

LEGISLATIONS ON WATER RESOURCES PROTECTION IN IRAQ:

An Overview of the Basic Legal Features

By

Dr. Yadgar Kamal Ahmmad

Koya University

Erbil-Iraq

Table of Contents

INTRODUCTION	3
IRAQI CONSTITUTIONS FROM 1925 TO 2005	4
1. Forests and Woodlots Law No. 30 of 2009	5
2. Environmental Protection and Improvement Law No. 27 of 2009	5
4. Ministry of Water Resources Law No. 50 of 2008	7
5. Public Roads Law No. 35 of 2002	8
6. Law of Conserving Water Resources No. 2 of 2001	8
7. General Authority for Water and Sewage Law No. 27 of 1999	10
8. Chapter IX of Instructions No. 1 of 1998 on the Iraqi Ports and Harbors	10
9. Maintenance of Irrigation and Drainage Systems Law No. 12 of 1995	10
10. Protection and Development of Agricultural Production in the Kurdistan Region-Iraq Law No. 4 of 2008	11
11. Irrigation Ministry Companies and Bodies Law No. 44 of 1987	11
12. Irrigation Law No. 6 of 1962 and its Amendments	11
13. Beaches Utilization Law No. 59 of 1987	12
14. Hydrocarbon Resources Preservation Law No. 84 of 1985	12
15. Natural Pastures Law No. 2 of 1983	13
16. Public Health Law No. 89 of 1981	13
17. Fishing, Exploiting and Protecting Aquaculture Law No. 48 of 1976	14
18. Penal Code No. 111 of 1969 and its Amendments	14
19. Protection of Rivers and Public Water from Pollution No. 25 of 1967	14
CONCLUSION	15
REFERENCES	17

INTRODUCTION

Iraq mainly depends on both surface water and groundwater. The surface water is principally dependant on the Tigris and Euphrates rivers which are transboundary rivers coming from the upstream countries. In the last two decades water resources management in Iraq has extensively stepped backwards. The blames may to certain degree lay on the eight years Iraqi-Iranian war during the 1980s, followed by the Gulf war in the early 1990s. However, the indubitable cause was the twelve years economic sanctions when managing water resources carried further burdens on the central government. When the US-led invasion to Iraq took place in 2003, water infrastructure underwent more devastation due to lootings as well as the continuous adverse political turmoil in Iraq. Thus, regulating water resources in Iraq was persistently a source of complication for the legislature although legislations on water resources have been known in Iraq since 1923.¹

This article reviews the Iraqi water law through presenting all those applicable legislations pertinent to water resources management in Iraq, and to examine whether these laws can be relied on for creating a competent legal framework for water resources management for the country.

At the outset, numerous legislations on protecting water resources at national level had been endorsed based on the social, political and economic developments that Iraq went throughout the twentieth century. However, it did not take place at the constitutional level until recently, as will be subsequently discussed.

The first law regulating the protection of water resources in Iraq was known as the Law of Monitoring Irrigation and Small Dams of 1923, which provided a clear definition of what irrigation system includes in relation to water resources.² While this law was abolished by Irrigation Law No. 6 of 1962, yet the former one's provisions were significantly revisited and emphasized in the latter one.³ The second important law was the Al-Makarih⁴ law for

¹ It does not mean there had not been any laws regulating and protecting water resources before the establishment of the State of Iraq. There were laws derived from Islamic Sharia, whether from Holy Quran, Prophetic Sunnah or scholars' books. Further, the Ottoman State had issued special laws dealing with this matter, and those were known as water laws "Al-Hujaj" (Note from the translator: it means arguments or reasoning). See *Study on Developing Laws and Legislations of the Use and Development of Arab Water Resources*, Arab League, Arab Organization of Agricultural Development, 2000, 53.

² According to article 2 (3), irrigation system means: (a) All channels, streams pipes and water reservoirs constructed at the government expense or being under its observation and control to distribute or store water; (b) All works, small dams, installations and creeks, which are distributed, or small parts of them being adjacent to streams, creeks, pipes, water reservoirs and all erected installations to facilitate the construction or maintenance of streams, creeks, pipes or water reservoirs; (c) Streams, connection works and flood control; and (d) Any part of a river, waterway, marsh, places where natural water concentrate or natural water leftover, which the Minister of Transport and Works consider as one of the works of irrigation. See Iraqi Official Gazette No. 100 on 4 October 1923, 169, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=130920054456123&Year=1923&PageNum=1.

³ See Irrigation Law No. 6 of 1962 and its amendments, *infra*, section 4.3.

⁴ Makarih means anything disgusting, causing bad smell and resulting in public diseases. Linguistically, it is anything the public hates or dislikes. This word is obsolete and no longer used in this sense, but is referred to as an old Iraqi slang. See Iraqi Official Gazette No. 1379 on 31 January 1935, p. 15, available at: www.iraq-ild.org.

cleaning streets, transporting garbage, removing Al-Makarih and preventing river pollution, which was the reemphasis of Article 2 of the Law No. 6 of 1929 of Public Health. Although the Al-Makarih law is no longer in force (as replaced by Law no 45 of 1958, and was further abolished by Article 21 of Regulation No. 44 of 1968),⁵ nevertheless, its articles 15, 16 and 17 have clearly prohibited activities that causes contaminations to the public waters and rivers in Iraq. Thus, this law became the cornerstone for the succeeding laws on water resources management for the modern Iraq.

