

The image features a stylized illustration of a classical building with a pediment and six columns. In the foreground, a diverse crowd of people is depicted in silhouette, holding up various flags and signs. The color palette is limited to shades of blue, yellow, orange, and purple. The text is centered over a dark blue horizontal band.

Civil Society in Federal Iraq and the Kurdistan Region Origins, Legal, and Regulatory Framework



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بتمويل من الاتحاد الأوروبي



Authors of the study:

Peace and Freedom Organization

Website: <https://www.pfo-ku.org>

Ufuq Organization for Human Development

Website: <https://www.ufuqorg.org/en/>

Un Ponte Per

Website: <https://www.unponteper.it/en/>

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**Civil Society in Federal Iraq and the Kurdistan Region:
Origins, Legal, and Regulatory Framework**

Abstract

Civil society is a fundamental element in building a democratic life and a civil state, as it helps maintain a balance between authority and various societal components. Civil society organizations (CSOs) in Iraq play a vital role in promoting democratic participation, social cohesion, and human rights advocacy. These organizations act as a bridge between local communities and authorities, facilitating public participation in peacebuilding and transitional processes. CSOs contribute significantly to various aspects of community development, civic engagement, and cultural diversity. Additionally, they play an important role in promoting transparency, accountability, education, awareness, social solidarity, service delivery, as well as early warning and mediation. Moreover, they contribute to reinforcing the rule of law and institutional life.

While the concept of civil society has historical roots, it is redefining its role today as a key player between the state and society. The legal and regulatory framework governing civil society operates on two levels: international and national. At the international level, CSOs rely on a set of international human rights documents and treaties that affirm the right to form associations and participate in peaceful assemblies, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

At the national level, Iraq's 2005 Constitution, along with national and local legislation in the Kurdistan Region, supports the establishment and operation of CSOs. The Iraqi Constitution guarantees, through its articles, the freedom to establish and join associations and political parties, as well as the freedom of expression and assembly. The 2010 NGO Law No. 12 regulates the framework within which these organizations operate, including registration requirements,

funding, and reporting procedures, highlighting their importance in strengthening civil society and outlining conditions for their operation and oversight.

This study aims to shed light on the key features of civil society in Iraq and the Kurdistan Region by exploring several key areas. The study is divided into two parts: one focusing on the national level and the other on the Kurdistan Region. The first section covers the introduction, objectives, and methodology employed in data collection and analysis, where focused group interviews were used as a primary tool. The second section provides the theoretical framework of civil society, explaining its significance and objectives, along with the international legal framework regulating its work. The third section discusses the constitutional legal framework and national laws governing civil society, providing an analysis of the main findings derived from the data and interviews.

In conclusion, the study offers several recommendations and proposals to strengthen the role of CSOs, including allowing individuals and groups to freely form alliances and collaborations without restrictions, regardless of their affiliations, to empower them to form associations and exercise their right to assembly. This will enhance civil society's ability to achieve its objectives in supporting democracy and sustainable development. Additionally, the study recommends reconsidering the requirement for obtaining and renewing the annual administrative order to facilitate the work of NGOs and increase their effectiveness, as this requirement is not clearly mentioned in the NGO law of the Kurdistan Region.

Key Findings

- Civil society organizations in Iraq play a crucial role in promoting democracy, protecting human rights, and providing services to the community, especially for vulnerable groups.
- There is an international and domestic legal framework that supports the work of these organizations, though it faces certain challenges in implementation.
- CSOs encounter several obstacles, such as financial and administrative constraints, as well as political interference.
- Partnership between the government and CSOs is essential for achieving sustainable development.

Key Recommendations

Legal Reforms

- Review and update the laws and regulations governing CSOs at both the national level and in the Kurdistan Region.
- Establish an independent body to oversee the operations of NGOs.
- Simplify administrative procedures and provide digital services.
- Remove registration restrictions imposed on voluntary groups.

Financial and Technical Support

- Increase financial and technical support for CSOs.
- Facilitate access to funding.
- Strengthen transparency and accountability within organizations.

Strengthening Cooperation

- Unify registration procedures across Iraq.
- Create an effective mechanism for legal dispute resolution.

Workers' Rights

- Ensure the rights of foreign workers to organize and represent themselves.
- Encourage the establishment of labor unions.

Importance of These Recommendations

Implementing these recommendations would:

- Enable CSOs to perform their roles more effectively.
- Strengthen democracy and human rights in Iraq.
- Improve services provided to citizens.
- Build a more just and equitable society.

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1. Introduction

1.1 Background

The establishment of the modern state, as a larger organizational unit than the family, dates back approximately four centuries. The founding of the state represents a significant milestone in human history, contributing to the increased organization of society, along with the establishment of rights, duties, security, identity, regulation, the protection of values, and various other responsibilities. Particularly notable is the state's monopoly on the legitimate use of violence and force, aimed at achieving a functional and influential civil society and civilization. Over time, as society evolved and human life progressed, other organizations emerged, such as civil society and its institutions—particularly associations and unions—alongside the state and the family, serving as a balancing force between the state, the market, and the family.

The emergence of civil society organizations in Iraq was far from easy, despite their origins tracing back to the early 20th century. Iraq has undergone profound political and social transformations in recent decades, which have directly impacted the structure of civil society and its role in the development and democratization processes. Civil society in Iraq reflects the complexities of the country's social and political realities, facing unique challenges related to political stability, the legal environment, and institutional capacities, alongside the opportunities presented by diverse social movements.

