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An abstract, textured background image with vibrant colors including teal, blue, orange, and black, resembling a close-up of a biological or geological surface.

The right to freedom of peaceful assembly in post-invasion Iraq

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Abstract

The right to freedom of peaceful assembly is one of the fundamental rights in any democratic system, and the state must protect individuals in exercising this right freely. In the context of Iraq and despite the democratic transformation that the country has witnessed after 2003, there are still many challenges that Iraqis face in exercising this fundamental right. This thesis focuses on the right to freedom of peaceful assembly in Iraq after 2003. Based on the doctrinal legal research method, this thesis aims to investigate the right to freedom of peaceful assembly in Iraq by describing the regulation and protection of this right in both international and national law and by identifying the actual obstacles that hinder Iraqis from exercising the right to freedom of peaceful assembly freely. The theoretical framework of this thesis explores the concept of the rule of law and use it as a guide throughout the analysis of this study. The main finding of this thesis highlights the state's responsibility to protect freedom of peaceful assembly under the international conventions ratified by Iraq and in accordance with national law. This finding reveals that the state's abuse of power and the presence of armed groups constitute the important actual obstacles limiting citizens attempting to exercise the right to freedom of peaceful assembly in Iraq. In addition, this thesis reveals that the lack of special legislation regulating the right to freedom of peaceful assembly in Iraq impedes the freedom of individuals to exercise this right.

Keywords: Freedom of peaceful assembly, Iraqi constitution, Iraqis, Demonstrations, International human rights law, Rule of law.

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1.Introduction

Most of the constitutions in the world, whether in democratic or non-democratic regimes, ensure a set of rights and freedoms for their citizens because of their importance in organizing societies and adding legitimacy to any political system.¹ These rights and freedoms include political, civil, economic, and social rights that affect people's lives, such as the right to life and dignity, the right to work and education, and others.

Among these fundamental rights stipulated by international law and national constitutions are the right to freedom of peaceful assembly, which reflects the importance of the freedom of individuals to express their thoughts in the various ways stipulated by the law without violating it.² Rights develop with the passage of time, and parallel to the methods of claiming them. Among the most common of these methods are demonstrations, protests, and sit-ins. The right to freedom of peaceful assembly is a fundamental right that forms part of the foundation of democratic societies. The presence of this right may constitute an active and free civil society that allows people to participate in issues that affect them.

There are several international and regional human rights instruments were intended by their drafters to protect the right to freedom of peaceful assembly. The ability to organize and participate in public demonstrations, pickets and marches is a key aspect of democratic representation.³ While no human rights law or national constitution provides the absolute right to freedom of assembly, they allow for some restrictions to be imposed only in limited circumstances mainly to ensure public safety.

Regarding Iraq, a country that witnessed a dictatorial regime under the leadership of the Baath party for more than 35 years during which most basic rights were denied or restricted including the right to freedom of peaceful assembly. It is important in this context to note that thousands of Iraqis were killed because of the exercise of these rights without a fair trial.⁴ Since the US occupation of Iraq in 2003 and the fall of Saddam Hussein's regime, the country has started a

¹ Richard H.,Fallon Jr. Legitimacy and the Constitution. *Harvard law review*, 118, 2005, 1798.

² Neil Jarman and Michael Hamilton. Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly. *Journal of Human Rights Practice*, 1(2), 2009, 208

³ Ibid.

⁴ John F. Burns. The World; How Many People Has Hussein Killed?. *The New York Times*, 2003.

<https://www.nytimes.com/2003/01/26/weekinreview/the-world-how-many-people-has-hussein-killed.html>

new democratic system based on established democratic institutions, free elections, and a new constitution that Iraqis voted on in referendum.⁵

The Iraqi constitution of 2005 set forth in detail the rights and freedoms of its citizens in an independent chapter in the constitution.⁶ Among these freedoms is the right to freedom of peaceful assembly and demonstration. Although most constitutions provide for rights and freedoms, not everything written on paper is perfectly reflected in practice.⁷ There are still actual obstacles stemming from governmental and non-governmental harsh behaviour towards demonstrations, which in turn hinder Iraqis in fully exercising their right to freedom of peaceful assembly. In this thesis, the author is investigating the right to freedom of peaceful assembly in Iraq and identifying the actual obstacles to this constitutional right after 2003.

1.1. Aim and research questions

In this thesis, the author is interested in exploring the right to freedom of peaceful assembly in Iraq after 2003 and the establishment of a democratic state that claims to respect and guarantee human rights. The aim of this thesis is to investigate the right to freedom of peaceful assembly by describing how this right is protected under international human rights law, as well as the national law of Iraq, and then identifying the actual obstacles that hinder Iraqis from exercising this constitutional right freely.

