

Advancing Peaceful Assembly: Navigating Iraq's Draft Law on Peaceful Assembly

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Introduction:

In recent years, Iraq has made efforts to develop the legal framework regarding the right to peaceful assembly. In 2010, the Iraqi parliament drafted a law titled 'Freedom of Expression, Assembly, and Peaceful Demonstration' and submitted it to the Council of Representatives (Parliament). Parliament conducted two readings of the draft law, but the essential third reading necessary for its enactment never took place. Another attempt to amend some articles of the draft law occurred in 2020 but yielded no results.

Subsequently, in 2023, prompted by a directive from Prime Minister Sudani, a committee within the Iraqi



Council of Ministers drafted another law, termed as an "Opinion Draft Law," with the aim of aligning it with international standards. However, since the process of preparing this paper did not adhere to the procedures for preparing legislative papers, Parliament does not recognize it as a new draft law but rather as a 'government opinion paper'. Additionally, the 2010 draft law remains valid and addresses the same topic.

Recognizing the importance of this fundamental right, the Kurdistan Organization for Human Rights Watch, alongside the International Center for Non-Profit Law and the Human Rights Committee in Parliament, initiated a comprehensive review process in February 2024. This process aims to evaluate the 2010 draft law and subsequent

documents and reviews by the Iraqi Council of Ministers and Parliament. The goal is to combine all these documents into one draft law to be presented to Parliament for voting after addressing all suggestions and opinions from different stakeholders such as NGOs, media, academics, and the government. This article explores the potential outcomes of this collaborative effort and its implications for promoting the right to peaceful assembly in Iraq.

Background:

The fundamental importance of peaceful assembly in democracy is underscored by its role in enabling people to voice grievances, advocate for reform, and engage in public discourse as guaranteed per the International Covenant on Civil and Political Rights (ICCPR) (Article 19). Despite the constitutional recognition in Article 38/3, Iraq lacks a legal framework for organizing such gatherings. The 2010 draft law (before February 2024 review) aimed at regulating freedom of expression and assembly, falls short of international standards in crucial aspects. It excessively requires prior permission for public meetings (Article 7), contrasting with global norms favoring prior notification, and imposes limitations on venue choices (Article 9), contradicting norms favoring public spaces for assemblies. Additionally, rigid constraints on timing and criminalization of certain expressions (Article 13) further inhibit effective expression. Addressing these flaws requires amendments to ensure alignment with international

principles, fostering rather than hindering peaceful assembly and safeguarding freedom of expression and association.

Principles guiding peaceful assembly find their basis in international human rights instruments such as the Universal Declaration of Human Rights (UDHR) and the ICCPR. Upholding non-violence, as enshrined in UDHR Article 20, is central to peaceful assembly, respecting everyone's right to freedom of peaceful assembly and association. General Commentary 37 of the United Nations Human Rights Committee provides further clarity on ICCPR Article 21, emphasizing that restrictions on assembly must adhere to the principles of legality, necessity, and proportionality, ensuring that reasonable restrictions can be imposed under certain circumstances.

Lawfulness, transparency, and accountability are fundamental principles of peaceful assembly, requiring that any restrictions be in conformity with the law and participants operate responsibly. Inclusivity, reflecting equality and non-discrimination, welcomes diverse participation, fostering civil discourse and respectful dialogue, as guaranteed by ICCPR Article 19. Lastly, the commitment to effecting positive change underpins peaceful assembly, recognized in the preamble of the ICCPR, acknowledging the essential role of civil and political rights in creating conditions for enjoying all rights and freedoms fully.

Review Process:

Recognizing the imperative to harmonize Iraq's legal framework with international human rights norms and standards, the Kurdistan Organization for Human Rights Watch (KOHRW), renowned for its advocacy of human rights, spearheaded a collaborative effort. Emphasizing the value of diverse perspectives, this initiative convened several workshops for different sectors to get their input about the 2010 draft law, comprising media professionals, journalists, legal scholars from academia, representatives of various non-governmental organizations (NGOs) dedicated to human rights, and members of relevant parliamentary committees. Stakeholders engaged in a series of carefully planned sessions, dissecting a range of provisions within the draft law and later related documents and reviews. Their goal was to identify strengths in each document, address any weaknesses, and ultimately combine the best features to create a comprehensive and rights-respecting framework for peaceful assembly in Iraq.



