

# كسر القوالب Breaking the mold

#Breaking\_The\_Mold

## Arab Civil Society Actors and their Quest to Influence Policy-Making

Country: Iraq

### Iraqi Civil Society and Election Law Amendment

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#### GENERAL CONTEXT

After the fall of the previous political regime in 2003, Iraq witnessed the establishment of many non-governmental organizations taking advantage of the new political circumstances. However, many of them are still in their primary stage; they are, in one way or another, a natural nucleus for future voluntary civil society sequences in Iraq.

The number of these organizations registered at the Ministry of Planning in the first year of the political change reached almost 977 (Jawad, 2004, p. 13). According to the statistics adopted by the Ministry of State for Civil Society Affairs, their number reached almost 5071 in 2006 (Hafez, 2009, pp. 315-314), distributed according to different civil jurisdictions and Iraqi governorates (see Table 1). It decreased to 3150 organizations in 2015, including 900 organizations in Kurdistan, before the number increased again to almost 4000 organizations in 2018 (Al-Tamimi, 2018), noting that many organizations are not officially registered.

In fact, the Iraqi Constitution promulgated in 2005 guarantees the right to form civil society organizations, as Article 5 stipulates: "The state's keenness to enhance the role, support, development and independence of the civil society organizations to be consistent with peaceful means to achieve their legitimate goals" (Al-Iraqi, 2005). The temporary Iraqi state administration law of 2014 preserves the right to form civil society organizations; thus, these organizations acquired a constitutional and legal description.

The political change produced popular demands that affect all life's aspects, and at the top of the list are the demands of democracy and the opportunity to fulfill its conditions and requirements, leading to building a balanced society by calling on these organizations to participate in reforming and changing several problems, including the Election Law.

#### METHODOLOGY

The researcher adopted the case study approach while using the field research through a random questionnaire distributed among 200 people. The questions focused on Iraqi civil society organizations' contributions in putting pressure on the Iraqi Parliament to amend the Election Law and the extent of the current Election Law's success with a fair representation of the Iraqi people.

#### FIRST: ISSUE'S BACKGROUND OR PROBLEMATIC

Since 2011, Iraq has witnessed a massive protest movement calling for political reform and the Election Law amendment. The civil society organized demonstrations and rallies, held seminars, conferences and workshops, and met with government officials and delegates from the High Electoral Commission (Adwar, 2018), as they conducted a critical study with experts in the electoral and political issue. The background of the problem can be summarized as follows:

The Election Law had a series of amendments, but this fact did not contribute to achieving effective, proportional representation for the Iraqi people.

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- In the 2005 elections, a closed list and one-district system was adopted to elect 275 deputies, i.e., one deputy for every 100,000 people due to the lack of a population census, in addition to allocating a %25 quota for women according to the Election Law No. 16 of 2004. This method is indeed far from the democratic spirit, for it deprives the voters of the freedom to choose their representatives, which directly affected the Iraqi political forces that emerged from the elections and expressed the opinion of groups of Iraqi society, as these forces were formed on a national, religious, sectarian and tribal basis, as an indicator of the primitiveness of political thinking that relied on fragile political alliances and a consensual political formula.

- Law No. 16 was issued in 2005 instead of the 2004 Law as mentioned above, adopted multiple constituencies (each governorate is an electoral constituency), and defined 275 seats, of which 230 seats were allocated to governorates and 45 compensatory seats to be more representative of the electorate. However, some considered this law flawed, as it did not rely on a population census that was supposed to take place before the elections to determine the number of residents according to each governorate and the number of voters in it, and to grant it seats in Parliament in proportion to the number of its population. Accordingly, no party or coalition obtained the political majority, which prompted the adoption of political consensus by relying on political forces to form alliances and political consensus with the small components. Furthermore, no political entity was able to obtain the two-thirds majority of the members of Parliament needed to elect the President and the Prime Minister. These consensuses led to a sectarian, religious, tribal and sectarian alignment. At the same time, minorities were not represented, which would have guaranteed their political rights. The leaders of the main blocs had the final decision in determining political positions, ministries and other functions in addition to the absence of political opposition for small blocs integrated into political agreements with the bigger blocs to grant them eventually some government positions.