The roots of Iraqi civil society extend to various historical periods, having passed through multiple phases of establishment and evolution. Notably, after 2003, Iraq witnessed a surge in the number of non-governmental organizations (NGOs) and associations, which played a

significant and essential role in promoting and disseminating the principles of peace, peaceful coexistence, women's empowerment, and the promotion and protection of human rights, as well as achieving sustainable development and supporting democracy. Despite facing considerable challenges, such as armed conflicts and administrative corruption, and despite the important roles they have played, Iraqi civil society organizations have faced and continue to face numerous challenges and difficulties. Nonetheless, these organizations remain a driving force in confronting the multiple crises.

In this study, we will provide a historical overview of civil society in Iraq, its origins, development, and the stages it has undergone under various political circumstances. We will also discuss the legal and regulatory framework for civil society in Iraq.

In conducting this study, we employed several tools and methodologies to arrive at an understanding of the organizational framework of Iraqi civil society. We conducted interviews with representatives of organizations across Iraq and reviewed laws, codes, studies, and reports related to various topics associated with our study.

1.2 Study Background

The significance of civil society in Iraq has undergone a notable transformation, particularly after the political and social changes following the fall of the Ba'ath regime in 2003. Civil society has played a pivotal role in supporting the democratic transition, enhancing efforts toward recovery from conflicts and wars, as well as contributing to peacebuilding and promoting coexistence among the diverse components of Iraqi society.

Amid the complex challenges faced by Iraq, civil society organizations have emerged as drivers of positive change. They have worked to strengthen national dialogue,

develop programs aimed at achieving sustainable development, and advocate for human rights. Additionally, these organizations have provided psychological and social support to communities affected by conflicts and have strived to empower marginalized and vulnerable groups within society.

This study is a contribution to the ongoing efforts to highlight the importance of civil society and its vital role in Iraq. It aims to explore the scope and impact of civil society within the national landscape, as well as to analyze the legal framework that governs its work.

1.3 Study Objective

The objective of this study is to provide a comprehensive and in-depth guide to Iraqi civil society, elucidating its various roles and positive impact on societal development. Through this work, we aspire to offer researchers, practitioners, policymakers, and those interested in civil society a reliable and detailed resource that will help them understand the organizational and legal frameworks governing civil society in Iraq. Furthermore, the study seeks to explore the challenges and opportunities facing civil society while offering effective strategies to enhance its role in achieving sustainable development and fostering social peace. We hope that this study will contribute to raising public awareness of the critical importance of civil society and its vital role in building a more cohesive and prosperous Iraqi society.

1.4 Study Methodology

This study employs a multidimensional research methodology aimed at achieving a comprehensive and deep understanding of Iraqi civil society. Interviews were conducted with focus groups comprising representatives of civil society organizations, experts, and practitioners in this field, to gather diverse insights and perspectives based on

practical experience and direct knowledge. In addition, a wide range of official documents and previous academic studies were reviewed to provide a strong scientific and knowledge-based foundation that supports the analysis and helps in formulating evidence-based recommendations.

The study also relies on the analysis of current policies and practices in the field of civil society, as well as the examination of the legal and regulatory frameworks that influence its work.

1.5 The Emergence of Civil Society in Iraq

The birth of Iraqi civil society organizations was neither natural nor easy, despite their historical origins dating back to the early 20th century. The period following the events of 2003 witnessed the establishment of hundreds of civil society organizations across Iraq. In a relatively short time, these organizations played significant and essential roles, including providing humanitarian aid to victims of war and violence, offering legal support to vulnerable and marginalized groups, promoting and solidifying the principles of peace, peaceful coexistence, human rights, and justice, empowering women, combating corruption, monitoring parliamentary and provincial council elections, and addressing many other issues. However, despite these important roles, many Iraqi civil society organizations faced numerous problems and challenges due to the country's political and security situation, the decline of impartial funding sources, which are the lifeblood of these organizations, and financial corruption that undermined the credibility of some of them.

Many non-governmental organizations (NGOs) carry out these activities, utilizing research to develop programs and support advocacy efforts. However, the work of civil society organizations in Iraq cannot be solely attributed to the political shift that occurred after 2003. Iraq is considered

one of the earliest countries to have focused on organizing civil society since the establishment of the Iraqi state in 1921. The first legislation concerning civil society organizations was issued in the second year of the Iraqi state's establishment. The year 1925 saw the enactment of the first legislation regulating civil society, named the Law on the Formation of Associations, which remained in force until 1954.

During this period, many labor movements, youth and student groups, and social activities emerged. This era also witnessed the rise of a large number of specialized associations that benefited from the constitutional support provided by the fundamental legal text of 1925, which stipulated that "Iraqis have the right to freedom of expression, publications, and the formation of associations within the framework of the law." This was further bolstered by the political class's support for such a direction, which facilitated the emergence of numerous associations and unions, including some of the most prominent ones:

Prominent Iraqi Civil Society Organizations

Name	Estab lishm ent	Activities
Association of Craftsmen	1922	Founded by artisans, later joined by railway workers, and eventually took on a political focus.
Kurdish Knowledge Association (Komeley Zanstî Kurd)	1926	Engaged in various cultural and social activities, attracting elite members of society, with its center in Sulaymaniyah.
Child Protection Association	1928	Aimed to reduce child mortality rates and ensure proper upbringing, with 19 branches

		across Iraq.
Al-Ahali Group	1931	A socialist-oriented political organization focused on education and establishing a strong economic system.
Iraqi Red Crescent Society	1932	Provided emergency aid to victims of natural disasters and wars, and offered other public services such as rehabilitation and psychological support.
Iraqi Aviation Association	1933	Established to transport mail within Iraq and to train young people in aviation at symbolic prices.
Iraqi Women's Union	1934	Focused on improving the social and economic conditions of women.
Popular Reform Association	1934	Advocated for political, social, and economic reforms, including the nationalization of certain government facilities and the reclamation and redistribution of agricultural lands to farmers.
National Homes Association	1935	Provided shelter for orphaned and homeless girls, teaching them sewing and embroidery skills.
Al-Muthanna Social Club	1935	Focused on promoting national and tribal awareness and preserving popular heritage.

The trajectory of civil society organizations in Iraq did not continue at the same pace. The landscape suffered a significant setback due to a decree issued by the government of Nuri al-Said, Decree No. 19, which dissolved all officially recognized associations and social clubs at that time. The

justification given was that these associations were promoting principles that were outside the law and posed a threat to public order. The decree, issued in 1954, led to the dissolution of 468 associations and clubs. This action caused considerable disruption to Iraqi civil society, prompting al-Said's government to issue the Associations Law No. 63 of 1955. Although this law provided some space for the activities of certain community associations, the British administration, which maintained close relations with the authorities at the time, hindered the role of civil society organizations. Instead, it favored tribal and sectarian institutions, believing that these were more influential and posed a greater threat to any political agenda within Iraq. This approach was embodied in what is known as the "Sandeman methodology" or "Sandemanization".

With the establishment of the Iraqi Republic in 1958 following the military coup that overthrew the monarchy, constitutional life was disrupted, and opportunities to build civil society were largely absent, except for a few professional organizations. By that time, only 143 associations remained in Baghdad, 80 of which were focused on cultural, social, religious, charitable, and professional activities, while there were 57 recreational clubs. In Basra, there were 16 associations and 27 recreational clubs, while in Mosul, there were 6 associations and 20 recreational clubs, with almost no presence of associations in other provinces, districts, and sub-districts. This reflects a clear disparity between rural and urban areas in this regard.

During this period, the first law for civil society organizations in the republican era was issued in 1960, known as the Associations Law No. 1 of 1960, followed by the Law on the Establishment of Associations with Foreign Relations No. 34 of 1962. Gradually, as the state moved towards monopoly, the role of organizations diminished, especially with the rise of trade union activities, which led to a near-total paralysis of civil society organizations. This

decline reached its peak after the Ba'ath Party took control in 1968. The decline in the role and activities of civil society organizations continued, as any gathering was considered a threat to the political system in Iraq, making it impossible for organizations to operate. The only exception was the General Federation of Iraqi Women, which was considered an arm of the regime and ended with the fall of the regime. As for trade unions, economic institutions, youth, and student organizations, they became social fronts for the Ba'ath regime, operating under its command and implementing its agenda. No specific law was issued for organizations throughout the Ba'ath Party's rule from 1968 to 2003, except for the distorted Associations Law No. 13 of 2000, which divided associations into political and non-political categories.

The real work of Iraqi organizations began after the change of the dictatorial regime in 2003, marking a new era for these organizations, associations, and unions. The legal work of these organizations went through three phases: first, the U.S. occupation authority, through a special office in the Green Zone, issued licenses under Order No. 45 of 2004, which remained in effect for one year until the transfer of power to the Interim Governing Council. In the second phase, the Ministry of Planning and Development Cooperation took over the issuance of registration licenses for organizations, which remained valid until 2007 when all licenses were revoked. Subsequently, the responsibility for assisting NGOs was transferred to the NGO Assistance Office, which was linked to the General Secretariat of the Council of Ministers and supervised by the Ministry of State for Civil Society Affairs. This office was later renamed the Civil Society Organizations Directorate, which became the direct authority responsible for the operation, organization, and registration of NGOs. The Iraqi Parliament also passed Law No. 12 of 2010, which is still the governing law for the operation of these organizations. As of now, more than 6,150

organizations are registered in Baghdad, with around 5,000 organizations registered in the Kurdistan Region of Iraq.

In the Kurdistan Region of Iraq, following the 1991 uprising and the establishment of the safe zone, along with the formation of the Kurdistan Regional Government and Parliament in 1992, the first law for organizations was enacted in 1993. Subsequently, another law for associations and unions was issued, which remained in effect until 2010, when the Non-Governmental Organizations (NGO) Law was enacted. Alongside this law, another law governing unions and associations is still in force.

Civil society organizations in Iraq are relatively new (in terms of modern institutional concepts) in both their establishment and practices. This has led to ambiguities in the definitions and interpretations of civil society and its legal foundations, creating a clear challenge that has resulted in an uneasy relationship between civil society and the three branches of government, the media, and other social activities. Civil society can be defined as a collection of activities and initiatives aimed at improving society. These activities can take various forms and patterns and may be social, economic, environmental, cultural, or otherwise.

2. Theoretical Framework

2.1 Definition of Civil Society

The term "civil society" is used to describe a wide range of organizations, networks, associations, groups, and movements that operate independently of the government. These entities sometimes collaborate to advance their common interests through collective action. Traditionally, civil society encompasses all organizations occupying the "social space" between the family and the state, excluding political parties and political corporations. Some definitions of civil society also include certain entities, such as media outlets, private schools, and for-profit associations, while others exclude these entities from the definition.