IRAQI CONSTITUTIONS FROM 1925 TO 2005

Constitutions have acknowledged the importance of water resources management for their respective countries. Owing to the diversity of natural resources in general and water resources in particular, most national constitutions have overtly indicated provisions on water resources on the nature of ownership, utilization and protection. Ironically, this was not the scenario for Iraq's successive constitutions. In fact, no constitution in Iraq has expressed the magnitude of water issues throughout the twentieth century except the present one. Instead, they sufficed to include water resources within the general definition of what is meant by natural resources. The reasons were various, but mainly owing to the abundance of water resources *vis-à-vis* lesser population density and industrial activities in one hand, and instabilities that Iraq went through for this length of time.

Iraq's legal system is a mixed legal system of French civil law and Islamic law. The constitution has been adopted eight times since 1921. The first constitution entered into force under the auspices of the British military occupation in 1925⁶ and remained effective until the 1958 revolution,⁷ when subsequently interim constitutions were adopted in 1963,⁸ 1964,⁹ 1968,¹⁰ and 1970,¹¹ which remained applicable until the Transitional Administrative Law was

ild.org/LoadLawBook.aspx?SP=REF&SC=260920055055713&Year=1935&PageNum=1, revisited on 10 August 2012.

⁵ See Iraqi Official Gazette No. 1621 on 12 September 1968, p. 238, Vol. 2, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=110320068659182&Year=1968&PageNum=1, revisited on 10 August 2012.

⁶ Article 94 states that no monopoly or concession shall be granted for dealing with or using any of the natural resources of the land, nor for any public service, nor shall the State revenues be farmed out, except in accordance with law, provided that where the period relating to them exceeds 8 years, they must in each case be the subject of a special law. See Constitution of the Kingdom of Iraq 1925, The Constitution Society, available at: www.constitution.org/cons/iraq2012/iraqiconst19250321.html, revisited on 10 August 2012.

⁷ See Interim Constitution of the Republic of Iraq 1958, (Arabic) Niqash Politics, available at: www.niqash.org/articles/?id=2306&lang=en, revisited on 1 July 2012.

⁸ See Constitution of the Republic of Iraq 1963, (Arabic) Niqash Politics, available at: www.niqash.org/articles/?id=2306&lang=en, revisited on 10 August 2012.

⁹ Article 9 states that wealth of natural resources and forces are all the property of the state, which ensures proper utilization. See Constitution of the Republic of Iraq 1964, (Arabic) Niqash Politics, available at: www.niqash.org/articles/?id=2306&lang=en, revisited on 10 August 2012.

¹⁰ Article 14 states that natural resources are owned by the state to ensure proper exploitation. See Constitution of the Republic of Iraq 1968, (Arabic) Niqash Politics, available at: www.niqash.org/articles/?id=2306&lang=en, revisited on 10 August 2012.

¹¹ Article 13 [Public Property and Planning] National resources and basic means of production are owned by the People. They are directly invested by the Central Authority in the Iraqi Republic, according to exigencies of the general planning of the national economy. See Constitution of the Republic of Iraq 1970, (Arabic) Niqash Politics, available at: www.niqash.org/articles/?id=2306&lang=en, revisited on 10 August 2012.

adopted in March 2004.¹² However, the current constitution, which was approved on 15 October 2005 significantly includes tasks for water resources management beyond defining the general meaning of natural resources.¹³

Article 110 assigns the federal authorities with the task of drawing water policies for its paramount importance and danger imminent to Iraq's national security. Thus, they should necessarily control all water resources in the country. The article reads thereof: "the Federal authorities shall have exclusive powers in the following matters:[...] Eighth: Planning policies relating to water sources from outside Iraq, and guaranteeing rates of water flow to Iraq."

This article stipulates that the State should protect natural wealth as the sovereign and the real owner of this public property especially when no other authority is capable of operating and maintaining it.

Other than the constitution of 2005, which is the supreme law of the country, there are other relevant laws pertaining water resources protection in Iraq, which are discussed below chronologically from the most recent down to the oldest, but all of them are still in force.

