



## A NEW CREATIVE KURDISH CONSTITUTION IN THE MIDDLE EAST

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The uprising in Syria since 2011 has created opportunities for creative approaches to Kurdish self-rule. The decision of Bashar al-Assad's armed forces to withdraw from Kurdish cities in Northern Syria enabled Kurdish parties to take charge of local state institutions, declare self-rule, and to replace Syria's flags with their own. The Democratic Union Party (Syria) announced a new constitution on 21 July 2013 that it called a "social contract". On the basis of that constitution, Kurdish autonomous self-rule was formed comprising of three initial cantons. The principle of equality of all groups and the renunciation of the nation-state are revolutionary dimensions of the new constitution. In this paper, the new constitution's creative dimensions are described and analyzed using a descriptive-analytic approach. The study aims to describe the articles of the constitution to analyze how minority Yazidis, Armenians, Arabs, Christians, Chechens, and Kurds might promote this model for the rest of Syria as a form of "democratic federalism".

Keywords: constitution, creativity, Kurds, *Rojava*, social contract, Syria.

### Introduction

Debates on political creativity are currently underway in all academic environments. They concern, in part, struggle against common belief systems maintained over long periods and they seek to reconfigure relations between groups in their communities, to restructure political orders, and to reshape governments. However, bringing creative political change to a region as old and diverse as the Middle East is difficult. Proposing a creative Kurdish constitution can stimulate reconsideration of the political order and provide one approach to changing the political climate.

Kurds have long demonstrated a desire for an independent state, especially in the north of Iraq. Simko Shikak's early 1920s armed rebellion in the eastern part

of Kurdistan was the first serious attempt to create such a state there (Yildiz 2004), but the only independent Kurdish state actually established was the Republic of Mahabad of 1945 to 1946. Article 64 of the 1920 Treaty of Sèvres had promised the Kurds their own homeland (Treaty of Peace with Turkey 1920; Yildiz, Muller 2008) but it was not ratified by the signatory countries (the Ottoman Empire, France, Italy, Japan, the British Empire, and other Allies).<sup>1</sup> The Treaty was replaced by the Treaty of Lausanne in 1923, which eliminated any mention of Kurdish statehood<sup>2</sup>. In fact, Kurdistan was divided among Turkey, Iran, Syria, and Iraq. Nevertheless, the Syrian civil war and the decision of Syrian President Assad's armed forces to withdraw from Kurdish cities presented Kurdish parties with opportunities to take charge of local state institutions, declare self-rule, and replace Syria's flags with their own. The Kurds are now experiencing a new era in Syrian parts of their historic homeland.

The collapse of Syrian state institutions in Kurdish areas left a legal vacuum which the self-proclaimed autonomous Kurdish government filled, setting up courts run by its members in the Democratic Union Party (Syria) (in Kurdish: *Partiya Yekîtiya Demokrat*, PYD; affiliated with the Kurdistan Workers' Party's (in Kurdish: *Partiya Karkerên Kurdistanê*, PKK) of Syria). The so-called 'revolutionary Syrian social contract' became the ultimate foundation of Kurdish legal and political decision-making.

There is a lack of academic resources regarding Kurds and their legal status. Not much was written on them prior to the American-led invasion of Iraq in 2003. Only after Kobani's<sup>3</sup> resistance against ISIS in 2014 has academia turned serious attention towards the Kurds. This paper sheds light on one aspect of the rapidly changing contemporary Middle East, the Kurdish constitution. It describes the creative dimensions of the revolutionary constitution (hereafter "the constitution") and compares the constitution with those in selected neighboring and western countries, identifying its creative differences. Its new dimension in the context of contemporary Middle Eastern Islamic states is the fostering of social and political inclusion and also promotion of cultural diversity.

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<sup>1</sup> Some claim the Treaty of Sèvres granted the Kurds autonomy not state independence. There are also opposite views on the issue of ratification of the same treaty: some claim that it was not ratified only by the Ottoman Empire (later Turkey), while others claim that the treaty was not ratified by all signatory countries. Article 62, called for "a scheme of local autonomy for the predominantly Kurdish areas lying east of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontier of Turkey with Syria and Mesopotamia" and if "majority of the population of these areas desires independence from Turkey", they "shall address themselves to the Council of the League of Nations". Upon Turkey's renunciation over these areas, "no objection will be raised...to such an independent Kurdish State of the Kurds" (Article 64), (Treaty of Peace with Turkey 1920).