Scholars have proposed dozens of definitions for civil society, each adopting a particular perspective based on different foundational angles. Some authors focus on the aspect of formation, while others emphasize functionality. These varying definitions reflect differences in the conceptualization of civil society and its specific roles. For instance, some have proposed civil society as an alternative to the state, others as a complement to the state's role, some as a counterbalance to the state and prevailing international policies, and others as a representative of different segments of the population affected by these policies.

The concept of civil society crystallized within the context of social contract theory, contrasting with the political society—i.e., the society founded on the social contract. According to Locke, the purpose of uniting people in civil society, in addition to achieving security and peace, is to protect individuals' property. Thus, when a group of people forms a single entity and each relinquishes the natural enforcement authority in favor of society, a political or civil society emerges.

Social contract theory, significantly shaped by Rousseau in opposition to the theory of divine right, linked the idea of civil society to the liberal political field, in contrast to Cartesian thought. It is part of the modern state concept, where the state functions as a mechanism to regulate individual behavior and protect their security, safety, and property, as articulated by Thomas Hobbes. Hobbes grounded the concept of the state in a tangible reality by translating divine concepts into practical terms through divine right. Conversely, Jean-Jacques Rousseau advocated for a social contract among individuals within society to organize social, economic, and political life. John Locke viewed the purpose of the social contract as preserving individuals' rights to property through an authority that regulates the "right" to use "force" to punish those who deviate from it. However, Locke considered "absolute property" inconsistent with the nature of civil society.

Perhaps the most comprehensive and clear definition of civil society was provided by [Author Name], who stated: "Civil society is a public space for human assembly, based on non-coercion, existing in an area that mediates between the state and individuals. It nurtures a number of citizens committed to collective actions aimed at achieving objectives that embody values and standards, with a degree of independence from the state and the market."

Experiences of civil society concepts can be found in Islamic societies, such as the Islamic endowment (waqf) system, brotherhoods, customary councils, and other initiatives that emerged within the Islamic environment and had significant impacts.

Historically, the idea of civil society was not as clearly defined as it is today. Instead, manifestations of social solidarity were prevalent and did not take on the organizational forms seen in the modern era until the 17th and 18th centuries with the beginnings of modern nation-state formation.

Although the concept was discussed by Thomas Hobbes, John Locke, Hegel, and Engels, Antonio Gramsci, one of the most important leftist thinkers, addressed the concept of civil society clearly. In one of his significant texts from his prison notebooks, Gramsci stated: "What we can do up to this moment is to establish two basic superstructures, the first of which can be called civil society, which is the collection of organizations known as (private), and the second is the political society or the state."

It is worth noting the United Nations' definition of civil society, which states:

Civil Society: Refers to the associations to which citizens voluntarily join (outside of their families, friends, and companies) to promote their interests, ideas, and ideologies. The term does not include activities aimed at achieving profit (the private sector) or governance (the public sector).

Lastly, the World Bank's widely adopted definition of civil society includes:

Civil society encompasses a broad range of non-governmental and non-profit organizations that have a presence in public life and take on the burden of expressing the interests and values of their members or others based on ethical, cultural, political, scientific, religious, or charitable considerations. Consequently, the term 'civil society organizations' refers to associations established by individuals working to support a common cause, including non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, religious organizations, professional associations, and philanthropic institutions.

2.2 Definition of Associations (Non-Governmental Organizations)

The United Nations defines civil society as "a coordinated system of bodies, institutions, and programs that aim to support or improve the economic or health conditions or mutual personal capacities of the entire population."

In Iraqi law, civil society organizations are defined in Article 1 of the Non-Governmental Organizations Law No. 12 of 2010:

1. **Non-Governmental Organization (NGO):** A group of natural or legal persons registered and granted legal personality in accordance with the provisions of this law, aiming to achieve non-profit purposes.
2. **Foreign Non-Governmental Organization:** A branch of an NGO established under the laws of another country.
3. **Network of Non-Governmental Organizations:** An NGO registered under the provisions of this law, consisting of several NGOs, each with its own legal personality.

Other definitions describe NGOs as a group of people who establish associations to advocate for a common cause. This includes both NGOs and community-based organizations, each representing a specific type of organization within civil society. The common feature among all civil society organizations, despite their diversity, is their independence from the government and the private sector in principle, allowing them to operate on the ground and play an essential role in any democratic system. Their activities are based on voluntary work that is non-profit and does not rely on kinship or hereditary ties, such as family, tribe, or clan.

Larry Diamond defines civil society organizations as "organized social life that is voluntary, self-financed,

independent of the state, and held together by a set of shared rules and values. Unlike society, individuals in civil society institutions work collectively to express their ideas and interests through consultation and exchange of opinions. They also demand their rights from the state and hold it accountable for its actions."

The characteristics of civil society organizations can be summarized in four points:

1. **Voluntary Willingness:** The voluntary nature of membership or establishment of organizations.
2. **Financial, Administrative, and Organizational Independence:** The ability to operate independently.
3. **Diversity of Fields and Interests:** Organizations cover a wide range of areas and concerns.
4. **Legal Methods:** The pursuit of goals through lawful means.