- The third phase began with enacting a new Election Law and the amendment of the Election Law No. 16 of 2005 by Law No. 26 of 2009. It included many amendments, such as: Granting a quota for the components of the compensatory seats, provided that this does not affect their percentage if they participate in the other national lists; \*working in multiple districts, increasing the number of seats in the Parliament to 325 seats as a result of increasing the population growth of the governorates by a rate ranging between 2.8 and %3, distributing 310 seats to the governorates and 15 compensatory seats, provided that they are calculated according to the electoral denominator that requires dividing the total number of valid votes for all Political entities in one constituency, minus the valid votes for the components, divided by the number of general seats for that constituency, with the exclusion of every political entity whose total number of valid votes is less than the electoral denominator. \*\*Finally, the seats are distributed among the candidates, as the candidates are rearranged within the opened list, according to the number of votes obtained by each candidate from highest to lowest. If two or more candidates have equal votes in one list, a lot will be resorted to. Scientifically, this law was drafted in favor of the major political forces and granted political entities the right to nominate those they prefer, as the prioritized candidates reached the Parliament based on their party lists.

- The fourth phase began by promulgating Law No. 40 of 2014, and the amended Sainte-Laguë system\* was adopted, as its Article 14 stipulated the distribution of seats to the competing lists according to the following (Iraqi, 2013):



- The valid votes for the competing lists shall be divided among the numbers (1.9, 1.7, 1.5, 1.3, 1.6, etc.) and the number of seats allocated to each constituency, taking into account that women obtain at least %25 of the number of seats.
- The seats shall be distributed within the list by preparing a hierarchical order for the candidates based on the number of votes obtained by each of them; hence the first winner shall be the one who gets the highest votes, and it is the same issue for the rest of the candidates, and in the event of an equal number of votes, a lot will be resorted to.

#### SEVERAL AMENDMENTS HAVE BEEN MADE TO THIS LAW (IRAQI, 2018):

**First:** Law No. 1 in 2018 stipulated the division of valid votes for the competing lists by serial numbers according to the modified "Sainte-Laguë" system (1.7, 1.3, 1.5, 1.9) and the number of seats allocated to the constituency.

**Second:** Increasing the number of seats in the Parliament to 329, including 320 for the governorates and 9 per the quota, but without making any changes to the modified "Saint- Laguë" system.

**Third:** Appointing 9 judges instead of the commissioners to run the Council of the High Commission for Elections until the Federal Court approves the election results.

Accordingly, these laws and their amendments firmly established the progress of major lists, the failure of parties and small components to reach the Parliament and the restriction of women to 25%, which is the minimum percentage stipulated by the Constitution and demanded by civil society organizations in Iraq (Adwar, 2018). Therefore, Iraqis' awareness increased in terms of the need to amend the Election Law to achieve a wider representation of the Iraqi people. This was clearly reflected through the demonstrations, including the million-strong demonstration in Tahrir Square in Baghdad on February 17, 2017 (Researcher, Observations, 2017), which included a large number of the Iraqi civil society organizations, left-wing, liberal and civil forces and many religious movements; among the most prominent political forces, we mention the Iraqi Communist Party, civil and independent activists and the Sadrist movement. The organizations that stand out are the Iraqi Al-Amal Association, the Iraqi Peace and Solidarity Council, the Tammuz Organization for

Social Development, the Ain Network, the Iraqi Women's Network, The Shams Organization, the Civil Center for Legal Reform and the Center for Governance Studies for Public Policy.