1. Forests and Woodlots Law No. 30 of 2009

First of all, *Forests and Woodlots Law No. 30 of 2009* aims to prevent logging in order to protect waterways and springs. It attempts to create a balance between protecting the environment and green spaces on the one hand and water resources on the other for being decisive to protect the ecosystem. Article 9 thereof reads: Trees in private sector forests may not be cut in the following circumstances, unless for technical necessity and in return of a fair compensation:[...] Second: if the forest leads to the protection of waterways and springs.¹⁴

2. Environmental Protection and Improvement Law No. 27 of 2009

The *Environmental Protection and Improvement Law No. 27 of 2009* aims to protect and improve the environment, including territorial water, from pollution and reduce its effects on health, the environment and other natural resources. The Iraqi parliament introduced this law for important reasons including the considerable decline of security crises in the country compared to the years before 2007 which led to some economic development in the middle and Southern part of the country. As a result of such economic activities, the rate of pollution

¹² Article 25 (E) states that "The Iraqi Transitional Government shall have exclusive competence in the following matters: (E) Managing the natural resources of Iraq, which belong to all the people of all the regions and governorates of Iraq, in consultation with the governments of the regions and the administrations of the governorates, [...] for dealing with their situations in a positive way, for their needs, and for the degree of development of the different areas of the country." Coalition Provisional Authority, Law of Administration for the State of Iraq for the Transitional Period, Centre for Studies on New Religions CESNUR, available at: www.cesnur.org/2004/iraq_tal.htm, revisited on 10 August 2012.

¹³ See Iraqi Permanent Constitution 2005, Centre for Studies on New Religions CESNUR, available at: www.niqash.org/uploaded/documents/unofficial%20translation%20iraqi%20constitution.htm, revisited on 10 August 2012.

¹⁴ See Iraqi Official Gazette No. 4142 on 25 January 2010, p. 0, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=040520109755645&Year=2009&PageNum=1, revisited on 10 August 2012.

had augmented, especially from industrial and household discharges dumped into the rivers and other water resources.

One of the most important articles of this law is article 14 which identifies water pollutants as well as a number of harmful acts which are strictly prohibited. Penalties may be imposed upon anyone who violates the legal obligations set forth in the law. The article further prohibits discharging any domestic, industrial, service or agricultural liquid wastes or poisonous materials into national water resources, whether surface or groundwater, or into Iraqi maritime zones, unless prior necessary treatments have been made in a manner that ensures conformity with the standards set forth in the domestic environmental legislations and international conventions which Iraq has ratified.¹⁵

Article 33 of the Law states that

“First: the minister or his authorized representative may warn any establishment, factory or any authority or environment polluter to remove the affecting factor within ten days from the date a warning notification is served. In case of non-compliance with the minister's order, the minister may suspend the activity or order temporary closure for no longer than thirty days, which may be extended until the violation is removed.”

This article also imposes a fine between one million and ten millions Iraqi Dinars, which is renewable on a monthly basis until the violation is removed, on anyone who violates any provisions of this law that also covers water resources. Moreover, this article establishes penalties for infractions committed by offenders of this law. The powers to enforce this law are vested in the executive authority through the minister or an authorized director general.

3. Kurdistan Region Environment Protection and Improvement Law No. 8 of 2008

Likewise, in Kurdistan region the *Environment Protection and Improvement Law No. 8 of 2008* determines the levels of water pollution and treatment. Article 22 prohibits discharging or putting any harmful substances, liquid, gaseous, radioactive or thermal into water resources and all their courses, unless when processed in accordance with applicable standards. This article does not differentiate between public or private water resources. It has generalized all kinds of the water resources and their courses. Article 23 mentions thereof: “regional standards for surface water and groundwater and drinking water should be set systematically”. Article 24 casts the responsibility on the Ministry of Environment of the Kurdistan Regional Government to determine the standard levels of pollution allowed in water used for drinking, irrigation, industry and services, which shall be reviewed from time to time as the circumstances may require.¹⁶

¹⁵ See Iraqi Official Gazette No. 4142 on 25 January 2010, p. 8, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=040520106055384&Year=2009&PageNum=1, revisited on 10 August 2012.

¹⁶ See Kurdistan Official Gazette No. 90 on 8 November 2008, p. 41, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=080420102051882&Year=2008&PageNum=1, revisited on 10 August 2012.

It is worth mentioning that before 1991, all the laws passed by the Iraqi legislation were considered as the *lex loci* of the entire country, unless a specific law itself made exceptions. However, after the Gulf War and the subsequent no-fly zone proclaimed by the US, UK and France on the basis of Resolution 688 adopted by the UN Security Council on 5 April 1991¹⁷ which protected Kurdistan region from the hostility of the Central government, the Kurdistan Regional Government (KRG) has established its own *de facto* government, and parliament. Kurdistan Region's laws and regulations are only applicable to those areas controlled by KRG, even after the 2003 US-led invasion in Iraq. As to the post invasion's disputed areas like of Kirkuk City and its suburbs, it is suggested that the federal legislation will prevail until the final settlement of the dispute has been achieved, as required by article 140 of the 2005 Constitution. In Kurdistan the laws are promulgated by its parliament by virtue of article 121 of Iraq's constitution of 2005 which grants power to the regional authorities in terms of issuing legislations to regulate the affairs of the region. Concerning water resources, the Kurdistan Region parliament has adopted a number of laws relevant to water resources management.