To achieve this aim, first, the international instruments that ensures the right to peaceful assembly are analysed, as well as this right's formulation in the national law of Iraq. Second, the author intends to find out the actual obstacles Iraqis have faced in exercising this right during 18 years of democratic experience in Iraq.

The research questions are therefore as follows:

1. How is the right to freedom of peaceful assembly for Iraqis protected under International and national law?
2. What are the actual obstacles in exercising the right to freedom of peaceful assembly in Iraq since 2003?

⁵ Adeed Dawisha. The prospects for democracy in Iraq: Challenges and opportunities. *Third World Quarterly*, 26(4-5), 2005, 723.

⁶ Iraqi constitution. Section 2, 2005. https://www.constituteproject.org/constitution/Iraq_2005?lang=en

⁷ Richard H.,Fallon Jr. Legitimacy and the Constitution. *Harvard law review*, 118, 2005, 1810.

1.2. Research method

The legal researchers, Khushal Vibhute and Filipos Aynalem have defined doctrinal legal research as "research into legal doctrines through analysis of statutory provisions and cases by the application of power of reasoning, " thus, it gives emphasis on the analysis of legal rules, principles, or doctrines."⁸ The doctrinal legal research method focuses on analyzing legal statutory, concepts, principles to obtain a rational assessment and correlated finding. This method helps a researcher to provide a systematic presentation, analysis, and critical evaluation of legal rules, doctrines, or concepts related to a specific law or legal issues in the research. Thus, doctrinal legal research includes the systematic analysis of legal rules and principles, as well as the logical and rational arrangement of them.⁹ Using the doctrinal legal research method requires the researcher to pay more focus on the statutory, doctrines, and concepts of law, then analyse these materials by applying the power of reasoning to draw a relevant conclusion.

The author plans to conduct this thesis using the doctrinal legal research method to achieve the aim of this research. Since this thesis deals with the laws that regulate the right to freedom of peaceful assembly in both international and national law of Iraq, the doctrinal legal research method may help the author in reaching the results of this thesis. The author conducts this research by analyzing the legal texts and other legal materials related to this constitutional right through the power of reasoning to answer the research questions of this thesis. Besides the primary source of materials as a basic tool in doctrinal legal research, the researcher can turn to secondary sources of legal material.¹⁰ This is based on information and published materials such as reports of governmental and non-governmental agencies to identify the actual obstacles that Iraqis face in exercising the right to freedom of peaceful assembly, as well as the other relevant literature on this fundamental right. Thus, carrying out this study by using the doctrinal legal research method helps the author in achieving the thesis plan.

1.3. Materials

The materials of this thesis are primary and secondary legal sources. Primary legal sources are the international human rights law and the national law in Iraq which consists of the constitution's provisions, national statutes, administrative rules, and regulations that relate to

⁸ Khushal Vibhute and Filipos Aynalem. Legal research methods, Teaching Material. Justice and Legal System Research Institute, Ethiopia, 2009, 71.

⁹ Amrit Kharel. Doctrinal Legal Research, 2018, 4.

¹⁰ Khushal Vibhute and Filipos Aynalem. Legal research methods, Teaching Material. Justice and Legal System Research Institute, Ethiopia, 2009, 74

rights and freedoms guaranteed in the Iraqi legal system. The secondary legal source will mainly consist of information and published materials such as reports of governmental and non-governmental agencies, law reviews, and journal articles that have discussed the issue of human rights and the rights to freedom of peaceful assembly particularly.

2. A brief background of Iraq

In this part, the author tries to give a brief overview of Iraq and the development of its legal system, to help the reader to have a basic background into the research topic. Iraq is a federal republic with parliamentary system located in West Asia with an average population of 40 million people, and its capital is Baghdad. The history of ancient Iraq goes back to more than 10,000 years BC and witnessed the emergence of the oldest human civilizations in history, such as Sumer, Akkad, Assyria, and Babylon.¹¹ Ancient Iraq witnessed the enactment one of the oldest written law in history, Hammurabi's Code. The Code of Hammurabi was enacted by the Babylonian King Hammurabi in the eighteenth-century BC and constituted 282 laws in which Hammurabi regulated standards of behaviour in Mesopotamia, include property rights, criminal behaviour, slavery, and divorce, as well as penalties for violation these laws.¹²

In modern history, the Kingdom of Iraq was established in 1921 under the leadership of King Faisal and was accompanied by adopted the first Iraqi constitution in 1925 after the end of the Ottoman occupation.¹³ This constitution deals with the division of powers in Iraq and guarantees the rights and freedoms of its citizens.¹⁴ Iraq has been completely independent from the British occupation in 1932 and witnessed a democratic development, represented by parliamentary elections, multiple parties, and a constitutional monarchy.