2.3 The Importance of Forming Associations

Associations and other public interest groups serve as vehicles for civil and political expression, acting as a bridge between local communities and authorities. These rights facilitate public participation in peace and transition processes. The Human Rights Council has emphasized that respecting the right to peaceful assembly and freedom of association contributes to addressing and solving societal challenges, including achieving sustainable development, empowering women, ensuring social justice, and realizing all human rights.

Civil society organizations play a crucial role in promoting democracy, and social and economic development. These organizations contribute to various sectors, ranging from human rights and political participation to sustainable development and cultural diversity. Here's a breakdown of their roles:

- **Promoting Human Rights:** Civil society organizations work to protect and promote human rights by monitoring violations and defending individuals' rights, especially marginalized and disadvantaged groups. These organizations provide a platform for victims to report abuses and offer legal and psychological support. They also pressure governments to adhere to international human rights standards.

- **Community Participation:** These organizations enhance political participation by encouraging citizens to engage in the democratic process and organizing awareness campaigns to increase political rights awareness. These efforts contribute to democratic accountability and encourage governments to improve public policies.

- **Economic and Social Development:** Civil society organizations support sustainable development through programs aimed at improving economic and social conditions. They implement educational and training projects to empower individuals and equip them with the skills needed for the labor market, helping to reduce poverty and unemployment rates.

- **Monitoring and Accountability:** Civil society organizations play a vital role in monitoring government and public institutions' performance to ensure transparency and accountability. Through independent research and media reports, these organizations expose corruption and mismanagement, leading to improved public services and increased citizen trust in governments.

- **Education and Awareness:** Civil society organizations provide educational and awareness programs in areas such as health, environment, education, and human rights. These programs contribute to building an informed and educated society capable of addressing various challenges and achieving sustainable development.

- **Social Solidarity:** Civil society organizations promote social solidarity by providing support and assistance

to those in need, including those affected by crises and disasters. They offer humanitarian relief and essential supplies in emergencies, helping to alleviate human suffering and build more cohesive communities.

- **Cultural Diversity:** These organizations work to preserve cultural heritage and promote understanding between different cultures. They organize cultural, artistic, and educational events that support cultural diversity and foster peaceful coexistence among different ethnic and religious groups.

- **Protection and Service Provision:** Civil society organizations provide essential services such as healthcare, education, and shelter to displaced persons, refugees, and vulnerable groups. They help create a safe and supportive environment for individuals and communities, contributing to social stability.

- **Monitoring and Early Warning:** Civil society organizations monitor social, economic, and political changes and provide early warnings about potential crises, such as armed conflicts, natural disasters, and economic downturns. These efforts help in preparedness and taking necessary actions to mitigate the impact of crises.

- **Mediation and Negotiation:** Civil society organizations play a role in mediation and negotiation to resolve conflicts between communities or between individuals and states. They contribute to promoting dialogue and building trust among conflicting parties, helping to achieve peaceful and sustainable solutions to conflicts.

3. Legal and Regulatory Framework

3.1 International Legal Framework

International law has established a framework to protect civil society and its organizations, recognizing their vulnerability to various forms of regulation and financial pressures. The inherently fragile nature of civil society institutions often makes them targets for dismantling and persecution. Given their crucial importance, as previously discussed, there has been a need for international protection to safeguard their existence and activities.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both enshrine the rights to peaceful assembly and freedom of association. These rights not only enable the existence of civil society itself but also allow for pluralistic expression within political systems and offer citizens choices in popular representation.

- **Article 20** of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of peaceful assembly and association." This article forms the basis for numerous provisions in subsequent international treaties and conventions, most notably the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights.

- **Article 22** of the International Covenant on Civil and Political Rights affirms: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." This covenant, issued in 1966 and ratified by Iraq in 1971, is one of the fundamental documents protecting the existence of civil society, despite the fact that official institutions did not initially comply with it or align it with

national legislation that restricted or even prohibited the existence of civil society organizations.

- **Article 8** of the International Covenant on Economic, Social, and Cultural Rights obliges state parties to ensure:

- a) The right of everyone to form trade unions and join the trade union of their choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order, or for the protection of the rights and freedoms of others.
- b) The right of trade unions to establish national federations or confederations, and the right of the latter to form or join international trade-union organizations.
- c) The right of trade unions to function freely, subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

- **Article 7(c)** of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country, particularly to ensure, on equal terms with men, the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.

- **Article 2** of the ILO's Convention No. 87 on Freedom of Association and Protection of the Right to Organize, adopted by the International Labour Conference,

asserts: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization."

- The **Declaration on Human Rights Defenders**, adopted by the United Nations General Assembly in Resolution 53/144, emphasizes in Article 5: "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- a) To meet or assemble peacefully;
- b) To form, join and participate in non-governmental organizations, associations or groups;
- c) To communicate with non-governmental or intergovernmental organizations."

- At the regional level, the **Arab Charter on Human Rights** in Article 24 enshrines every citizen's right to "5- Freedom to form associations with others and to join them." Moreover, Article 35 states: "1- Everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

3.2 National Constitutional Framework

The Constitution of the Republic of Iraq (2005) guarantees the right to form associations and non-governmental organizations under Article 39, First: "The freedom to establish associations and political parties, or to join them, shall be guaranteed, and this shall be regulated by law." Another article linked to the right to form associations is Article 38, which in Paragraph One guarantees freedom of expression, and in Paragraph Three guarantees the right to

assembly. Both rights are closely related to the right to form associations.

