
The Impact of Formal Military Militias on the Democratic Transition Process (Iraq in Post-2014)

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Abstract: In this research, we identify and deepen the impact and influence of the non-state armed groups on the democratization process in deep-divided societies such as the Iraqi society. At the beginning of the paper, we look at the Kurdish force (Peshmerga) and Shia armed groups (Popular Mobilization Forces – PMF) and assess their legal basis from the Iraqi Post-2003 constitution. Then the role these groups will play in strengthening and supporting a democratic transition also will be discussed in detail. The main question in our paper is to determine the role these mentioned armed groups will play in Post-2014 Iraq, how they will contribute to preserving political stability, and also which position they will take in the democratic transition process. Shia armed groups limited to different levels of roles have been considered, and their influences on human rights, national goals, and corruption in Iraq have also been discussed.

Keywords: Post-2014 Iraq, Democratic transition process, Irregular army forces, Kurdish Peshmerga, Shia armed groups..

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Introduction:

One of the most important fundamentals for building a state and maintaining its existence is legitimacy. In constitutional studies, three approaches such as legacy, forces, and elections, can be seen to analyze the relationships between the state (as a center of authority) and legitimacy (as a legal authority). This study will test a particular understanding of legitimacy: using forces to build democracy in unstable societies. There is no doubt that the military forces are one of the main pillars of an institutional state's existence and survival. According to this standpoint, the military forces are a national force with the duty to protect states' sovereignty against any threats to their sovereignty. The central research question of this study is: to what extent and in what ways can formal military militias play a role in democratizing society?

The paper is a descriptive-analytical study of the role and impact of formal militia military institutions in unstable societies, including Iraq. It focuses on the Kurdistan forces (Peshmerga) and Shia armed groups (Popular Mobilization Forces - PMF). The Kurdistan Peshmerga and PMF were chosen because they have a legal basis and can impact society positively and negatively as an official force. Generally, this study is divided into three sections. The first part introduces formal militia forces and their effectiveness. In contrast, The second part discusses the legal principles of formal militia forces according to the constitution and laws in Iraq after 2003. The third part describes their current influence in modern Iraq.

The significance of this study stems from its emphasis on the armed forces as a factor in achieving stability in Iraq and their transformation into a source of community strength after previously serving as a source of individual dictatorship in Iraq. Furthermore, the forces covered by the study, namely the Peshmerga and the PMF, have played a heroic and militant role following the fall of the previous regime in preserving Iraq's unity and sovereignty and fighting terrorism.

The Conceptual Framework

Several experiences have demonstrated the success and failure of democratic transitions in several countries following army takeovers. Since the 1950s, we have seen the army intervene in two ways: controlling chaos and establishing stability, as seen in the Philippines, Iran, and other countries, or exploiting civilian rule, as seen in Iraq and Egypt. Because several internal and external variables governed these interventions, we discovered that the Army for Democracy's intervention failed in some experiments while succeeding in others.

Military Militia

To define concepts abstractly, we will evaluate militias as irregular and regular forces and non-state actors. Armed individuals or groups not members of the regular armed forces, police, or other internal security forces (Armypubs, 2022) are called irregular forces. Being armed as an individual or troop can include a wide range of people who can be classified as irregular forces correctly or incorrectly. Individuals from regular armed, police or internal security forces may be excluded from being considered irregular forces. However, such exclusion is inappropriate when a soldier of a regular armed force, a police officer, or a member of an internal security force is also operating in support of insurgent, guerrilla, or criminal activities. Irregular forces can also be insurgent, guerrilla, criminal organizations, or any combination. Any of these forces could be supported by mercenaries, corrupt governing authority officials, compromised commercial and active or covert supporters, and willing or pressured members of the populace. Independent actors can also pursue agendas distinct from those followed by irregular forces (Armypubs, 2022).