<sup>2</sup> Treaty of Peace with Turkey (1923).

<sup>3</sup> Kobanî or Kobanê in Kurdish.

## The Kurds

The Kurds are a non-Arabic and largely Sunni Islamic people with their own culture and language (with several dialects), living in contiguous areas of Turkey, Iraq, Iran, and Syria. After Islamization in the 7th century, the Arab Muslims began to call this people “Kurds” (Gunter 2009). The Kurds had actually arrived in the region well over three thousand years earlier (Anderson, Stansfield 2004), an ancient Indo-European people ethnically and linguistically distinct from their new neighbours and, in fact, descended from the Medes, a people mentioned in the Old Testament (Yildiz 2005).

Forming the largest “stateless ethnolinguistic” nation in the world today, the Kurds number between 35 and 40 million (Yildiz, Taysi 2007).<sup>4</sup> The 20th century saw them strewn not only to neighboring regions, such as Lebanon and (non-contiguous) Khorasan in north-eastern Iran, but to such far-flung lands as the former Soviet Union, Europe, and the United States.

## Kurds in Syria

The current situation of the Kurds in Syria was shaped by France and Turkey, through an agreement signed in London in 1921. The Kurds became the largest non-Arab minority in Syria, forming 10 to 15 percent of Syria’s (pre-civil war) population of 23 million people (International Crisis Group 2013).<sup>5</sup>

In 1936, Syrian Kurds formed their own autonomist movement via the Kurdish-Christian bloc in Upper Mesopotamia (Tejel 2009), which culminated in a summer uprising in 1937. This event forced the central government to countenance creation of autonomous administrations for them, the so-called “Jabal al-Druze”. Despite government promises, these various Kurdish aspirations were denied and the experiment was soon wound up in the summer of 1937.

The legal approach of the Syrian state with its 3.5 million to 4.0 million Kurds was thereafter characterized by the systematic denial of basic human rights. For example, the Syrian central government’s Decree No. 93 of August 23, 1962, ordering a census of the population in Jazira (*Cezîrê* Canton, meaning “island”) was used to strip around 120,000 Kurds of Syrian citizenship (Human Rights Watch 1996), as the authorities claimed that only 60 percent of the Kurds were “true” Syrians. The remainder were asserted to be illegal immigrants from Turkey, said to be encouraged by the US to foster a Kurdish state in Syria and they were called an “alien group” (Tejel 2009). These 40 percent of the Kurds in Jazira received only a simple paper indicating “name not on the registration lists of Syrian Arabs specific to Hasaka”<sup>6</sup> (Human Rights Watch 1996). They were thus relegated to statelessness.

<sup>4</sup> There is no census on the Kurds by country, but estimates indicate that they form a population of between 20 and 40 million (see France24.com 2015; Fondation-Institut kurde de Paris 2017).

<sup>5</sup> Between 25 and 35 million Kurds inhabit a mountainous region straddling the borders of Turkey, Iraq, Syria, Iran and Armenia (BBC 2016a).

<sup>6</sup> Hasaka is the capital of Jazira Canton. It was formerly a province before 2011 uprising.