The 2005 Constitution of the Republic of Iraq highlights the significance of civil society organizations by emphasizing a set of rights that contribute to enhancing their role. The constitution provides a legal environment that allows individuals the freedom to form and join associations, reflecting the state's recognition of the importance of these organizations as an integral part of the democratic process.

The constitution also affirms the rights to freedom of expression and assembly, which are fundamental rights supporting the activities of civil society organizations and the right to form associations. By ensuring these rights, the constitution empowers organizations to play their role in promoting societal dialogue, participating in policy formation, and monitoring government performance.

The 2005 Iraqi Constitution presents a comprehensive vision for the role of civil society organizations as a means of enhancing popular participation and expanding the scope of public freedoms. Thus, the constitution serves as a cornerstone for ensuring pluralism and effective participation in public life, contributing to the enhancement of Iraq's democratic transition.

3.3 National Legal Framework

The Iraqi Parliament, through the Civil Society Institutions Committee—later merged with the Parliamentary Development Committee in the fourth parliamentary session, and then with the Labor Committee—enacted the Non-Governmental Organizations (NGO) Law No. 12 of 2010. This law regulates the work of NGOs, incorporating key principles derived from the constitutional text, including:

1. Freedom of citizens to establish and manage NGOs or to join or leave them.

2. Reinforcement of the concept of civil society in the new system, enhancing the role of organizations and preventing interference by any authority except in accordance with the constitution and law.

3. Definition of the procedures for granting official status to organizations and the requirements and conditions for such status, which relies on the concept of prior licensing—unlike the notification system applied in some countries. It also defines the conditions for founders and members.

4. Specification of the role of the executive administration—NGO Directorate—in the licensing process, streamlining many procedures previously based on discretionary authority, codifying them into law, and granting organizations the right to appeal, complain, and seek judicial recourse in case of legal violations.

5. Restriction of the dissolution of organizations to judicial proceedings with specific conditions and procedures, limiting the administration's authority in cases of abuse of power.

6. Right granted to organizations to receive internal and external funding, with the condition of opening a bank account in a bank under the supervision of the Central Bank of Iraq.

7. Prohibition of NGOs from adopting goals and engaging in activities that violate the constitution and Iraqi laws, conducting commercial activities for the benefit of members, or raising funds for candidates for public office or providing material support to them.

8. Specification of foreign membership quotas, prohibition of one person from leading more than one organization at the same time, clarification of members' liability for the organization's legal obligations, establishment of independent legal personality, and obligation to disclose and avoid potential conflicts of interest.

9. Right granted to organizations to own property—including real estate—as well as the right to participate in public tenders within their scope, to establish branches, to merge with other organizations, to dissolve voluntarily, or to form and join networks of organizations.

10. Obligation on organizations to submit an annual report detailing their financial transactions and activities, to maintain a set of necessary records, and to conduct financial operations through their bank account.

This section lays the groundwork for understanding the international, constitutional, and national legal frameworks that regulate and protect civil society organizations in Iraq.

3.3.1 The Role of NGO Law No. 12 of 2010 in Supporting the Right to Association

The NGO Law No. 12 of 2010 is one of the most significant pieces of legislation that laid the foundation for a new era of organized civil work in Iraq. This law emerged in response to an urgent need to regulate the operations of civil society organizations (CSOs) following years of political turmoil and change. Its primary objective is to support and develop civil society by establishing a legal framework that ensures citizens' rights to establish, manage, and join NGOs, thereby enhancing the role of civil society in Iraq's new political and social system.

Fundamental Rights and Freedoms

The law guarantees citizens the right to form NGOs, join them, or leave them, thereby reinforcing the freedoms of assembly and organization, which are protected under the Iraqi Constitution. This freedom is fundamental to the growth of an effective civil society capable of positively influencing society. The law also asserts that any governmental interference in the activities of NGOs must be

constitutionally and legally justified, thereby promoting the independence of these organizations and ensuring they can operate freely without unjustified constraints or interference.

Regulatory Mechanisms and Official Status

The law clearly defines the mechanisms by which NGOs obtain official status, including the conditions for establishment and membership requirements. Unlike some countries that rely on the "notification" system, Iraq, through this law, adopts the "prior approval" principle, requiring NGOs to submit formal applications to obtain legal authorization to operate.

Executive Administration and Rights Protection

The role of the executive administration, represented by the NGO Directorate, is pivotal in implementing the law. The law grants the directorate broad powers in granting licenses and registering NGOs while streamlining many procedures that were previously characterized by bureaucracy and complexity. Additionally, the law provides NGOs the right to appeal and seek legal recourse if they face any violations or legal breaches by authorities, thereby enhancing the protection of these organizations' rights and ensuring a fair opportunity to defend their interests.

NGO Funding and Independence

NGO funding is a crucial aspect covered by the law. It grants NGOs the right to receive both domestic and foreign funding, provided they open bank accounts with banks regulated by the Central Bank of Iraq. This provision aims to enhance transparency in NGOs' financial dealings while ensuring their financial independence, enabling them to carry out their projects and programs without financial constraints that could hinder their work.

Oversight and Supervision

In addition to defining the executive administration's role in granting licenses, the law also establishes oversight and supervision measures for NGO activities. For example, the law prohibits NGOs from adopting objectives or engaging in activities that violate the Constitution or Iraqi laws. It also sets specific limits on foreign participation in NGO membership and prohibits any individual from heading more than one organization simultaneously. These measures aim to protect NGOs from being exploited for unlawful purposes and ensure they operate within the legal and stated objectives.