Non-state actors, on the other hand, are similar to the militia. This concept refers to non-state organizations that have the capability and means to carry out systematic violent actions and thus have the potential to become relatively more powerful (Vince, 2008). These actors'

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power can sometimes reach higher levels of state power, and this power is based on sectarian, religious, or ideological legitimacy, which was accepted by the masses. The most visible example of this type of force is (ISIS), which was able to occupy large areas of land in Iraq and Syria according to its ability and military victories. These forces' presence, material, and moral capabilities do not imply their legitimacy. For example, (ISIS) was a terrorist force that combined the efforts of the state group's countries in the form of military alliances to fight it. Another non-state actor with international legitimacy and support is the Kurdistan Region, the most prominent example. The Peshmerga forces were an influential ally in the course of events throughout the group's war on terrorism, in addition to its legal cover represented by the Iraqi constitution of 2005.

After defining the last two terms, we can define a military militia as a force that perceives itself as protecting a specific political, ethnic, tribal, religious, or family group from harm because the state is unable or unwilling to fill gaps. Militias serve as local guardians, intervening to provide political power or public safety (Pugliese, 2022). A militia is an armed sub-state organization that includes security and governance within a state. A militia's primary goal is the control of the population, particularly establishing local rule in a specific territory. It can be founded or co-opted by states and insurgent groups or emerge as a rival to both (Jones, 2022). Furthermore, militias may be supported by international and regional powers, so an important question arises: what is the cost of using militias to resolve internal and international conflicts versus the use of regular state force? For example, in Iraq, he backed pro-Iranian and anti-American militias in their fight against terrorism or the American presence, confirming the legitimacy of these militias from both an internal and international standpoint; otherwise, international actors like Iran and America would not have dealt with them.

Democratization Process

Democratic transformation refers to the transition from authoritarian rule to democratic rule. The application of democratic governments in civil state departments and institutions, or the extension of these applications to include previously unrepresented individuals and subjects; thus, democratic transformation refers to the institutional arrangement by which individuals obtain the power to make political decisions through free and fair electoral practices (Al-shemari, 2012).

It entails taking some steps or enacting many policies; the most important of them are (Kharbosh):

- Belief in the rule of law and the Constitution.
- The existence of a Legislative Council that is freely and impartially elected.
- The judiciary's independence.
- Press and media independence.
- Political and party diversity.
- Human Rights Respect

However, the transition to democracy is uncertain; it could be the establishment of political democracy or the reintroduction of a new system, likely stricter than authoritarian regimes. The result can be confusing, as different governments that alternate in power fail to secure a stable or predictable solution to the problem of institutionalization of political power. Transitions can also result in violent and widespread clashes, leading to the emergence of revolutionary regimes that alter the political landscape (Guillermo O'Donnell, 2007).

It confirms the existence of a set of conditions that aid in the success of the democratic transition process, which can be summarized as follows (Kribsh, 2022):

Strengthening the values of tolerance, acceptance of the other, coexistence, and faith in dialogue to understand and reject difference.

- The recognition of the right to differ and acceptance of pluralism in its broadest sense.
- Understanding the dangers of political tyranny and rejecting it.
- The existence of a political culture believes in everyone's natural participation and the right to peaceful power circulation.

With the presence of active forces that believe in democracy and work for its realization, as well as the availability of an appropriate level of political stability, this study is referred to the concept of democratic transition in the post-collapse phase of the authoritarian regime and the emergence of democratic foundations as a starting point for its consolidation in the state and society.

The Legal Basis of the Military Forces in Iraq

This section will focus on the constitutional and legal foundations of Iraq's official militias, specifically the Peshmerga and the PMF, because both teams have legal and constitutional coverage. However, we must first justify their designation as official militias and the legal and constitutional differences between them and other informal and unrecognized militias.

According to article 9 of the Iraqi constitution, "the Iraqi armed forces and security services will be composed of Iraqi people components, with due consideration given to their balance and representation without discrimination or exclusion." They will be subject to civilian authority, defend Iraq, not be used to oppress the Iraqi people, and not interfere in political affairs. They will play no role in the transfer of authority (constitution, 2005), This article of the Iraqi constitution, mainly the preceding text, demonstrates the new Iraqi state's defense policy following the former Baathist regime, as it focuses on some essential points, including:

First, it demonstrates that the Iraqi armed forces are divided into two categories: military and security agencies. These two organs have different tasks; the first is defending against external aggression, and the second is maintaining internal unity. On the other hand, the two organs represent all Iraqi people's components by

defining them in the two organs, each according to its numerical ratio.