Key Findings:

The cooperative review process produced several important conclusions and suggestions, including:

- **Alignment with International Standards:** The review process involved removing parts of the 2010 draft law that were not aligned with international standards. The review combined aspects of the draft law

to adhere to international criteria and best practices, including those outlined in the UDHR and ICCPR, ensuring that the proposed draft law guarantees the right to peaceful assembly in accordance with Iraq's international obligations.

- **Clarity and Precision:** The review process focused on enhancing the clarity and precision of the provisions within the draft law. Ambiguous language and vague terms were scrutinized and refined to provide clear guidance on the exercise of the right to peaceful assembly.
- **Protection of Fundamental Rights:** Within the parameters of peaceful assembly, the protection of fundamental rights—such as the freedom of expression and association—was accorded priority. Sections that could potentially violate these rights were identified and amended. For instance, limitations on protest locations near government buildings were reviewed to ensure they don't excessively restrict freedom of expression.
- **Strengthening Accountability Mechanisms:** Efforts were taken to reinforce oversight and accountability systems within the proposed legislation, acknowledging the role that these procedures have in preserving the right to peaceful assembly. The review process recommended establishing clear procedures for complaint mechanisms against authorities who infringe on peaceful assembly rights.
- **Participatory Approach:** Significant efforts were made to enhance a participatory approach and an inclusive model of legislative development, evident in the incorporation of feedback from diverse stakeholders and entities. This collaborative process resulted in substantial enhancements of the draft law over its predecessor, characterized by clearer definitions, procedural safeguards, and improved protections for individual rights during public gatherings. Moreover, deliberate steps were taken to ensure that the proposed amendments align with international human rights standards, as highlighted in Articles 1, 7, and 8 of the revised draft law, thus demonstrating a strong commitment to upholding these principles. Furthermore, by integrating principles from global instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), the revised version underscores a dedicated effort to align legislation with international norms (Article 1, 7, and 8) of the revised draft law.

Key Positive Features:

The merged draft law offers several positive features that aim to strengthen the legal framework for peaceful assembly in Iraq:

1. **Constitutional Grounding:** The draft law to some extent draws upon the provisions of the Article 38/3 of the Iraqi constitution, reinforcing the constitutional basis for peaceful assembly rights. This strengthens the legal foundation for this fundamental right. "Freedom of assembly and peaceful demonstration, and this shall be regulated by law" (Reviewed 2010 Draft Law, Article 1).
2. **International Compliance:** In accordance with the principles outlined in (Article 21) of the International Covenant on Civil and Political Rights (ICCPR), this reviewed version of the 2010 draft law somehow reflects Iraq's dedication to adhering to international commitments concerning the

safeguarding of peaceful assemblies. This underscores Iraq's advancement towards meeting international human rights benchmarks (Reviewed 2010 Draft Law, Articles 1, 7, and 8).