Transparency and Accountability

The law mandates NGOs to submit annual reports that include financial transactions and activities, and it requires them to maintain a set of necessary records and conduct financial operations through their bank accounts. These requirements enhance the transparency and accountability of NGOs, contributing to building trust between them, the public, and regulatory authorities.

3.4 The Regulatory Framework

The activities of civil society organizations are governed by a set of regulations and procedures that relate to their interactions with state institutions, the scope of their work, and the financial regulations applicable to them. Key regulations and standards include:

- **Anti-Money Laundering and Counter-Terrorism Financing Law No. 39 of 2015:** Based on Article 10, Paragraph 4, the "Due Diligence Standards for Senior High-Risk Positions in Financial Institutions and Specified Non-Financial Businesses and Professions" were issued in 2023, which include in Article 3, Paragraph L:

"Chairpersons, deputies, and directors of charitable institutions, NGOs, and their board members, or those of equivalent rank."

- **Compliance with Iraqi Laws and Regulations:** Civil society organizations must adhere to existing Iraqi laws and regulations, such as the Iraqi Penal Code, Anti-Terrorism Law, Retirement and Social Security Law for Workers, Income Tax Law, and other applicable laws, regulations, instructions, and directives.

- **Collaboration with Iraqi Ministries and Official Institutions:** Organizations must be registered within the databases of the aforementioned institutions. Registration typically requires a certificate of registration issued by the General Secretariat of the Council of Ministers/NGO Directorate, the organization's internal regulations, its organizational structure, activity reports, and financial reports.

- **Compliance with Central Bank of Iraq Regulations:** NGOs must comply with the Central Bank of Iraq's regulations, applied through private and governmental banks, requiring several documents when opening a bank account, which must be periodically updated.

- **Security Approvals for Activities in Some Iraqi Provinces:** In some Iraqi provinces, conducting activities and booking venues for these purposes requires obtaining security approvals.

3.5 Legal and Regulatory Framework in the Kurdistan Region

In the Kurdistan Region, the Law of Non-Governmental Organizations (Law No. 1 of 2011) regulates civil work. This law is implemented and overseen by the Kurdistan Regional Government's Office of Non-Governmental Organizations. Although the aim of this law is to regulate and support NGO activities, it contains gaps and opportunities that may be

unsuitable. Participants in the hearings we organized felt that some provisions hinder the freedom to form organizations. The law requires both Iraqi and foreign NGOs in the region to submit accurate records and comprehensive documentation (Article 10). Some requirements may be overly strict, causing individuals to hesitate in forming NGOs due to bureaucratic processes that are complex and lengthy, leading to administrative exhaustion for citizens. This is exacerbated by the fact that the application process is still traditional and paper-based, rather than organized through digital means and the internet.

On the other hand, participants noted that the law grants regulatory authority to the NGO Office, including the power to approve or reject registration applications, monitor activities, and audit financial records. While financial asset audits are not mentioned in the NGO Law, the Integrity Law and the Federal Financial Audit Bureau Law refer to auditing the financial assets of both official and non-official institutions (Articles 11, 14). The Office may reject registration applications if legal conditions are not met (Article 11), and NGOs can be dissolved by court order for constitutional or legal violations (Article 16), at a time when the legal provisions offer broad definitions that allow for varied and diverse interpretations. This poses a threat to the independence of NGOs.

Foreign NGOs face additional requirements to submit documents in both Kurdish and Arabic, which may limit their expertise and international support (Article 10). Penalties for violations include warnings, suspension of activities, and dissolution (Article 15), with limited appeal processes that may not protect against arbitrary decisions. NGOs have only 10 days to appeal suspension decisions and 30 days for dissolution (Article 15). While financial transparency is important, detailed financial reports and records of all property and income (Articles 12, 14) impose a

significant burden, especially on small organizations with limited resources.

NGOs registered with the federal NGO office in Baghdad are required to register with the Kurdistan Regional Government's NGO Office to operate in the region, and vice versa for NGOs registered in the Kurdistan Region that wish to work outside the region. While this procedure is mentioned in the law itself, resubmitting documents and information amounts to a re-registration process in the Kurdistan Region. Coordination issues between the NGO offices in Baghdad and the KRG make the registration process for those organizations wishing to work in both areas more complicated. Although NGOs registered in Baghdad should theoretically be recognized throughout Iraq, in the Kurdistan Region, notification and re-registration with the KRG NGO office are required, often leading to delays and further investigation by local authorities. Additionally, NGOs in the Kurdistan Region must also register with the federal NGO office in Baghdad, posing an extra challenge for Kurdish regional NGOs.

Organizations must renew their administrative orders annually to continue operating. This step, although not mentioned in the law, has been added as an additional requirement imposed on civil society organizations. Verification is required during the approval process to ensure the organization's name is not similar to any other registered organization. This process takes a long time. NGOs must submit three names for approval, and if they are rejected, three new names must be provided. Founders face obstacles when using terms such as "association" or "foundation," although this is intended to distinguish NGOs from unions and associations.

Respondents indicated that the NGO Office in the Kurdistan Region does not formally reject any registration applications but is slow and inactive in providing documents that allow applicants to track their applications. According to

the law, applications must be approved within 30 days of submission, but since applicants have no proof of the date, they submitted their applications, they cannot be sure when the submission period has expired, while at the same time, they are not granted a registration certificate. Despite the NGO Law in the Kurdistan Region stating that failure to respond to an application within the specified period is considered approval of the organization's registration (Article 11, Paragraph 3).