Second, the two bodies should not play any roles in the political process. This text was written to ensure that military forces do not influence the course of political events by controlling the electoral process or by staging a coup against the political system, as modern Iraqi history has seen many coups and counter-coups since 1958 including in 1963 and 1968.

Third, both are subject to civil authority and are not used to suppress the Iraqi people. They are two national devices designed to defend Iraq from internal and external threats and protect Iraqi citizens from future threats or risks.

Article (B) of the same article states that military militias may be formed outside the Armed Forces framework (constitution, 2005). The main question here is whether militia formation within the Armed Forces is also prohibited or whether the Constitution allows for it in the future.

The final observation regarding these two paragraphs of Article 9 of the Iraqi constitution is that, in addition to the military forces, all internal state organs of intelligence, security, and police should be represented by all components of the Iraqi people, each according to its numerical ratio in Iraq. Notably, the executive power in Iraq has effectively neglected or paralyzed this article.

The Constitutional Basis of the Peshmerga Forces

From paragraphs I to paragraph V of the permanent Iraqi constitution (121), what was stated indicates the legitimacy of the administrative and political authorities of the Iraqi state. According to the article:

First, except for the authorities specified in the exclusive sovereignty of the federal government, regional powers shall have the right to exercise executive, legislative, and judicial powers following this Constitution (constitution, 2005). Given the nature of the Iraqi federal state, this paragraph granted the regions, including the Kurdistan Regional Government, the right to form legislative, executive, and judicial authorities. It includes exercising administrative and political powers and freed the regions to exercise these powers and authorities, except for what falls under the exclusive jurisdiction of the federal authorities.

Second, suppose there is a conflict between regional and national legislation on a subject outside the federal government's exclusive jurisdiction. In that case, the regional power has the authority to amend the application of national legislation within that region (constitution, 2005).

In addition to what was mentioned in the first paragraph of Article 121, the second paragraph states that the regions have the right to amend the application of federal laws that do not fall under the exclusive jurisdiction of the federal authorities in a manner

consistent with their economic, political, and cultural environment. This paragraph confirms the supremacy of

federal laws in terms of application. The goal here is not to change or repeal the federal law but to modify how the region's interests implement the law.

Third, regions and governorates shall be allocated an equitable share of national revenues sufficient to discharge their responsibilities and duties while considering their resources, needs, and population rate (constitution, 2005).

The third paragraph emphasizes the importance of federal governments assisting regional governments with what they require from a fair budget to carry out their work ultimately. It includes allocating a budget to the regions in the state's general budget, which the Iraqi Council approves of Representatives before the end of the fiscal year.

Fourth, regional and governorate offices will be established in embassies and diplomatic missions to monitor cultural, social, and developmental issues (constitution, 2005).

Fifth, the regional government is responsible for all administrative needs of the region, particularly the establishment and organization of the region's internal security forces, such as police, security forces, and guards (constitution, 2005).

The fifth paragraph is an official and constitutional recognition of the regions' right to form security forces affiliated with them, such as the police, security, and regional guard. The armed forces are first and foremost forces that represent all components at the national level, and then forces that represent regions at the local level.

This constitutional understanding is incomplete unless it considers two articles in the Iraqi constitution, namely Article 117, first paragraph, which states: (This Constitution shall recognize the region of Kurdistan, along with its existing authorities, as a federal region) (constitution, 2005)(Article 141 of the Constitution states that (Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the area of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled according to the laws of the region of Kurdistan by the competent entity in the area, provided that they do not contradict with the Constitution) (constitution, 2005)

Reading the materials referred to demonstrates how constitutionally legitimate the establishment of the Kurdish armed forces (Peshmerga) is. Since the Iraqi constitution has recognized the authorities and laws in force in the region since 1992, and the Ministry of Peshmerga came up with regulations issued by the House of Representatives in part, the Peshmerga has acquired a constitutional and legal cover.

The Constitutional Basis of PMF

First and foremost, we should concentrate on the legal foundations for forming the PMF as one of the organs of the Iraqi armed forces. The formation of this apparatus began with a fatwa issued by a religious authority, which is the fatwa of sufficient jihad. It is a fatwa issued by Mr. Sistani in June 2014 to combat ISIS, and his representative (Sheikh Abdul Mahdi al-Karbalai) announced it in Karbala during the Friday prayer. Following this fatwa, thousands of volunteers volunteered to join the PMF, which fought ISIS. After this, terrorist organizations took control of large areas of Iraq's western region and carried out extensive killing and destruction. This fatwa effectively ended ISIS's systematic activity. It was regarded as a legitimate cover and moral support for PMF and factions affiliated with it (Al hamed, 2015).