## SECOND: PROBLEM'S TIMELINE

Since the collapse of the previous regime, events proved that the Election Law in 2005 and 2008 emerged to be convenient to the entry of large parties to the Parliament and the government's formation from these same parties. Therefore, the large parties' tyranny was firmly established, along with the weakness or lack of representation of the parties and small components, which required amending the Election Law. That led many organizations to reveal these defects, such as the closed list system, the opened restricted list system, the modified "Saint-Laguë" system that ensured the entry of large parties to the Parliament, which led the organizations to object to the adoption of this system severely because it contradicts people's will, and the Independent High Elections Commission does not have the legal authority to make any electoral amendment influenced by the Parliament. Calls were issued to reformulate the law to ensure compliance with the constitutional provisions in articles 46, 47 and 57 of the permanent Iraqi Constitution for 2005 while preserving the individual and direct election system and the relative division of constituencies according to the number of residents of each governorate (which requires a population census for Iraq), abolishing the compensatory quota system pursuant to Article 47 of the Constitution, which did not include any reference to such a formula, and increasing the women's quota. The response of civil society organizations was prompt in identifying the problem and demanding the amendment of the law from 2011 to 2018; **nevertheless, the response of the government and Parliament did not meet the ambition**, as the law and its amendments included guaranteeing the access of large parties to the Parliament and government.

## THIRD: ROLE OF REPRESENTATIVES OF CIVIL SOCIETY ORGANIZATIONS AND THEIR INVOLVEMENT IN THE ISSUE

Iraqi civil society organizations urged the Parliament and the government to make amendments to the Election Law, which was designed to ensure that large parties lead the political scene and that qualified candidates and small parties fail, along with the absence of political opposition in the Parliament. These manifestations resulted in political and societal instability, which requires an electoral system that guarantees a wider representation for the Iraqi people and combines justice and wide representation, which leads to the stability of political and social life. Therefore, many civil society organizations held seminars, conferences, demonstrations, workshops and interviews with government officials and commissioners in the Independent High Elections Commission, interaction and attendance of specialists in electoral and political affairs, as well as addressing messages to the government that were supported by social media campaigns. The most prominent of these organizations are the Iraqi Al-Amal Association, the Iraqi Peace and Solidarity Council, the Tammuz Organization, the Ain Network, the Shams Organization, the Iraqi Women's Network, the New Human Organization and the Success Organization in Kurdistan.

It is worth noting that most of those calling for these activities are volunteers in these organizations and have not received any financial compensation or wages.

## FOURTH: STRATEGIES AND TACTICS (ADWAR, 2018)

The activities of Iraqi civil society organizations varied in framing the problem.

- Some of them emphasized the role of protest in showing mistakes, gaps, and unfairness of the government and Parliament's Election Law.
- Some of them held seminars, conferences and workshops to study law critically.
- Others held meetings and dialogues with government officials, parliamentarians and members of the Commission. Social media campaigns were prominent to show the gaps and unfairness of these laws, which contributed to clarifying the dangers of the law and forming a legal, political awareness among the public of the need to change or at least amend the law.

It is worth noting that many civil society organizations were active in more than one field (demonstration, symposium, conference and meeting). They also filed lawsuits before the Federal Court to urge the Parliament and the government to change the Election Law<sup>2</sup>.

## FIFTH: INFLUENTIAL FACTORS OR TRANSFORMATIONAL MOMENTS

The electoral system in Iraq was affected by numerous factors, some of which are internal, such as religious, political, cultural and economic factors, and others are external, represented by the United Nations and the United States of America's role. It was found that the religious factor is the most influential internal factor in the electoral system, at a rate of 56.6%, followed by the political factor at 28%, then the cultural factor (11%) and the economic factor (4%) (Al-Issawi, 2003, p. 161).