Moreover, Iraq witnessed several military coups after 1958, the transformation of Iraq into a republic state under the control of military rule, and the decline of democracy, especially under the rule of the Baath Party which banned all other political parties.¹⁵ In the era of Saddam Hussein's rule, Iraq lived through several wars, such as the first and second Gulf War, and the

¹¹ Phebe Marr. *The modern history of Iraq*. 3rd ed., Boulder, Colo, Westview Press, 2012, 20.

¹² Dominique Charpin. *Writing, Law, and Kingship in Old Babylonian Mesopotamia*. Chicago, University of Chicago Press, 2010, 75.

¹³ Ibid.

¹⁴ Iraqi constitution, 1925. <https://constitution.org/1Constitution/cons/iraq/iraqconst19250321.html>.

¹⁵ Stacy E. Holden. *A Documentary History of Modern Iraq*. Gainesville, University Press of Florida, 2012, 160.

country was under the leadership of one person, and people were deprived of the freedom and basic rights guaranteed by general democratic principles.

After 2003 and the US occupation, Iraq witnessed the establishment of a federal state with democratic institutions represented by multi parties and legislative elections despite the security instability and all other complications.¹⁶ Although the constitution of 2005 came to guarantee the rights and freedoms of its citizens, there are still many indications of violations of the basic rights guaranteed by the constitution, including the right to peaceful assembly, which is the subject of this thesis.

3. Theoretical and conceptual framework

The theoretical framework of this study is employed to gain a better understanding of the right to freedom of peaceful assembly which is the main issue of this study. The concept of rule of law is used in this study as a tool to guide the analysis throughout the research and explain the research subject. Also, using the concept of rule of law helps the author in analysing the law materials on this right as well as the government and non-government behaviour in dealing with it particularly. In this part, the author intends to provide the main explanations to the concept of rule of law and its relationship with the human rights.

Rule of law:

There are various explanations that describe the concept of rule of law, and the main explanation is a government by law as all the states' actions are based on law and accountable to it. Lautenbach argues that the concept of the rule of law consists of two basic elements which is the control of power and legality.¹⁷ The control of power is a fundamental element in the rule of law because it aims to restrict the power of government which is a product of a political system. Therefore, rule of law is mainly concerned with the balance between establishing public order and controlling the power of government in its actions.¹⁸ As for the legality element, it is essential in the rule of law, because the rule of law aims to limit the government's powers and subordinates the government and all state authorities to the law through the

¹⁶ Ali A. Allawi. *The Occupation of Iraq : Winning the War, Losing the Peace*. New Haven, CT, Yale University Press, 2008, 370-371.

¹⁷ Geranne Lautenbach. *The concept of the rule of law and the European Court of Human Rights*. 1. ed, Oxford, England, Oxford University Press, 2013, 19.

¹⁸ *Ibid.*, 19.

principle of legality. Therefore, the concept of the rule of law mainly aims at organizing society in the way that all different actors to the law as well as limiting governmental powers.

Furthermore, rule of law and the development of human rights have become, in the modern world, two interrelated concepts that support each other, and they work side by side to help societies achieve the balance between public interest and individual rights.¹⁹ The practical reflection of the relationship between human rights and the rule of law, in taking measures that strengthen the rule of law in which the respect for human rights is embodied. It is not possible to achieve the rule of law without protecting and respecting human rights.²⁰ Rule of law may define as the principle of governance whereby all state and non-state actors including individuals themselves are considered responsible before the law based on the principle of equality and are consistent with international human rights principles.²¹ In addition, it requires the avoidance of abuse and the existence of transparency in governance.

Moreover, Peacock argues that the rule of law is fundamental to all liberal constitutional systems that guarantee and recognize the equality of natural rights for all individuals and aims to protect those rights. The aims of the government which stipulate in the constitution are guaranteed through institutional mechanisms such as separation of powers, checks and balance.²² The rule of law and the protection of human rights are so related that it is difficult to separate them, as the goal of the rule of law is to protect the rights and freedoms of people from arbitrary authority. Some scholars argue that the rule of law is concerned with the purpose of the state's existence, which is to ensure the rights and freedoms of its people.²³ One of the fundamental aims of the rule of law is to protect the individual from arbitrary use of government power and to protect them from persecution. Some human rights must be referred to as a codification of the central principles of the rule of law. Therefore, there must be a legal system consistent with the standards of the rule of law and the effective protection of these rights depends on their place in the legal system of a country. Human rights are enforced through a legal system and a political community that shares the principles and values of the rule of law.²⁴

¹⁹ Leanne McKay. *Toward a rule of law culture: Exploring Effective Responses to Justice and Security Challenges*. *United States Institute of Peace*, Washington, D.C, 2015, 30.