MP Ahmed Al-Asadi, the PMF Authority spokesman, stated how a Diwani order contributed to collecting and rearranging the PMF in the form of armed brigades. "A Diwaniya order was issued by the Office of the Commander in Chief of the Armed Forces No. 91 of 2016 in which the PMF are anti-terror forces, including a commander and deputy commander, 20 brigades, and supporting directorates," Al-Asadi said (Nabai, 2016)

Al-Asadi continued, "in terms of equipment and training, such as the anti-terrorism apparatus and its connection with the Commander-in-Chief of the Armed Forces, an appropriate financial budget is allocated to them with this formation." (Nabai, 2016) "So far, most of the lords of the twenty brigades have been identified and received diwaniyah orders," Al-Asadi explained (Nabai, 2016) "The number is not less than 20 brigades and not more than 25 brigades," it says (Nabai, 2016) "These brigades are the same fighters now in the operations sectors within the popular crowd factions," he said (Nabai, 2016) Noting that "the head of the PMF Authority, the National Security Adviser, is Faleh al-Fayyad, who is currently regarded as the leader of this force, and the deputy head of the authority is regarded as a deputy commander" (Nabai, 2016) "No, there is a change in the crowd, but it is legalized," he stated (Nabai, 2016)

According to statistics, the Shiite component accounts for 85 percent of PMF affiliates and 15 percent of the Sunni. In terms of leadership, the Shiite branch has complete control (politica, 2022)

The PMF's most essential organizations are (Al hamed, 2015):

Saraya Al Salam

There are following the major breakdown in the security and military establishments, the Sadrist movement's leader announced the formation of the "Peace Brigades" to defend the holy sites on June 11, 2014. Saraya al-Salam made her first public appearance on June 21, 2014, in a military parade organized by the Sadrist movement. Saraya al-Salam aims to protect Shiite holy sites from Islamic State threats and forbids and prohibits inciting sectarian strife. It does not defend any party or

organization. It is solely a defensive strategy, and the following are not permitted to launch attacks on others. Saraya al-Salam is considered an armed wing of the Sadrist movement following the dismantling of its original wing, the Promised Day Brigade, which was formed in 2008 following the sharp splits in the Imam Mahdi Army.

Asa'ib Ahl al-Haq (League of the Righteous)

It is a Shiite armed group that broke away from the Imam Mahdi Army in 2006. Its membership is estimated to be over ten thousand fighters, and in the fall of 2014, the group announced its allegiance to Supreme Leader Ali Khamenei through its representative in Iran. Following the American withdrawal, Asa'ib Ahl al-Haq declared its intention to lay down its arms. Moreover, entering the political process under the guise of the "Sadiqoon Bloc," led by Representative Hassan Salem, contributes significantly to the PMF forces fighting the Islamic State in most of the fighting areas. Including Ramadi, part of the Iraqi security system, especially after the fatwa of the religious authority Ali al-Sistani.

Badr Organization

The Badr Organization was founded in Iran in the early 1980s as the Badr Brigade, then the Badr Corps, by Iraqi soldiers and officers who deserted the Iraqi army during the first Gulf War. According to some estimates, there are tens of thousands of fighters. It took part in Iraqi opposition meetings in London and Salah al-Din.

Kata'ib Hezbollah

The Iraqi Hezbollah Brigades were formed in 2007 with direct support from the Lebanese Hezbollah and several armed brigades, including Abu al-Fadl al-Abbas, the Karbala Brigades, Ali al-Akbar and al-Sajjad, and other independent units. According to a statement issued by the battalions, these battalions do not hide their support and affiliation to The Guardianship of the Islamic Jurist (Wilāyat al-Faqīh). Following the events in Mosul, it announced the establishment of "People's Defense Brigades" to absorb and train new volunteers. The Popular Defense Brigades are fighting alongside Iraqi forces in many cities.