The state started to cover the winning entities that dominated the Iraqi political scene and tried to maintain the electoral system and its mechanisms, starting from 2004 (the closed list) and the last law (amended Saint- Laguë), which resulted in an unfair representation for some provinces in favor of exaggeration of other provinces' representation, and poor policies developed by the winning components, which expressed narrow views that do not represent the Iraqi public opinion due to the partisan, sectarian and consensual quota system in which the Iraqi political forces worked. Therefore, a relationship exists between the political and electoral systems, which prompted civil society organizations to emphasize the idea of the political system seeking to put pressure towards drafting an election law. In contrast, the political system was not influential in determining the activities' movement of these organizations or the religious authorities. Still, the religious authority represented by Mr. Al-Sistani was one of the first advocates of adopting the opened list (Tawfiq, 2018).

The media outlets and social media platforms supported civil society organizations and the need to change, reform or amend the election law; altogether, they contributed to putting pressure on the Parliament and the government, noting that these organizations were not often exposed to political and governmental influence on the one hand, but the political system did not respond to pressure from civil society organizations on the other hand.

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<sup>2</sup> Including a million-strong demonstration in Tahrir Square on 2017/17/2, and the symposium on constitutional amendments on 2017/2/1, and the meeting of civil society organizations with a member of the legal committee in Parliament, Mr. Qassem Al-Aboudi

## SIXTH: TRANSFORMATIONAL MOMENTS

In fact, no transformative moments emerged in the attempt to put pressure on the government or Parliament to amend the Election Law ensuring a wider and more equitable representation, as political decision-makers did not follow up this process, and civil society organizations were unable to make an impact generally on the political decision-makers. In other words, civil society organizations' activities did not meet the ambition they seek<sup>\*\*\*</sup>, and they failed to amend, abolish or change the Election Law to make it more representative.

## SEVENTH: RESULTS

The activities of the various Iraqi civil society organizations were below the level of ambition. They were unable to impact the political decision-makers to amend or abolish the Election Law, which was governed by the major political forces' will. Similarly, these organizations failed to influence the Parliament and the Iraqi government to make the required and needed amendments to ensure the enactment of an election law that would contribute to a wider and fairer representation of the Iraqi people, given that the activities of these organizations were systematic, legal and voluntary, but they failed to influence the amendment of the Election Law.

This is what the study respondents adopt, as their answers were distributed to the question: Did civil society organizations contribute to putting pressure on the Iraqi Parliament to amend the Election Law? As follows: 60.3% do not agree, 27.3% are neutral, and 12.4% agree. However, their answers were distributed to a question: Does the current Election Law contribute to achieving real representation for the Iraqi people? As follows: 7.3% agree, 15.5% are neutral and 77.2% do not agree.

## EIGHTH: CONCLUSION

This resulted in significant lessons:

**First:** the failure of Iraqi civil society organizations to influence the amendment of the Election Law.

**Second:** the major political forces' influence on maintaining the election law, which qualified them to remain in power and Parliament.

**Third:** the lack of response from the Parliament and the Iraqi government to Iraqi civil society organizations' pressures and activities and the lack of protection for these organizations.

**Fourth:** The most prominent lessons learned from the Iraqi civil society concerning the amendment of the Election Law are:

1. The weak role of organizations in influencing the government and Parliament.
2. The existence of international and internal variables preventing these organizations from working on the amendment of the law and maintaining the situation.
3. Despite the large number of these organizations, they are limited and few, and they play a pressing role on the government and Parliament, which is not influential.

**Fifth:** These organizations are still unable to make an impact on this issue, and they seek to amend the law in the future.**Sixth:** What has the Iraqi civil society learned from these activities?

1. The need to continue to put pressure on the government and Parliament to amend the Election Law to be convenient with the broad representation of the Iraqi society.
2. The need to unify all organizations' work to contribute to putting pressure on the government and Parliament.
3. The absence of political opposition in Iraq was, and still, one of the most significant reasons preventing influence and pressure on the government and Parliament and increasing the pressure on them.



## REFERENCES

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Hafez, Abdul-Azim Jaber, (2009), *Democratic Transition in Iraq (Reality and Future)*, 1st Edition, Mortada Foundation - Egypt for Iraqi Book, Baghdad.