4. Ministry of Water Resources Law No. 50 of 2008

Another matter is the institutionalization of water resources management in Iraq. Hence, the *Ministry of Water Resources Law No. 50 of 2008* can be considered as a significant law introduced by the Iraqi parliament since 2003. The reason is that it hands creating legal and technical framework for regulating Iraq's national water resources to the federal government's Ministry of Water Resources.¹⁸ This law has two important implications. The first is to achieve the requirements of article 110 of the 2005 constitution; while the second one is the initiation of a new water governance framework assigned to this Ministry. Accordingly, article 2 of this law states that the ministry aims to plan for the investment in water resources in Iraq and utilization of ground and surface water to achieve the perfect use of water resources, to develop water resources, and to determine water sources and uses.¹⁹

However, before the above ministry was set up, successful attempts to establish a Water Resources Ministry in Kurdistan Region were made by the fifth cabinet in 2006. Thus, Ministry of Water Resources Law No. 9 of 2006 was passed in Kurdistan Region to identify the Ministry's strategies, policies and plans to develop, improve and invest ground and surface water resources in the region, and conduct technical and economic feasibility studies for projects of water resources. The Ministry will also construct and operate dams and

¹⁷ United Nations Doc. No. S/Res/688 of 5 April 1991, available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement>, revisited on 26 April 2012.

¹⁸ See Iraqi Official Gazette No. 4098 on 24 November 2008, p. 8, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=170520104756784&Year=2008&PageNum=1, revisited on 10 August 2012.

¹⁹ Article 2, the third paragraph states that "[...] sponsor Iraq rights in common international water and maintain communication and information exchange with riparian neighboring countries on river basins, in a manner to reach fair agreements to divide the quantity of water entering Iraq". Fourth: "preserve ground and surface water from pollution, giving priority to the environmental aspect, and revive and maintain marshlands and other water surfaces." Ibid.

undertake irrigation projects. It will assess the integrity of dams and utilize water to achieve the perfect use of water resources. It will also maintain and treat the soil within the public plants of the region.²⁰

5. Public Roads Law No. 35 of 2002

Also, the *Public Roads Law No. 35 of 2002* is another important law that makes securing the water flows from rivers, streams and drainages an obligation by law if their natural flows will be encountered by projects on public roads and bridges as provided by article 18. The article further requires the operating companies to construct alternative roads until the completion of those existing projects, which have encountered these rivers, streams, and drainages in order to evade harms resulted from activities other than the project in place.²¹

6. Law of Conserving Water Resources No. 2 of 2001

Perhaps the *Law of Conserving Water Resources No. 2 of 2001* is one of the most effective water legislation in the country before the US-led invasion in 2003 issued by the Iraqi Council of Ministers in 2001.²² Given the importance of water resources *vis-à-vis* the environmental, economic and social development in Iraq, and the growing phenomenon of water pollution alongside the scarcity of water resources, it had become necessary to issue laws regulating the utilization of water for purposes other than domestic use.

In addition, there are rules regarding the management, utilization and preservation of Iraq's water resources prescribed by this law. It also includes provisions on the discharge of wastes into public waters, determining how to dispose of or recycle wastewater. For example, article 3 prohibits the discharge or cast of wastes into public water irrespective of the entity, whether it be public or private. Such entities are strictly not allowed to discharge wastes, for any reason whatsoever, unless after the obtainment of an approval to discharge those wastes as per the criteria and specifications set out by the Environment Protection and Improvement Directorate (EPID). It is noteworthy that EPID was established in 1986 to be an organ of the Ministry of Health, and continued to function under the same Ministry until subsequently the Ministry of Environment was established in 2003, in which the EPID constituted the core organ of it.²³

Article 4 prohibits discharging any pollutant into public waters, while article 5 authorizes the EPID to issue environmental restrictions pertaining to the quality of public water as well as the quality of water discharged into public water, sewage systems, or rainwater. It also

²⁰ See Kurdistan Official Gazette No. 63 on 21 January 2007, p. 53, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=091020074575956&Year=2006&PageNum=1, revisited on 10 August 2012.

²¹ Article 18. See Iraqi Official Gazette No. 3947 on 9 September 2002, p. 450, Vol. 2 available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=150220063756644&Year=2002&PageNum=1, revisited on 10 August 2012.

²² See Iraqi Official Gazette No. 3890 on 6 August 2001, p. 505, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=130120013018238&Year=2001&PageNum=1, revisited on 10 August 2012.

²³ Iraqi Ministry of Environment, available at: www.moen.gov.iq/summary.html, revisited on 25 August 2012.

includes the quality of waste water containing materials coming from these systems, depending on the nature of those materials, taking into consideration a set of factors about the effects of these (poisonous) pollutants on organisms, especially the human body.

Moreover, article 6 requires the owners of small private businesses which produce wastes containing radioactive substances to use the methods required to treat these substances before discharging them into public water, irrespective of their economical costs. Furthermore, the owner must submit full details to the EPID on the required procedures that he will take to remove the pollution impacts, explaining the environmental impact of the respective project.

Article 6 further establishes that a shop owner needs to apply for an annual permit or license from EPID to discharge wastewater resulting from the activity performed in the said business's premises into public water networks, sewage systems or rainwater networks.²⁴ The EPID may issue the license only after ascertaining that the shops have met the relevant health requirements to be observed in accordance with the orders and instructions set forth in Article 5 (b) and (c).