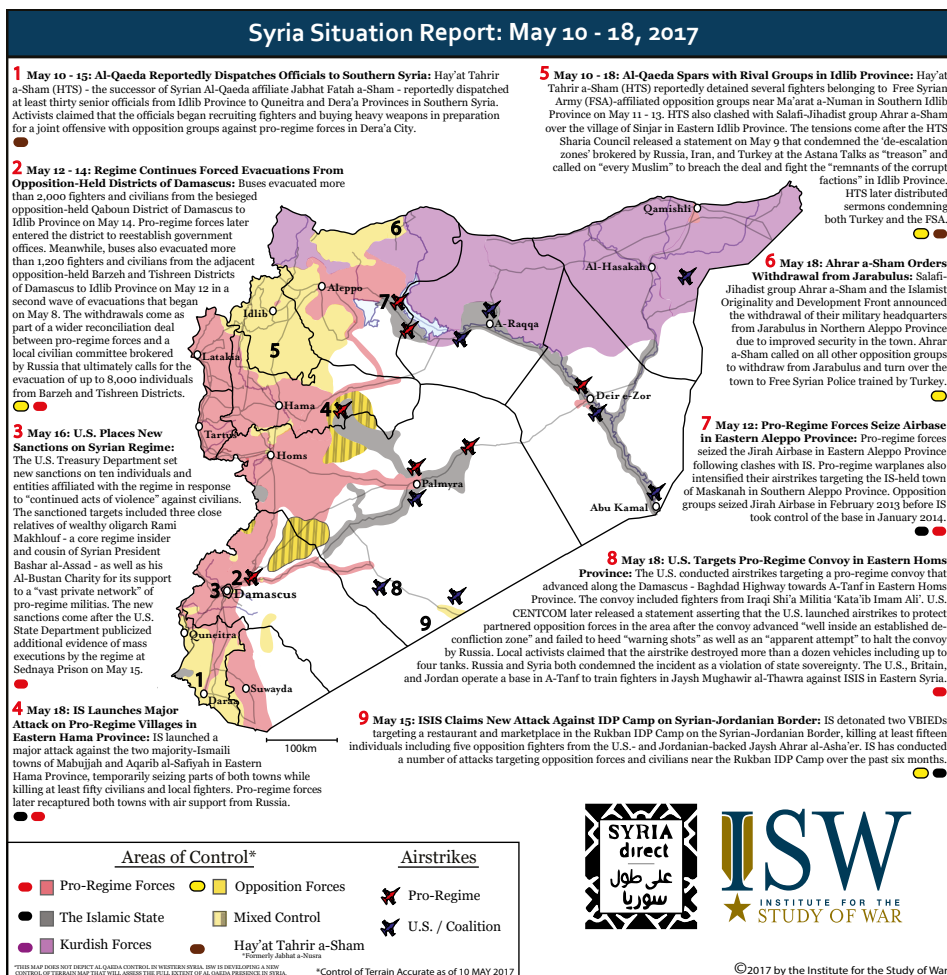


Fig. 1. Kurdish regions and controlling Northern border in Syria (source: Kozak 2017)

The constitution of Syria of 1973 proclaimed Syria a democratic republic but left the country under the institutionalized single-party leadership of the Ba'ath Party. That government continued to intimidate any ethnic or religious groups who challenged the unity of the country.

Syrian President Hafez al-Assad encouraged the main Kurdish political force in Turkey, the *PKK*, in part, because it threatened primarily neighboring Turkey. But more cordial developments in Turkish-Syrian relations in the early 2000s moved the Syrian government to switch its support from the *PKK* to the *PYD*. Despite this, the *PKK* has remained so popular among Kurds in Syria since the 1980s that the *PYD* has had a hard time competing. The *PKK* has attempted to maintain the Kurds' collective identity since the 1980s, promoting Kurdish language and culture via a variety of meetings, activities, and festivals.

Within Syria, under both Presidents Assad, Hafez the father and Bashar the son, the Kurds' political status did not change until the 2011 uprising. At the outset of the uprising, Kurds were reluctant to take up arms because they had tasted the Bashar Assad government's brutal repression during an abortive uprising in *Qamishli* in 2004.<sup>7</sup> The Syrian government grew increasingly alarmed upon the US-led invasion of Iraq in 2003 and then the creation of a *de facto* autonomous Kurdish region in the north of that country. Although inspired by fall of Saddam Hussein in Iraq, and even after the 2011 uprising in Syrian Arab cities, the *PYD* Syrian Kurdish political party structure tried to maintain a moderate and conciliatory stance with the central government, calculating that this would lead Assad to grant the Kurds self-rule (Fig. 1). Unfortunately, it was not to be.

### The Northern Syria Constitution

In 2007, prior to autonomy, the *PYD* had founded People's Committees in Northern Syria, whereby each committee was responsible for specific administrative functions, under a Central Corridor Coordinating Committee. This coordinating committee was composed of 24 members, heads of each People's Committee. In the chaos of the Syrian uprising since 2011, Kurds, Arabs, Christians, Yazidis, Chechens, and Armenians in Syrian Kurdistan have extended the People's Committees into a government based on "federalism" within a democratic "decentralized Syria" and have "rejected the nation state structure" (Aretaios 2015).