3. **Simpler Procedures:** Notably, the requirement for approval has been replaced with a simple notification process as outlined in (Article 7) of the revised draft law, streamlining the administrative procedures for organizing peaceful assemblies with the purpose of protecting protestors. This reduces bureaucratic hurdles for exercising the right to peaceful assembly. It's important to note that details like the timeframe for notification and the designated recipient are crucial for clarity.
4. **Spontaneous Assemblies:** A significant improvement lies in the organization of spontaneous peaceful assemblies as addressed in (Article 7) of the revised draft law., which are no longer deemed illegal if not pre-notified to the authorities. This recognizes the right to assemble in response to immediate situations.
5. **Proportionate Responses:** All forms of penalties have been eliminated from the draft law, as outlined in the revised version, emphasizing a shift towards a more nuanced approach to addressing misconduct during assemblies. This significant change can be observed in the removal of penalties from relevant articles such as (Article 7) and (Article 8). Instead, individuals engaging in violence or unlawful activities during assemblies will be subject to the appropriate penal codes, ensuring a fair and proportionate response to wrongdoing without unduly restricting the right to peaceful assembly. This adjustment aims to maintain a balance between safeguarding public order and upholding fundamental freedoms.
6. **Organizer Protection:** The combined draft law eliminates legal liabilities on organizers of demonstrations, shifting responsibility for any misconduct during demonstrations to individual participants. This crucial revision, as stated in Articles 7 and 8 of the revised versions, aims to protect organizers from undue burden and enables them to focus on facilitating peaceful assembly without fear of legal repercussions. By holding individual participants accountable for their actions, the revised law seeks to foster a more conducive environment for the exercise of the right to peaceful assembly.
7. **Flexibility in Scheduling and Location:** The combined draft law brings about substantial modifications concerning time and place restrictions for peaceful assemblies. Particularly noteworthy is the removal of previous constraints on scheduling and location, detailed in (Article 7) of the revised version. This pivotal amendment grants organizers increased flexibility in selecting the timing and venue for their assemblies, thus facilitating a broader range of peaceful expressions. By eliminating these limitations, the revised law strengthens individuals' capacity to freely assemble and voice their opinions without undue hindrances.
8. **Protecting Demonstrators:** The draft law places a strong emphasis on safeguarding the rights of demonstrators, including freedom of expression and association, during assemblies, ensuring their ability to exercise these rights securely. This commitment to protecting demonstrators' rights is notably reflected in (Article 11) of the revised draft law, which explicitly highlights the importance of upholding these rights during assemblies. By affirming and recognizing these fundamental freedoms within the legal framework, the draft law reinforces the principle of individual liberties and underscores the government's responsibility to safeguard them during public gatherings.
9. **Prioritizing De-escalation:** Importantly, the combined draft law, as outlined in (Article 11), prohibits security forces from using force during demonstrations except as a last resort. Measures such as notification, warning, and orderly dispersal are prioritized to maintain public order and safety. This

provision promotes de-escalation tactics and prioritizes peaceful crowd management, aligning with international standards for the protection of assembly rights.

Criticism of the combined Draft Law:

Legal experts have raised significant concerns regarding the clarity and effectiveness of enforcement mechanisms in the draft law that will govern public demonstrations if it is passed by parliament. Here, we delve into the key criticisms leveled against these proposed legislations:

- 1. Restrictions on Public Demonstrations:** There are specific regulations governing public demonstrations and assemblies, particularly within sensitive locations such as temples, schools, universities, and health compounds. These areas have been designated as off-limits for such activities, leaving demonstrators with limited options for organizing protests. For



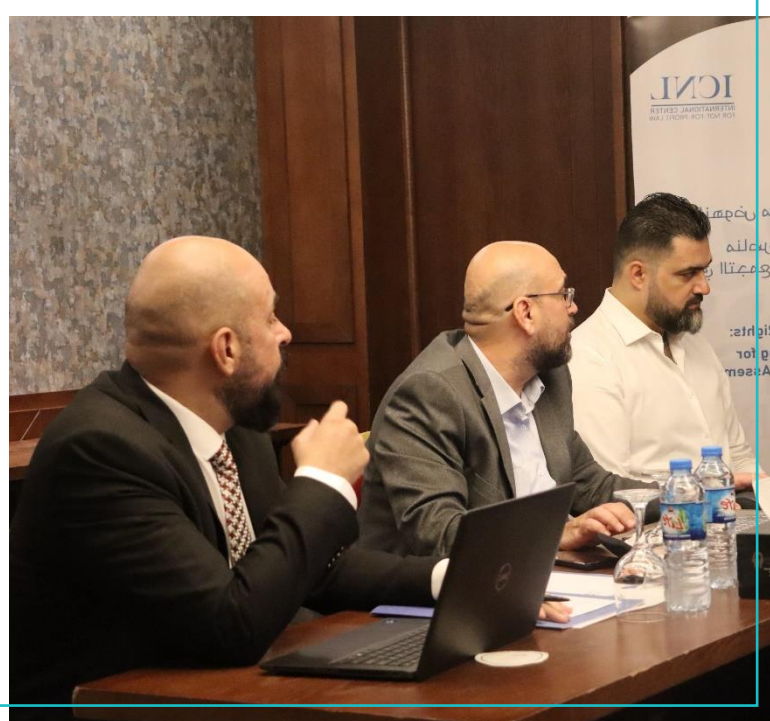
- 2.** example, students advocating for educational reform or protesting specific curricula are permitted to demonstrate solely within educational institutions for the relevant purposes. Although these regulations are intended to strike a balance between the right to protest and the preservation of public order, they also provoke concerns regarding the sanctity of public spaces and the breadth of democratic expression. Additionally, certain political factions argue that the existence of protest laws constrains their activities. They contend that the absence of such laws would afford them greater freedom to protest continuously and, if deemed necessary, escalate their actions to armed confrontation at their discretion.
- 3. Digital Activism in the Shadows:** Despite the stringent regulations and designated areas governing physical gatherings, the draft law remains silent on digital demonstrations. This oversight casts doubts on the legislation's adaptability to modern forms of protest and expression. As society increasingly turns to digital platforms like online petitions, social media campaigns, and online forums to voice grievances and mobilize support, the absence of clear provisions for digital demonstrations underscores the urgent need for comprehensive legislative frameworks. Furthermore, neglecting digital activism in the legislation creates potential risks. Without clear guidelines, authorities might