Conceivably one of the most important articles of this law is article 9. It prohibits disposing certain materials in the vicinity of water treatment and purification stations, such as pollutants causing metal erosion, high viscosity materials affecting water projects, and other non-disintegrated materials. These materials are considered dangerous and to have negative effects on those projects which eventually lead to pollution. The article also prohibits disposing carcasses, human and animal waste, decayed material, or other wastes of any kind into public waterways or river banks. It also prohibits washing animals, their skins, intestines, wool or any materials damaging the environment or public health in water or passing stools or urinating into waterways or at river banks.²⁵

Finally yet importantly, this law introduces mechanisms for the preservation of public water. According to this chapter, provincial councils are authorized to protect and improve the environment through coordination with local peoples' councils as well as making plans for each governorate to protect public water from pollution and improve its quality according to timetables. These plans are to be presented to the Council of Environmental Protection and Improvement.²⁶ Furthermore, the provincial councils' plans for the protection of public water from pollution must identify the sources of pollution in public water and indicate the proposed treatment method. The plans must also account for future projects, the funds to be reserved for the implementation of these projects, and the timetables for the projects to be implemented in order to treat sources of pollution.²⁷

²⁴ Article 6, *ibid.*

²⁵ Article 9 (c), *ibid.*

²⁶ Article 12, *ibid.*

²⁷ Article 13, *ibid.*

7. General Authority for Water and Sewage Law No. 27 of 1999

The *General Authority for Water and Sewage Law No. 27 of 1999* instructs the local authorities in charge of processing drinking and raw water and the discharge of sewage and rainwater in all parts of Iraq beyond the boundaries of the municipality of Baghdad. This law entails the processing should be done according to needs and long-term planning, taking into account economic, social and health developments. Interestingly, this law imposes water connections to all the private properties in the country in a time when the years 1998 and 1999 were considered as severe drought years in the Middle East region. In this context, article 11 states that “if the installation of water and sewage networks is completed in an area where a property is located, the owner or the person in charge of the property is obliged to participate in these networks. If the owner declines to participate, the competent authority should work on his/her behalf and pay the aggregated expenditure for such installation in accordance with the provisions of the law of the collection of government debt.”²⁸ One should bear in mind that this law was not enforceable in the Kurdistan Region of Iraq for being a semi-autonomous area and possessing a separate legislature from central government of Baghdad.

8. Chapter IX of the Instructions No. 1 of 1998 on the Iraqi Ports and Harbors

It is noteworthy that protecting water resources again has been addressed in Chapter IX of the *Instructions No. 1 of 1998 on the Iraqi Ports and Harbors*. It addresses the care for the aquatic environment and fight against pollution. The articles of this law regulate the issue of aquatic environment care by anchoring ships. For example, a ship captain is required to inform the competent authorities of the occurrence of pollution as soon as possible. Besides that, ships or vessels are prohibited from throwing any waste, which might be empty cans, dirty water or wastewater, into a river, or pumping their sewage into a river. When pollution or any of the acts set forth in this law occur, the owner of the ship or its captain shall bear the responsibility and pay all due compensations incurred thereby. This law also addresses the responsibility according to the volume and type of pollution, which the competent authorities will estimate by articles 167, 168, 178 and 180.²⁹

9. Maintenance of Irrigation and Drainage Systems Law No. 12 of 1995

The *Maintenance of Irrigation and Drainage Systems Law No. 12 of 1995* has purposely prepared an exclusive section on protecting natural rivers. First of all, article 1 necessitates facilitating and securing the operation management in accordance with designs approved by the relevant directorates under both Ministries of Irrigation and Agriculture. It also aims to protect agricultural land, irrigated lands from negligence, harm salinity and low fertility, and to identify those responsible for doing so. Yet, this law does not ignore the importance of

²⁸ See Iraqi Official Gazette No. 3788 on 23 August 1999, p. 495, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=120120056686430&Year=1999&PageNum=1, revisited on 10 August 2012.

²⁹ Chapter IX of Instructions No. 1 of 1998 on the Iraqi Ports and Harbors. See Iraqi Official Gazette No. 3731 on 20 July 1998, Inst No. 1, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=070220065516593&Year=2003&PageNum=1, revisited on 10 August 2012.

protecting natural rivers. Its article 5 obligates the state enterprise of irrigation projects operation and the irrigation directorates in the governorates responsible for the maintenance of rivers and streams, as well as natural rivers, main drainages, estuaries, evaporation basins, main streams, and drainages delineated in the design maps, their installations and pumping stations located on them.³⁰

10. Protection and Development of Agricultural Production in the Kurdistan Region- Iraq Law No. 4 of 2008

Similarly, the Kurdistan Region has endorsed the *Protection and Development of Agricultural Production in the Kurdistan Region-Iraq Law No. 4 of 2008* in order to include all agricultural lands, plants, groves, forests, pastures and livestock and its productions, water resources and other agricultural production in the definition of national resources in Kurdistan the region, as specifically mentioned in Article 1. The article also brings the liabilities on their owners and other persons utilizing and developing them according to plans and strategies of the regional authorities in such away they result in damaging and harming them. Article 2 has been allocated for treatment to contribute in increasing the irrigated spaces and provide systems for the rational use of water.³¹