²⁰ *Ibid.*, 32.

²¹ *Ibid.*, 12.

²² Anthony A. Peacock. *Freedom and the rule of law*. Lanham, MD, Lexington Books, 2010, 1.

²³ Geranne Lautenbach. *The concept of the rule of law and the European Court of Human Rights*. 1. ed, Oxford, England, Oxford University Press, 2013, 54.

²⁴ *Ibid.*, 55.

Likewise, limiting the arbitrary governmental authority is a fundamental goal of the rule of law, and this is represented by demanding a limited government. Human rights may be understood in terms of freedom rights, which define the free space of the individual in which the state may not interfere. Some scholars refer to freedoms in the negative sense as freedom from interference such as freedom of expression, as well as in the positive sense, such as the ability to act.²⁵ Although civil and political rights may consider to be a negative right that require the government to refrain from interfering with individuals' exercise of these freedoms, there are positive obligations to protect individuals from the interference of other individuals, not necessarily the government actors.²⁶

²⁵ Geranne Lautenbach. *The concept of the rule of law and the European Court of Human Rights*. 1. ed, Oxford, England, Oxford University Press, 2013, 58.

²⁶ *Ibid.*, 59.

4. Findings and analysis

4.1. *The international and national legal protection to the right of peaceful assembly:*

The right to freedom of peaceful assembly is among the fundamental human rights that everyone is entitled to exercise without interference. Thus, respecting and protecting this right is the responsibility of the governments of any state to promote the growth and prosperity of democracy.²⁷ The right to freedom of peaceful assembly is codified in many international human rights treaties to ensure protection of exercising it.²⁸ Besides that, many constitutions in the world came to stipulate the right to freedom of peaceful assembly and protect it by giving it a constitutional power.

In this part, the author intends to investigate how the right to peaceful assembly for Iraqis is formulated and protected by the international instruments and national law of Iraq.

4.1.1. International instruments

As explained above, the right to freedom of peaceful assembly is one of the fundamental rights of every person in collective expression and their ability to meet and express their opinion or tendencies opposing authorities or a certain governmental approach.²⁹ The right to freedom of peaceful assembly is considered an opportunity for public expression by people who are marginalized or deprived of their rights, such as minorities or certain political groups, but in general, it is a tool for people to correct the path of different authorities and challenge the deviation in leadership. Therefore, this right has been guaranteed by the international human rights law through international conventions that explicitly provide for the protection of the right to freedom of peaceful assembly to all the people.³⁰ Protecting this right is an indication of protecting democracy by not silencing public opinion and denying freedom of peaceful assembly such as demonstrations, marches, sit-ins, etc. Peaceful assembly may have special importance in times of political tension or in the context of broader demands for social or political change.

²⁷ Edward R. Maguire. Protest policing and the reality of freedom: Evidence from Hong Kong, Portland, and Santiago in 2019 and 2020. *International journal of comparative and applied criminal justice*, , 2021, 11.

²⁸ Amanda Murdie and Purser Carolin. How protest affects opinions of peaceful demonstration and expression rights. *Journal of human rights*, 16, 2017, 353.

²⁹ Jarman Neil and Michael Hamilton. Protecting peaceful protest: The OSCE/ODIHR and freedom of peaceful assembly. *Journal of human rights practice*, 1, 2009, 208.

³⁰ Ibid.

Iraq is a member of most international human rights conventions that explicitly recognize the right to freedom of peaceful assembly and the state failure in protecting this right is a clear violation of international human rights.³¹ Thus, respecting the right to freedom of peaceful assembly is an important criterion for democratic growth in any country. Among these international human rights instruments that stipulate the right to freedom of peaceful assembly to which Iraq is a legal party, are the following:

The Universal Declaration of Human Rights: this declaration published in 1948, as the first global initiative after the Second World War on human rights and freedoms that must be guaranteed for all human beings worldwide.³² This declaration indicates that the states parties pledge to ensure the exercise and protection of the rights contained in this document. The Universal Declaration is an important document in the history of human rights - drafted by representatives of various legal and cultural backgrounds from all over the world and has been adopted by the United Nations General Assembly. The Universal Declaration of Human Rights has become a foundational text for human rights. It consists of 30 articles describing the fundamental rights and freedoms of the individual and affirming their universal character as being inherent and applicable to all human beings. This declaration stipulates the right to freedom of peaceful assembly in article 20, as it is a fundamental right of every human being that must be respected and promoted.³³ Iraq voted in favour of this declaration at the United Nations and welcomed the adoption and implementation of its principles.