An interview with Mr. Muhammad Al-Tamimi, Director of Non-Governmental Organizations in the Iraqi Council of Ministers on 11/12/2018.

*The permanent Iraqi constitution of 2005*

Interview and dialogue with the head of the Iraqi Al-Amal Association (Hana Adwar) in Baghdad on 11/24/2018

The Christian component (5) seats distributed in the governorates of Baghdad, Nineveh, Kirkuk, Dohuk and Erbil. The Yazidi component is (1) seat in Nineveh, the Sabian-Mandaeen component is (1) seat in Baghdad and the Shabak component (1) seat in Nineveh.

Electoral denominator =	Total number of valid votes in one constituency for all political entities - valid votes for the components
	number of general seats for that constituency
Seats' number for each political entity =	Total number of valid votes for each political entity
	Electoral denominator
Then the seats are allocated according to the results of valid number for each list; if there are remaining seats, they are considered vacant and distributed based on the following step	
Distribution of the vacant seats =	Total votes of the entity x the number of vacant seats
	Total of the entity's non-influential votes in the constituency

\*Modified Sainte-Laguë is a modified version of the Sainte-Laguë system that aims to make the distribution of seats more equitable and in which the denominators are modified to be (1, 3, 5, 7, 9) and is currently applied in Iraq.

Elections Law No. (40) of 2013 issued by the Iraqi Council of Representatives Amendments to the first, second and third Election Laws of 2018

Interview and dialogue with the head of the Iraqi Al-Amal Association (Hana Adwar) on 11/24/2018, *ibid*

Al-Researcher, Views, 2017.

Interview and dialogue with the social researcher (Duraïd Tawfiq), a member of the Iraqi New Human Organization and interested in electoral affairs, on December 4, 2018, in Baghdad.

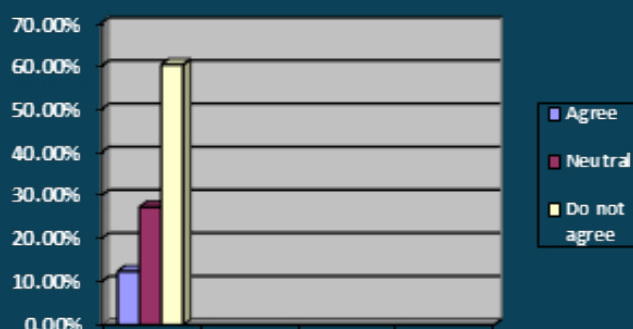
Adapted from Abdul Aziz Ali: *Regulations of the elections for the Iraqi Parliament after 2003*, Baghdad, 2013, p. 161.

Interview and dialogue with the social researcher (Duraïd Tawfiq), a member of the Iraqi New Human Organization and interested in electoral affairs, on December 4, 2018, in Baghdad.

This opinion was shared by Hana Adwar, head of the Iraqi Al-Amal Association, and Dr. Raad Sami, Director of the Institute for Electoral Education, in an interview on 12/24/2018.



The current Election Law contributes to real representation of the Iraqi people.



The Iraqi civil organizations contributed to put pressure on the Parliament to amend the Election Law.

Table (1)

Final inventory of civil society organizations according to geographical location and civil jurisdiction with the symbols used.

Source: The Non-Governmental Organizations Office at the Ministry of State for Civil Society Affairs 08/13/2006