Accordingly, the *PYD* founded the People's Council of "Western Kurdistan" ("*Rojava*"), which has 320 members, on 12 December 2011 (International Crisis Group 2013). On 21 July 2013, the *PYD* announced a constitution for the region (Visser 2013). It declared Syria an independent country with a democratic federal parliamentary system for "self-rule" in "Western Kurdistan" and with *Qamishli* as the capital. The Kurdish Center for Legal Studies and Consultancy in Erbil published the 96 articles of the draft constitution on 21 December 2013.<sup>8</sup> Interestingly, it was not called a constitution but entitled "The Social Contract of *Rojava* Cantons in Syria" to emphasize its decentralized, community-based governance model. On 17 March 2016, "democratic federalism" was declared by the Kurds to be the foundation of *Rojava*'s constitution, based on the equality of all people in these autonomous regions.<sup>9</sup> On 28 December 2016, the name of the region under the constitution was changed from "Western Kurdistan" ("*Rojava*") to "Northern Syria", thereby confirming the region

<sup>7</sup> During a football match in the town of *Qamishli* between the local Kurdish team and *Deir ez-Zor*, offensive words were exchanged which turned into a battle. Syrian security forces opened fire which resulted in death of six Kurds and led to the rioting.

<sup>8</sup> For the English version of the SCRCs referred to throughout this paper see the Personal Website of Mutlu Civiroglu (Civiroglu 2015).

<sup>9</sup> Reuters (2016) and BBC (2016b).

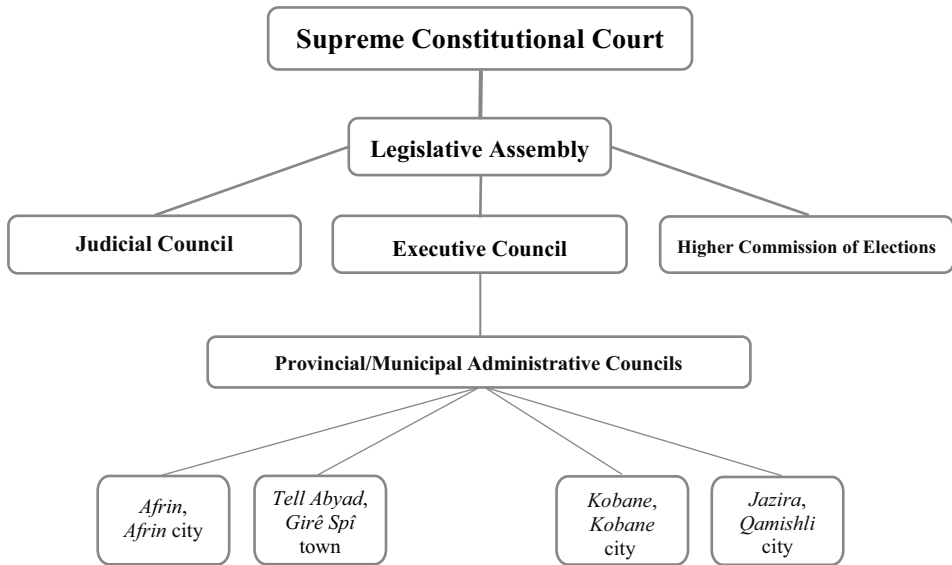


Fig. 2. Northern Syria government institutions organizational chart pursuant to the Constitution of the *Rojava* Cantons (Social Contract or Charter)

as a part of Syria and as a multi-ethnic polity without linguistic or other primacy accorded to any ethnic group.<sup>10</sup>

On 15 January 2014, a day before the second international Geneva II Conference on Syria was held (to which the Kurds were not invited), the *PYD* declared the first three Kurdish cantons in Syria: *Afrin* in the West, *Jazira* in the East, and *Kobani* in the centre. *Tell Abyad* (*Girê Spî* in Kurdish) was later recaptured from Islamic State of Iraq and al-Sham (ISIS) by the People's Protection Units (in Kurdish: *Yekîneyên Parastina Gel*, *YPG*). It was officially declared as a new canton on 21 October 2015, pursuant to Article 7 of the SCRCs, which enables cantons to accede (Fig. 2).