11. Irrigation Ministry Companies and Bodies Law No. 44 of 1987

To provide logistic supports to the Ministry of Irrigation on maintaining the smoothness of rivers' water flow, the *Irrigation Ministry Companies and Bodies Law No. 44 of 1987* establishes thirteen state companies in order to assist the Ministry in carrying out its duties and objectives.³² The Irrigation Ministry Companies and Bodies Law establishes which specific state companies specialized in cleaning the stream beds of rivers in order to maintain a smooth flow of water and protect the water environment shall carry out these tasks.³³

12. Irrigation Law No. 6 of 1962 and its Amendments

The *Irrigation Law No. 6 of 1962 and its Amendments* was mainly introduced to regulate irrigation activities and the protection of water resources. According to this law, the state

³⁰ Article 5, See Iraqi Official Gazette No. 3578 on 28 August 1995, p. 260, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=191120056350193&Year=1995&PageNum=1.

³¹ See Kurdistan Official Gazette No. 87 on 6 December 2008, p. 19, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=070420106261491&Year=2008&PageNum=1, revisited on 10 August 2012.

³² Article 1 of this law states that: this law establishes 13 State enterprises which are directly linked to the Ministry of Irrigation, they are: Al-Rafidain Company for Construction of Dams, Al-Salah ad Din Company for Land Reclamation, Al-Nahrawan Company for Land Reclamation, Palestine Company for Land Reclamation, Green Company for the Cultivation of Reclaimed Land, Zora Company for the Cultivation of Reclaimed Land, Al-Muthanna Company for the Maintenance of Irrigation Projects, Al-Hadba' Company for the Maintenance of Irrigation Projects, Nasr Company for Maintenance of Irrigation Projects, Drilling Water Wells Company, Repairing Machinery and Equipment Company, General Authority for Land Surveys, and General Authority for Oases and Soil Conservation. See Iraqi Official Gazette No. 3153 on 8 June 1987, p. 360, Vol. 1, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=281220059942013&Year=1987&PageNum=1.

³³ See Iraqi Official Gazette No. 3153 on 8 June 1987, p. 360, Vol. 1, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=281220059942013&Year=1987&PageNum=1, revisited on 20 April 2012.

bears the responsibility of monitoring, operating and protecting lakes and rivers as well as monitoring and improving the natural and man-made waterways, which are constructed to store, distribute and discharge water. Moreover, the law sets forth penalties against offenders, who pollute water sources as a result of a sinking boat or throwing garbage into a river.³⁴

13. Beaches Utilization Law No. 59 of 1987

Under the *Beaches Utilization Law No. 59 of 1987*, article 1 defines a river as the main natural waterway that has a source and estuary. The source of its water is from springs, ground water, lakes or other sources. All or some of these sources contribute to its flowing water. Its water may flow continuously or intermittently throughout the year. Also, it defines tributary as a natural waterway flowing into a main river. The sources of its water are the same as those of a main river and its water may also flow continuously or intermittently throughout the year.

The objectives of this law are to secure the passage of floodwater and prevent pollution caused to the rivers, particularly the Tigris and Euphrates. It is suggested that this law ignores the legal ownership status of the land, be it proprietary right, drainage right, utilization or rent right, or trespassed land as far as pollution is concerned. Since the two rivers are crucial for the peoples' life and economic development in Iraq, this law has somewhat retrospective effects. Therefore the Minister of Irrigation was given the power to order the removal of any installations or barriers erected before the issuance of this law which hinder the flow of water in the river basin as they may lead to the narrowing of waterways and eventually to the basin not containing flood waves. However, in some circumstances the approval of the President of the Republic was needed.³⁵

14. Hydrocarbon Resources Preservation Law No. 84 of 1985

On the other hand, the *Hydrocarbon Resources Preservation Law No. 84 of 1985* seeks to preserve the water environment and prevent it from pollution resulting from the rupture of oil pipes or oil spills into rivers. Article 47 provides that the Minister of Oil shall issue instructions in line with the appropriate technical specifications adopted in the oil industry, in a manner consistent with the country's circumstances, in order to operate and maintain the facilities of transportation, storage, loading and distribution of water safely.³⁶

³⁴ See Iraqi Official Gazette No. 645 on 20 January 1962, p. 25, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=101120053458875&Year=1962&PageNum=1, revisited on 10 August 2012.

³⁵ Article 2 (a) and (b), See Iraqi Official Gazette No. 3157 on 6 July 1987, p. 390, Vol. 2, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=291220059045045&Year=1987&PageNum=1, revisited on 10 August 2012.

³⁶ According to article 47, these specifications must take the following into consideration: First: "The passage of pipelines through different areas, and cross with rivers, waterways and railways to ensure their protection from external factors such as erosion and exposure to breakage". See Iraqi Official Gazette No. 3061 on 21 October 1985, p. 734, Vol. 2, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=231220057651020&Year=1985&PageNum=1, revisited on 10 August 2012.