In many provinces, there is no local NGO office, so organizations often have to travel to another city to receive their mail. This creates an obstacle, especially in emergencies where a response is required within 10 days. The 10-day period often expires before NGOs can resolve the issue, which could lead to the issuance of a restrictive order. Participants noted that in Iraq and the Kurdistan Region, security forces require NGOs to notify them of all activities and direct property owners not to rent to NGOs without a security clearance. This barrier affects NGOs' right to operate without state interference or intervention in their work.

In one of the meetings, it was noted that civil society organizations faced obstacles due to their work in raising awareness and inquiring about saving victims of domestic violence. These organizations were perceived as encouraging the breakdown of the family and opposing religious education, reinforcing patriarchal stereotypes against NGOs.

3.6 Establishment of Unions in Federal Iraq and the Kurdistan Region

Iraq's Law No. 37 of 2015 recognizes the freedom to form unions and associations, despite the existence of laws in Iraq and the Kurdistan Region that prohibit the formation of multiple unions, including Law No. 71 of 1987 and the Labor Union Organization Law No. 52 of 1987.

Currently, there are more than 10 labor unions in Iraq and the Kurdistan Region, but they have not been officially recognized by the Iraqi Ministry of Labor. The governments in Baghdad and Erbil only deal with two unions that simultaneously have representation in the Social Security Fund and Labor Inspection Committees. These rights are not granted to others.

There are thousands of foreign workers in Iraq and the Kurdistan Region working in various sectors. However, there is still no specific law in Iraq that allows them to establish their own unions or permits them to join national Iraqi unions.

Recommendations

Based on the review of the legal text, the following recommendations can be made to improve the legal framework and strengthen the role of civil society organizations in Iraq:

- **Enhancing Collaboration Between NGOs and Government Authorities:** There should be stronger partnerships between civil society organizations and government authorities to ensure that common goals supporting sustainable development and human rights in Iraq are achieved.

- **Inclusiveness of the Right:** All individuals and groups, including networks and alliances, should be permitted to freely form associations and exercise their right to freedom of assembly, regardless of their nationality. All groups should be allowed to freely establish their own membership criteria upon formation, provided they adhere to principles of non-discrimination.

- **Developing Legal and Regulatory Infrastructure:** It is crucial to review and develop the laws and regulations governing NGO activities in partnership with stakeholders, including organizations and their staff, to ensure greater flexibility and more effective support for civil society initiatives.

- **Providing Financial and Technical Support:** More financial and technical support should be provided to NGOs, including easier access to domestic and foreign funding while ensuring compliance with Iraqi laws.

- **Promoting Transparency and Accountability:** It is important to enhance transparency and accountability practices within NGOs to ensure that resources are used effectively and to achieve maximum benefit for the community.

- **Establishing an Independent Body to Regulate CSOs:** It is recommended that the body responsible for regulating civil society organizations be an independent entity, similar to the Independent High Electoral Commission that regulates political parties in Iraq. This would contribute to greater impartiality and effectiveness in supporting and guiding civil society organizations.

- **Adopting Electronic Systems in Regulatory Processes:** It is recommended to adopt electronic systems for registration, monitoring, reporting, and notifications. This would enhance the efficiency and transparency of NGO operations and facilitate oversight and communication between the relevant parties.

- **Strengthening Partnerships with Official Institutions:** Strengthening partnerships between state institutions, civil society, and local communities is essential for participating in the formulation of visions, policies, and managing societal dialogue on legislation and development strategies.

- **Supporting Volunteer Teams:** Removing restrictions on the work of volunteer teams and ensuring their existence without requiring formal registration, which contradicts their nature as volunteer groups and does not impose institutional burdens on them.

- **Administrative Order in Kurdistan:** Eliminate the requirement for civil society organizations to obtain and renew an annual administrative order, allowing them to function more effectively and efficiently. This requirement is not explicitly mentioned in the region's NGO law, and its removal would streamline operations.

- **Independent Authority for NGOs in the Region:** Establish an independent body or review committee to manage NGO records in the Kurdistan Region. This would promote fairness, enhance transparency, and improve the relationship between NGOs and their governing office. The

authority should be empowered to investigate records and propose reforms.

- **Streamlined Registration Procedures:**

Develop a mutual recognition agreement between the Federal NGO Office and the Kurdistan Regional Government's NGO Office. This would allow NGOs to operate across the Kurdistan Region and Iraq without needing to repeat administrative procedures for registration.

- **Rights of Foreign Workers:** Grant foreign workers in Iraq and the Kurdistan Region the right to form their own labor unions and recognize their right to join existing unions.

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While the concept of civil society has historical roots, it is redefining its role today as a key player between the state and society. The legal and regulatory framework governing civil society operates on two levels: international and national. At the international level, CSOs rely on a set of international human rights documents and treaties that affirm the right to form associations and participate in peaceful assemblies, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

At the national level, Iraq's **2005** Constitution, along with national and local legislation in the Kurdistan Region, supports the establishment and operation of CSOs. The Iraqi Constitution guarantees, through its articles, the freedom to establish and join associations and political parties, as well as the freedom of expression and assembly. The **2010** NGO Law No. **12** regulates the framework within which these organizations operate, including registration requirements, funding, and reporting procedures, highlighting their importance in strengthening civil society and outlining conditions for their operation and oversight.

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