### Creativity in the Northern Syria ("*Rojava*") Constitution

There are three major theories of creativity: behaviorist, cognitive, and personality-based. In the behaviorist view, environment and genetic forces joining together affect a person "to act in special ways" (Skinner 1976). If we take creativity as a function of a cognitive process, individuals become creative in reaction to difficult circumstances such as solving a mathematical equation or speaking another language (Ghiselin 1952). Scholars as Abraham Maslow (1976) perceive creativity as a humanistic aspect of personality. Here creative people are termed as self-actualized and de-

<sup>10</sup> Kurdistan24 (2016).

scribed as having independence, freedom, and self-confidence (Shallcross 1985). Most approaches to creativity used in daily life stem from this theory.

As Walter Kiechel (1983) states: “creativity is latent in all of us and it just needs to be brought out”. Any act which is the result of personal capacity and bears no full resemblance to others’ acts is the broadest meaning of creativity. Confinement to activities related to the arts gives a narrow meaning for creativity. Richard Florida (2012) recognizes a “creative class” with broad connotations, such as designing, architecture, etc. However, creativity can encompass the widest range of actions including, even, writing a unique constitution.

In the unquiet Middle East, creativity is necessary in order to find solutions to long lasting conflicts. Creative constitution-writing is a potential aspect of this search. It involves merging previously known principles into uniquely new forms and adding elements that are new in the region. The creative dimensions of the Syrian Kurdish constitution embed unprecedented notions that make it an innovative text in the Middle East. The constitution may be a feasible alternative in multi-ethnic and -religious contexts and help in a reconfiguring of the regional social and political order.

### Self-determination

The Social Contract of *Rojava* Cantons in Syria (hereinafter “SCRCS”) uses the opening words, “We, the people”, in the preamble, a phrase that was first heard in the Constitution of USA. It reflects a new form of rule proposed to respect the equal rights of all people living in the region’s cantons. Surprisingly, the SCRCS does not name any ethnic or religious group as having an official status, not even the Kurds. The constitutional convention that formulated and adopted the text was comprised of all the people living in the Kurdish majority regions. Thus, it was formed by the people as a whole. In fact, “the people” empower the government.

The SCRCS has everything to do with the people. Article 1 articulates a “social contract” between the people of the regions, who grant legitimacy to governing institutions (art. 2b). The “popular vote” would give authority to governmental organizations that are subject to “democratic principles essential to a free society”.

The right to self-determination of inhabitants of Kurdish regions is guaranteed on all levels (Preamble to the SCRCS). The SCRCS makes “all strands of society” part of the union. It provides that Kurdish autonomous regions are to be governed “in the spirit of reconciliation, pluralism, and democratic participation”. All people are free to express their community, ethnic and religious identity in the cantons. Predicting the outcome of the 2011 uprising, the SCRCS proposes itself as “a model for a future decentralized system of federal governance in Syria” (art. 12).

To “maintain domestic and international peace”, the government is to secure the rights of the people even against the Syrian central government. The defense forces (YPG and Women’s Protection Units (in Kurdish: *Yekîneyên Parastina Jin*, YPJ) are to be the only armed force in the region (art. 15). The Supreme Constitutional Court is to uphold the constitutional distribution of powers set out in the SCRCS (art. 78) even against the Syrian government.

Through the constitution, the cantons would replace the centralized Syrian state and the centralization policy of the Ba'ath Party. Instead, decisions are transferred to the lowest level of the local communities. Articles 8 and 11 deal with cantonal autonomy. The most important feature of the constitutional system is the equality of the cantons in decision-making. Each canton has its own flag, emblems, and anthem (art. 11). The cantons have been founded on the principle of local self-rule and they perform state tasks. The people of the Cantons elect their own representatives but their independence is restricted insofar as it “does not contravene the articles of the Charter” (art. 8). They are represented in the Legislative Assembly and on Executive Council by Cantonal Premiers (art. 54).

### Human rights

Equality in general and equal protection of fundamental human rights for all are secured in Article 6 of SCRCS, which holds that “All persons and communities are equal in the eyes of the law and in rights and responsibilities”. This feature is seen in most constitutions in the Middle East but is applied variably in neighbouring states such as Iraq, Saudi Arabia, Afghanistan, etc.