15. Natural Pastures Law No. 2 of 1983

Protecting natural pastures in relations to water resources protection has a great importance by the Iraqi legislature. Thus, the *Natural Pastures Law No. 2 of 1983* was passed to employ sentences of imprisonment upon anyone who ploughs or cultivates natural pastures or causes damage to such pastures, water springs, wells, water distribution facilities, or any water source in these pastures, or to fences, signs, border landmarks, or other structures in a natural pasture.³⁷ The penalty should not exceed one year and a fine may not exceed 500 Iraqi Dinars. If the violation is repeated, the penalty will be imprisonment for a term not exceeding two years and a fine not exceeding one thousand Iraqi Dinars.³⁸

16. Public Health Law No. 89 of 1981

Also, the *Public Health Law No. 89 of 1981* has dedicated chapter V only for drinking water issues in order to obviate the great damage that water pollution could cause to public health. Under this law, article 64 sets out the procedures to be implemented by the state authorities in charge of supplying drinking water to the citizens.³⁹ Moreover, article 65 requires the obtainment of approval from the competent health authorities when planning to conduct studies and suggesting designs for projects of drinking water supply. It further stipulates the submission of information related to the water quality from the source.

Article 67 addresses a vital issue, which is the degree of using the source and the methods of subsequent purification and treatment of the water source. The article further obligates the competent authorities in charge to ensure that the methods set forth must be in line with the Iraqi and international standards for ensuring drinking water quality and suitable for human consumption as well as assessing the feasibility of these drinking water projects all over Iraq. Additionally, this law states the necessity that every new drinking water installation project must contain a unit for purifying drinking water and integrated laboratories to conduct mycological, chemical and physical tests to identify the efficiency of purification stages and ensure that the supplied water corresponds with the standards. The laboratories must also provide the health authority in the area with the drinking water test results.⁴⁰ Finally, article 105 stipulates that regulations, instructions and statements may be issued to facilitate the implementation of the provisions of this law. Therefore, a number of specific instructions which address several provisions pertaining to the environment protection and improvement, were issued.⁴¹

³⁷ Article 12, *See* Iraqi Official Gazette No. 2922 on 31 January 1983, p. 74, Vol. 1, available at: www.iraqild.org/LoadLawBook.aspx?SP=REF&SC=291120057072056&Year=1981&PageNum=1, revisited on 10 August 2012.

³⁸ *Ibid.* also in 1982, the value of the Iraqi Dinar was equal to US \$ 3.22, and sustained this official exchange rate without additional devaluation despite mounting debt until the year 1988. *See* "eDinar Financial", *Securing A Changing World* Website, available at: www.edinarfinancial.net/about.php, revisited on 20 April 2012.

³⁹ *See* Iraqi Official Gazette No. 2848 on 17 August 1981, p. 759, Vol. 2, available at: www.iraqild.org/LoadLawBook.aspx?SP=REF&SC=291120057072056&Year=1981&PageNum=1, revisited on 10 August 2012.

⁴⁰ *Ibid.*, article 67, para. 1, 2 and 3.

⁴¹ *Ibid.*, article 105.

17. Fishing, Exploiting and Protecting Aquaculture Law No. 48 of 1976

According to the *Fishing, Exploiting and Protecting Aquaculture Law No. 48 of 1976*, fishing companies must preserve aquaculture in public water on the way prescribed by law. Public water means internal public water, which includes rivers, lakes, marshes, water reservoirs, fish farms, swamps both permanent and temporary; as well as drainages, streams, ponds, common gulfs, creeks and regional water and their marshes, swamps, ponds, and gulfs.⁴²

18. Penal Code No. 111 of 1969 and its Amendments

There are a number of articles under the *Penal Code No. 111 of 1969 and its Amendments*, which deal with water related issues. For instance, article 368 criminalizes acts which harm the public health and that are related to the environment and its protection, such as causing the spread of dangerous disease harming the life of individuals, for example causing cholera. Under the provisions of this article, the perpetrator is considered to have committed a crime punishable under the law.⁴³ Furthermore, article 496 paragraph 2 addresses infractions related to the public health. According to this article, a person who disposes animal carcasses, dirty materials or items harming the public health in a river, conduit, drainage or any waterway can be subject to punishment. This article was amended twice by the Revolutionary Command Council (RCC), Resolution No. 77 on 14 January 1982, and then amended by RCC Resolution No. 188 on 7 February 1984.⁴⁴

19. Protection of Rivers and Public Water from Pollution No. 25 of 1967

As to the discharge of wastewater, the *Protection of Rivers and Public Water from Pollution Law No. 25 of 1967* is a set of regulations introduced to address several matters related to discharge into public water and sewage systems. According to this regulations, article 7 prohibits discharging wastewater of a shop into public water if either the absorbed vital oxygen trapped or floating materials exceed the rates, determined by the Health Authority by virtue of any other instruction given by the Minister of Health or his nominee. Moreover, articles 8 and 9 of the regulation provide mechanisms to control water pollution caused by

⁴² Article 1, See Iraqi Official Gazette No. 2527 on 3 May 1976, p. 2, Vol. 1, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=110120061247971&Year=1976&PageNum=1, revisited on 10 August 2012.