Governorate	z	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Total
Baghdad	1415	60	138	84	93	72	25	39	131	222	26	71	51	69	30	89	50	2625
Nineveh	88	3	3	1	3	4	*	1	8	6	1	2	7	2	1	6	1	137
Basra	228	8	15	3	15	5	*	*	17	10	*	2	2	8	1	8	1	323
Dhi Qar	168	2	9	*	*	10	1	*	6	9	1	3	1	2	2	6	3	223
Maysan	86	*	3	*	1	1	*	1	1	2	1	*	2	*	*	3	3	101
Karbala	90	3	5	1	1	3	*	2	*	2	2	1	2	4	2	4	3	125
Najaf	110	1	11	1	*	3	4	2	6	3	2	3	2	1	1	4	3	157
Diyala	80	4	13	3	2	12	3	2	9	21	2	5	2	2	1	8	4	173
Babel	185	4	9	10	4	4	2	2	11	11	3	5	3	9	*	12	6	253
Al Anbar	54	4	4	5	6	8	4	3	4	2	3	6	6	7	1	5	11	11
Wasit	57	2	5	*	2	*	*	4	6	2	5	1	*	*	*	3	2	89
Al Diwaniyah	109	6	3	1	*	3	2	2	6	5	2	4	1	4	4	*	1	150
Sulaymaniyah	12	*	1	*	*	*	*	1	*	*	*	*	*	*	*	2	*	16
Erbil	2	*	*	*	*	*	*	*	*	1	*	*	*	*	*	*	*	3
Duhok	7	*	*	*	*	*	*	*	1	1	*	1	1	2	*	4	*	17
Kirkuk	148	10	10	5	7	13	4	5	11	14	1	5	7	6	1	108	265	265
Al Muthanna	92	1	1	1	*	3	1	*	1	1	1	*	*	1	1	2	1	107
Salah ad Din	53	16	9	2	4	11	1	3	8	8	2	2	3	5	1	4	2	134
Total	2957	124	239	117	138	152	47	67	226	320	52	111	90	122	42	171	96	5071

Notes: Horizontal\*: all the civil jurisdictions in one governorate

Vertical\*: each civil jurisdiction in all the governorates

Final inventory valid till 25/6/2006

Final inventory of civil society organizations according to geographical location with the symbols used.

Valid till 25/6/2006

Democratic transition in Iraq - Reality and Future	
T	Civil jurisdiction
1	Agriculture
2	Arts & Culture
3	Democracy and governance
4	Economic development
5	Education
6	Environment
78	Handicaps
9	Human right
10	Media
11	Children
12	Medicine & Health
13	General services
14	Housing
15	Women's matters
16	Sports & Youth

## BREAKING THE MOLD PROJECT

*In mid-2018, the "Civil Society Actors and Policymaking in the Arab World" program at IFI, with the support of Open Society Foundations, launched the second round of its extended research project "Arab Civil Society Actors and their Quest to Influence Policy-Making". This project mapped and analyzed the attempts of Arab civil society, in all its orientations, structures, and differences, to influence public policy across a variety of domains. This research produced 92 case studies outlining the role of civil society in impacting political, social, economic, gender, educational, health-related, and environmental policies in ten Arab countries: Lebanon, Syria, Palestine, Jordan, Egypt, Morocco, Tunisia, Yemen, and the Arab Gulf.*

*Over two dozen researchers and research groups from the above countries participated in this project, which was conducted over a year and a half. The results were reviewed by an advisory committee for methodology to ensure alignment with the project's goals, and were presented by the researchers in various themed sessions over the course of the two days.*

## THE CIVIL SOCIETY ACTORS AND POLICY-MAKING PROGRAM

*at the Issam Fares Institute for Public Policy and International Affairs at AUB, examines the role that civil society actors play in shaping and making policy. Specifically, the program focuses on the following aspects: how civil society actors organize themselves into advocacy coalitions; how policy networks are formed to influence policy processes and outcomes; and how policy research institutes contribute their research into policy. The program also explores the media's expanding role, which some claim has catalyzed the Uprisings throughout the region.*


## THE ISSAM FARES INSTITUTE FOR PUBLIC POLICY AND INTERNATIONAL AFFAIRS AT THE AMERICAN UNIVERSITY OF BEIRUT

*The Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut (AUB Policy Institute) is an independent, research-based, policy-oriented institute. Inaugurated in 2006, the Institute aims to harness, develop, and initiate policy relevant research in the Arab region. We are committed to expanding and deepening policy-relevant knowledge production in and about the Arab region; and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society and policy-makers.*


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