For the cantons, the Arabic language is no longer the only official language, in contrast to the Syrian Constitution. Arabic, Syriac, and Kurdish have been declared as the languages of regional government and education (art. 9). Due to the ethnic and religious diversity of the canton of Jazira, three languages have been recognized as official languages in that one canton: Kurdish, Arabic and Syriac. Freedom of expression is secured in Article 24 although restricted insofar as necessary to protect “the security of the Autonomous Regions, public safety and order, the integrity of the individual”. This caveat indicates ongoing concern about violent attacks by ISIS and other militant extremists. This wide caveat is a feature of non-democratic regimes and may need amendment to protect peaceful political expression.

A distinctly innovative feature in the SCRCS is gender equality in the context of the Muslim Middle East.<sup>11</sup> Kurds have a record of recognizing equality for women and this equal status for women is one of the cornerstones of the constitutional blueprint for this new society. The core gender equality right is set out in Article 27, which guarantees “the inviolable rights” of women in the cantons. Opportunities are mandated for women to engage in political and social life. This is demonstrated in provisions requiring an equal number of women and men to be selected to run administrative institutions and is demonstrated also in the forming of two armed forces, one male and one female, each with recognized equal responsibility. Women are to have an approximately equal number of administrative positions to men in the autonomous administration of the Legislative Assembly and Judicial Council: 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 2015). This provision must be applied across local

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<sup>11</sup> TheWeek.co.uk (2016).



institutions and up to the federal government. At the highest levels of cantonal administration, governmental organizations are to have women as co-president or vice-president.<sup>12</sup> Women also serve in combat roles in the armed forces, the *YPJ*, alongside men, which is unprecedented in Middle East countries other than in Israel.

The SCRCs would eliminate “gender discrimination” (art. 28) by breaking with the past and abandoning the traditional principles of Islam. Under Islamic law the testimony of two women is equal to one man, and a man may marry four wives while a woman may marry only one man. Under the SCRCs, it is specified that men are forbidden to marry more than one woman, that women are equal in judicial proceedings and “before the law”, and that they have equal access to opportunities in “public and professional life” (art. 38). In the broadest sense, the new constitution points to the valued equal contribution of women to Western Kurdistan’s political and social life.

The 2013 Northern Syria constitution also unprecedentedly guarantees rights to public participation of the youth (art. 17) in “political, social, economic and cultural life”. The high rate of youth unemployment is a problematic issue in the Middle East and has led to mass migration to the European Union to find a better situation. The SCRCs can be seen as an initiative to ensure more effective youth policy and program development and youth engagement in public life. It calls on the youth to contribute to “the effective realization of equality of women and men” (arts. 27 and 28). No development issue perhaps is more pressing than that of finding economic and social opportunities for the region’s large youth population.

The SCRCs also guarantees the rights of the child under Article 29. They “shall not suffer child labor, torture or cruel, inhuman, or degrading treatment or punishment, and shall not be married before attaining the age of majority”. This provision is based on the Convention on the Rights of the Child 1989. This is another feature that makes the constitution exceptional in the contemporary Middle East. It can be seen as a guiding document for advancing children’s rights in every country in the Middle East, where some armed groups even use children as soldiers.

No official religion has been declared in the SCRCs, which provides that “everyone has the right to freedom of worship”, and to “practice one’s own religion” individually or collectively and that “no one shall be subjected to persecution on the grounds of their religious beliefs” (art. 31). The SCRCs specifically recognizes the Yazidi religion (art. 32c), as this minority group suffered hardship and genocide during the ISIS invasion into Sinjar, a part of Northern Iraq under the Kurdistan Regional Government.

Explicit commitment to international treaties on fundamental human rights laws is another prominent new feature of the SCRCs that distinguishes it from most others. Under Article 20, the self-rule administration is obliged to recognize all international treaties and covenants on the fundamental rights of humans. Listed are “the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights”. This is a milestone in the drafting of constitutions in the region although securing implementation of the treaties is during the current time of war is difficult.

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<sup>12</sup> Green Left (2016), Deutsche Welle (2014).

Other social, political, and cultural rights and freedoms are guaranteed (arts. 32 to 42), including personal security, adequate health care and social care, freedom to join any political party, the right to peaceful protest, the right to seek political asylum, the right to the use and enjoy one's own private property, and freedom to choose one's own residence within the Autonomous Regions, etc.