engage in unchecked surveillance of online activity or suppress online dissent altogether. This lack of clarity could stifle legitimate online activism and hinder the free flow of information.

4. Ambiguities in Language and Potential for Abuse: The language of the combined draft law is still part of this final draft which to some extent encompasses broad expressions, potentially susceptible to interpretation and abuse by authorities. Ambiguous terms such as "public moral" and "public order" raise concerns among critics, who fear they could serve as a pretext for suppressing peaceful protests and targeting specific groups or individuals. For instance, such vague language could be used to restrict protests by religious minorities critical of certain practices or to silence dissent against government policies. Such ambiguity not only undermines the integrity of the legislation but also poses a significant threat to the fundamental rights of individuals to assemble and express dissent.

The Draft Law's Solution to Existing Gaps:

Iraq has long grappled with challenges in regulating assemblies due to the absence of a dedicated legal framework. Historically, demonstrators faced legal penalties under the Iraqi Penal Code without specific legislation governing peaceful assembly, leading to ambiguity and inconsistency in treatment by local authorities across different locations. While some areas adopted strict measures, others were more lenient, resulting in confusion and potential unfair treatment of protesters. Disparities in implementing procedures sometimes depended on the subject of the protest; for instance, demonstrations demanding public services like water and electricity often



faced less violent responses, unlike those with political demands, which were met with force and violence, as seen in events such as October 2019. However, the introduction of the draft law on peaceful assembly aims to address these gaps and inconsistencies. By providing a clear legal framework, the draft law offers guidelines for assembly conduct and defines the rights and responsibilities of demonstrators and authorities. Enactment of this legislation promises standardized procedures and protections for demonstrators across Iraq, promoting transparency and accountability in assembly management, and reducing the risk of arbitrary or discriminatory practices.

Conclusion:

In conclusion, the collaborative review process spearheaded by the Kurdistan Organization for Human Rights Watch, in partnership with the International Center for Non-Profit Law and the Human Rights Committee in the Parliament, has yielded significant advancements in the legislation governing peaceful assembly in Iraq. By amalgamating the finest components from both the “2010 draft law” and the “2023 opinion document” and refining their provisions through extensive stakeholder engagement, the finalized reviewed version of the 2010 draft law stands as a testament to the nation's commitment to upholding human rights principles and fostering a conducive environment for democratic participation.

Some of the key achievements of this collaborative effort include the removal of penalties for demonstrators, the provision of clearer guidelines for organizing assemblies, and the emphasis on the protection of demonstrators' rights and safety. Moreover, the draft law introduces important changes such as replacing the requirement for approval with a simple notification process and legalizing spontaneous peaceful assemblies. Additionally, by prohibiting security forces from using force during demonstrations except as a last resort, the law underscores its commitment to upholding the rights of demonstrators while maintaining public order and safety.

Overall, the finalized draft law, consisting of 17 articles, represents a significant milestone in advancing the right to peaceful assembly in Iraq. While some concerns regarding limitations on protest locations or the lack of provisions for digital activism and public morals remain to be addressed, the progress made is undeniable. Moving forward, it is imperative to ensure the effective implementation of this refined legal framework, empowering citizens to exercise their fundamental right freely and safely to peaceful assembly. Continued advocacy will be crucial to ensure the successful passage and implementation of this legislation, solidifying Iraq's commitment to a more democratic future.

