on citizens' national or religious affiliations.
8. We recommend the creation of an institutional mechanism for coordination between the federal government and the Kurdistan Regional Government in the area of internal migration and population planning. It must guarantee the unification of the public policies, the respect of the constitutional jurisdictions of each party, and the elaboration of a long-term national strategy for the management of the demography. This strategy should be jointly prepared by the federal government and the Kurdistan Regional Government and should define the general principles for managing population shifts,

thereby achieving constitutional and social stability and preserving Iraq's distinctive diversity.

9. We recommend the setting up of a national observatory of population and demographic change, composed of experts in the field. The Department of Law, Demography, Statistics, and Urban Planning shall issue periodic reports and make recommendations to the legislative and executive powers on any demographic changes that have legal or strategic implications. Before any regulatory action, we must establish objective criteria for assessing demographic risks. Objective criteria for assessing demographic risks have to be laid down. Decisions have to be based on scientifically, statistically, and legally verifiable indicators and not on political considerations or general impressions.



Vision Foundation
for Strategic Studies

✉ info@vfssiq.org

☎ +964 772 330 0005

🌐 www.visionfoundationiq.org

📍 Sulaymaniyah, Ashty, Opposite to Azadi Park

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