⁴³ The old text of the article states that: "Punishable by imprisonment for a term not exceeding one year or a fine not exceeding one hundred dinars to anyone whose mistake caused the spread of serious disease that of harmful to the lives of individuals." However, the text of this article was amended during Paul Bremer's Coalition Provisional Authority (CPA) in Iraq in 2003. Under article (3) the CPA Order amended the Penal Code and the Code of Criminal Procedure, No. 31 Date 10 September 2003, and replaced by the following text: Punishable by imprisonment for a term of fifteen years or a fine not exceeding one hundred dinars each of his mistake caused the spread of serious disease is harmful to the lives of individuals. If the act caused death or a permanent disability to a man, the penalty prescribed to the perpetrator as the crime of murder or crime in line with victimization as the case may be. See Iraqi Official Gazette No. 3980 on 10 September 2003, p. 31, available at: www.iraq-ild.org/LoadLawBook.aspx?SC=210220061355071, revisited on 10 August 2012.

⁴⁴ See Iraqi Official Gazette No. 2982 on 27 February 1984, p. 139, Vol. 1, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=081220056954842&Year=1984&PageNum=1, revisited on 10 August 2012.

discharges of wastewater into public water by shop owners.⁴⁵ Furthermore, the word 'shop' is defined by article 1 of this law to include any public or private factory, store or any other institution whether publicly or privately owned.

Article 10 prohibits disposing animal carcasses, secretions, feces, any decayed substance, whether solid or liquid, garbage of any kind whatsoever or any other harmful materials into any public waterway or over its beaches, or allows or orders so. Although this law is still in force, its text overlaps with the article 9 of the Regulations on Preservation of Water Resources No. 2 of 2001,⁴⁶ and may bring about confusions for the both the public and the authorities to decide which law should prevail although the latter provides more details.

The regulation also addresses the means of using public water and drinking water, and tackles some of the problems resulting from water pollution. It holds anyone who performs such prohibited activities liable provided under article 15. It also establishes methods to prevent certain negative effects of water usage, as it, pursuant to article 10 prohibits the cast of leftovers and discharge of waste water into any river, channel, waterway or stream. Additionally, article 11 prohibits the extravagant use of water resources, or for wasteful use of water, such as washing leathers, clothes or any other polluted material in a river, channel or waterway. Finally, the Regulation provides several instructions concerning the permitted level of pollution in general.⁴⁷

CONCLUSION

After a list of legislations in force regarding water resources management in Iraq has been presented and analyzed, it can be seen that the lawmakers in Iraq have shown a degree of awareness pertinent to the legal perspective of water resources in the country at various sectors. This is an evidence to demonstrate the Iraqi government's goodwill to create a competent legal framework for its national water resources. Article 110 of the constitution of 2005 is a landmark for the Federal Government's solicitude for this framework. Other than the constitution of 2005, some laws have mainly focused on the management, utilization and preservation of water as a national wealth. Next, they established provisions on the discharge of wastes into public waters and determined how wastewater should be processed, disposed or recycled.

On the other hand, these current laws and regulations are not free from weakness. Most of them lack the necessary practical and technical details to ensure accurate achievement of the obligations established for managing water resources properly. Some of them have been drafted in a general style, overlapping provisions which are still in force, missing an in-depth,

⁴⁵ See Iraqi Official Gazette No. 1446 on 16 July 1967, p. 108, Vol. 2, available at: www.iraq-ild.org/LoadLawBook.aspx?SP=REF&SC=250120062043864&Year=1967&PageNum=1, revisited on 10 August 2012. It is noteworthy that the articles of this regulation came to achieve the purpose of the Public Health Law No. 45 of 1958 (comprised of 15 articles, but no longer in force as it was replaced by article 102 of Law No. 89 of 1981).

⁴⁶ Iraqi Official Gazette No. 3890, article 9, *supra*, footnote 21.

⁴⁷ Iraqi Official Gazette No. 1446, *supra*, footnote 45.

scientific dimension and detailed mechanisms. Furthermore, insufficient literature, unreliable texts and legal documents proceedings on water resources management in Iraq has become a barrier for the legal analysts and experts in the field to contribute to the discipline. Besides that, lack of adequate funding capabilities from the government, and weak monitoring and follow-up procedures due to diverse political assessments by statesmen at this stage have promoted additional hindrance for both lawmakers and academic institutions to contribute to the discipline.

Finally, in the balance of presenting both virtue and inadequacy of the legal framework of water resources management in Iraq, there are a number of factors, which may dictate the improvement of this legal framework. For instance, cooperation and coordination between the various government institutions can serve this conclusion. Particularly if scientific and technical research, the exchange of information, technical means and methods on regulating water resources are vitally defined by law, it will contribute to the formation of a well-structured national water law for Iraq.

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