The PMF Commission Law, Law No. 40 of 2016, was issued and stated some reasons for giving the above law, including honoring volunteers from the Iraqi people, preserving the Iraqi state, fighting terrorism, etc. From all of the above, it is clear that The PMF Institution was established as a military institution affiliated with the Iraqi state on a different foundation than the Peshmerga forces. The first came in response to a fatwa and to unite military militias within the institution of a military organization. In contrast, the second came to deter previous political regimes' aggression against Iraq's Kurdish component.

Militias' Impact on the Democratic Process

This section will examine the impacts of militias on democratic transition. There are numerous channels through which militias contribute negatively, but we will concentrate on three:

Human Rights

Militias are generally associated with state failure and violence; many studies show that when governments collaborate with informal armed groups, respect for human rights suffers (Neil J. Mitchell & Sabine C. Carey & Christopher K. Butler, 2014).

Communities that have been victims of organized crime and street gangs have formed or supported the formation of vigilante groups that seek to bring criminals to justice because the police, courts, and government are ineffective or corrupt. These security gaps allow local guardians to band together to provide a level of public safety by directly confronting criminals. However, the actions of anti-crime militias are largely unaccountable to the law. They act with little regard for due process and impartiality. In crime prevention in this situation, militias have taken on a wide range of policing duties, including neighborhood patrols, road checkpoints, and evidence gathering against criminals. In many cases, these militias have punished those they have identified as criminals rather than handing them over to the police and the legal system. Warnings, threats, curfews, fines or restitution, disfigurement, beatings, shootings, exile, and death have been common forms of punishment used by militias against suspected criminals (Monaghan, 2011).

Anti-national objectives

Militias are not uniform structures; they are formed to serve the interests of current or potential political leaders and wealthy warlords. Smaller armed groups and individuals are drawn into coalitions by the prospect of increased wealth and power. Although the warlord leads the militias, the warlord's interests and those of the fighters are frequently at odds, and civilians are commonly used to further the agenda of the armed groups (Isaacs-Martin, ACCORD, 2015).

Political leaders in illiberal and non-democratic states constantly fear losing power due to the betrayal of those in their inner circle or a popular uprising among their citizens. Many Latin American leaders have used militias to protect their regimes to prevent successful challenges to their political authority. These militias have served as local guardians, focusing solely on defending the ruling leadership and its critical supporters from political upheavals (Kan, 2019).

Corruption

Citizens must have faith in their governing institutions, and those institutions must provide the security and services that citizens require. There can be no trust when rampant corruption and safety and services suffer.

Corruption is endemic and especially damaging in countries transitioning from one form of governance to another or recovering from violent conflict. Furthermore, rooting it out too quickly may result in more violence and instability. However, if corruption is allowed to fester in those societies, it cannot be easy to establish strong and effective governance, and social and economic development will be hampered (Programs, 2022).

Oil is one of the sectors in which militias are involved in the corruption process. Two significant corruption risks threaten the efficient use of hydrocarbon resources (Agator, 2013):

- Smuggling of oil. Converging reports condemn oil smuggling on various scales, from local pipeline drilling to large-scale organized fraud. These illegal activities have been used to fund major political and religious organizations and personalities and criminals, militias, and other violent groups. Between 2005 and 2008, oil smuggling is estimated to have cost nearly \$7 billion (OECD 2008). Despite initiatives to improve metering, the problem persists, as demonstrated by Basrah oil workers who recently began a strike to protest "oil thieves" in their management (Al-Arabiya News, 2013)
- Another major challenge for Iraq is the management of its oil revenue. Oil and gas, as extractives industries, are thought to have high corruption risks due to the large amounts of income and the increased incentives for rent-seeking (Kolstad, Søreide & Williams, 2008). Although Iraq has been a member of the Extractive Industries Transparency Initiative since 2012, many questions remain about how its booming oil revenues will be spent.

Conclusion

Based on what we have discussed above, it is clear that militias play a negative role in the process of democratic transition. However, if these forces are not employed in the state's official defense institution, their negative role will not transform into a positive role in contributing to building state institutions. However, there is a distinction between official and unofficial militia forces. While official forces protect Iraqi territory, unofficial forces cause destabilization in Iraq, so Iraq's political system and political power should eliminate these informal forces.

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