Part IV of the Charter deals with the regional Legislative Assembly (arts. 45 to 53), Part V with the Executive Council (arts. 54 to 62), Part VI with the Judicial Council (arts. 63 to 75), Part VII with the Independent High Electoral Commission (art. 76), Part VIII with the Supreme Constitutional Court of Syria (arts. 77 to 80), and Part IX with General Rules (arts. 81 to 93).

## Conclusions

Only the upcoming years will tell the future of the crisis in Syria, of the Syrian government and of Kurdish aspirations. Backed by US airstrikes, the *YPG* and *YPJ* have forced ISIS out of many territories in Northern Syria in recent months. On 25 May 2016, Kurdish forces launched an offensive on *Raqqa*, the capital of so ISIS in Syria, under the name of the "Syrian Democratic Forces" (SDF), a US-backed coalition of armed groups led by the *YPG* and consisting of 2000 Kurds and 5000 Turkmen, Arabs, Assyrian, Armenian, and Circassian fighters. The *YPG* and *YPJ* defended and retook Kobani – a strategic city of Jazira Canton – against ISIS in another breakthrough for Kurds in the region. They have also recaptured many lost territories and villages around Kobani and *Tell Abyad*. They fought together with *peshmerga* (the armed forces of autonomous Iraqi Kurdistan, distinct from the Syrian Kurdish forces) armed with heavy weapons from the Kurdistan Regional Government in Iraq.

The Syrian Kurds are at the beginning of building their government. The Northern Syria (or Western Kurdistan or *Rojava*) autonomy is still in the process of construction. It faces isolation by the Syrian and Turkish governments and its self-rule has not been recognized by other neighbors than the KRG (Gürçanlı 2015). Some Western states have allowed the opening of Kurdish diplomatic missions, such as Germany, France, the Czech Republic, Sweden, and Russia. All the Kurdish parties want Kurdish autonomy recognized in Syria and for their individual and collective rights to be secured in Syria's constitution.

As is clear, the SCRCs is a milestone in the legal history of the Middle East, where every state has multi-ethnic and multi-faith communities and many are beset with conflict, as are Bahrain, Lebanon, Israel, Turkey, and Yemen. The SCRCs embeds creative approaches to autonomous self-rule that set out a model for coexistence within a multi-cultural and multi-ethnic polity based in local rather than centralized administration. Specifically, it seems to offer a realistically crafted democratic model to promote peaceful coexistence among the various ethnic and religious communities in the Kurdish majority autonomous regions of Syria. On March 13, 2015, the first regional elections were held, in Jazira Canton. It remains for the new constitutional system to prove itself through democratic processes as general elections take place across the other four cantons.

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## NAUJOJI KŪRYBINĖ KURDŲ KONSTITUCIJA VIDURINIUSIUOSE RYTUOSE

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Santrauka

Sudėtingi Sirijos sukilimo (2011) įvykiai pastaruoju metu kurdams suteikė galimybę paskelbti savivaldą Šiaurės Sirijoje. Basharo al-Assado ginkluotųjų pajėgų sprendimas atsitraukti nuo kurdų miestų leido kurdų partijoms perimti savo žinion vietines valstybines institucijas, įvesti savivaldą ir pakeisti Sirijos vėliavas savosiomis. Įvykus 2011 metų sukilimui, Sirijos kurdai įsteigė autonomiją *de facto*, o Demokratų sąjungos partija (Sirija) 2013 m. liepos 21 d. paskelbė naują konstituciją, vadinamą visuomenine sutartimi. Ja remiantis buvo suformuota kurdų autonominė savivalda ir sudaryti trys kantonai – tai Jazira, Kobani ir Afrinas. Ketvirtasis kantonas buvo paskelbtas 2015 m. birželį – tai Tell Abjadas (kurd. *Girê Spî*). Pačiame karo įkarštyje bandyta imtis kai kurių naujų veiksmų, remiantis visų grupių lygybės principu. Nacionalinės valstybės atsisakymas – tai vienas iš revoliucinių ir kūrybinių aspektų. Jazidai, Armėnijos arabai, krikščionys, čečėnai ir kurdai viliasi, kad jų „demokratinio federalizmo“ veiksmai gali būti pavyzdys likusiai Sirijos daliai.

Reikšminiai žodžiai: konstitucija, kūrybingumas, kurdai, *Rojava*, visuomeninė sutartis, Sirija.