International Covenant on Civil and Political Rights: Established in 1966 and adopted by the United Nations General Assembly, this covenant explicitly states the right to freedom of peaceful assembly as a basic human right among other political and civil rights that must be guaranteed for every human being in the member states.³⁴ Article 21 of this covenant explicitly recognizes the right to peaceful assembly and emphasis that restrictions on this right should be limited to the law that is necessary for democratic interests and public safety.³⁵ Iraq ratified this Covenant and became an effective member of it in 1971. This in turn made Iraq obliged to protect and promote this right for its individuals.

³¹ Jarman Neil and Michael Hamilton. Protecting peaceful protest: The OSCE/ODIHR and freedom of peaceful assembly. *Journal of human rights practice*, 1, 2009, 209.

³² Universal declaration of human rights. United Nations, General Assembly, 1948.

³³ *Ibid.*, art.20.

³⁴ International Covenant on Civil and Political Rights. United Nations, General Assembly, 1966.

³⁵ *Ibid.*, art.21.

International Convention on the Elimination of All Forms of Racial Discrimination:

This convention was adopted by the United Nations General Assembly in 1965 to protect human beings from any discrimination or incitement to discrimination on any basis or type such as colour, race, religion, etc.³⁶ The importance of considering all people equal before the law and having the same rights, therefore these rights must be protected from any act of discrimination. The declaration of this convention was made to eliminate all forms of racial discrimination and officially affirms the need for the rapid elimination of racial discrimination in all parts of the world, in all its forms and manifestations, and the need to secure protection and respect for the dignity of the person. This convention consists of 25 articles, including the clear reference to the right to freedom of peaceful assembly as a basic human right in Article 5, as it should be protected and promoted by the state's members to this convention.³⁷ This convention emphasized in Article 2 that states parties undertake to prohibit and eradicate racial discrimination in all its forms.³⁸ Iraq ratified this convention in 1970 and became obligated to implement its provisions, including the right to freedom of peaceful assembly.

4.1.2. National law of Iraq

As explained above, Iraq's recognition of international human rights law includes the right to peaceful assembly. On the domestic level, previous interim Iraqi constitutions such as the 1970 constitution included the right to freedom of peaceful assembly.³⁹ In addition, the military rule who run the country for decades only allowed assemblies and demonstrations that support the government and its policy. Since the subject of this study is to focus on the right to freedom of peaceful assembly in Iraq after the US invasion in 2003, the focus is on explaining this right in the Iraqi legal system and constitution of 2005. It is worth pointing out that the Iraqi constitution of 2005 was written by the Iraqi constitution drafting committee which represented the various social and political backgrounds of Iraq.⁴⁰ This constitution was approved after the success of the popular referendum on it. Hence, it became the permanent constitution for the new political system in Iraq.

³⁶ International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, General Assembly, 1965.

³⁷ Ibid., art.5.

³⁸ Ibid., art.2.

³⁹ Iraqi constitution. Art. 26, 1970. http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=42152

⁴⁰ Jonathan Morrow. Iraq's Constitutional Process II: An Opportunity Lost. *US Institute of Peace*, 2005, 2.

The Iraqi constitution of 2005 includes rights and freedoms in detail in an independent chapter, such as political, civil, social, and economic rights.⁴¹ Regarding the right to freedom of peaceful assembly, the constitution included a general provision for the expression of opinion in Article 38 (3), which states “The State shall guarantee in a way that does not violate public order and morality freedom of assembly and peaceful demonstration, and this shall be regulated by law”.⁴² This constitutional text was very explicit in stating the right to freedom of peaceful assembly whether in a public or private place. Hence, the Iraqi constitution guarantees freedom of expression, including peaceful and purposeful assembly. The constitution indicated in the same paragraph that the right to freedom of peaceful assembly should be regulated by special legislation, but it is worth noting that the legislature did not enact this law to regulate the exercise of this right yet. In addition, Article 130 of the constitution affirms the validity of all applicable laws until they are repealed or amended.⁴³ The right to freedom of assembly is regulated at the first place under Legislative Order No. (19) of 2003 issued by the Coalition Provisional Authority in Iraq, an authority that was formed after the US occupation of Iraq to run the country temporarily.⁴⁴ This order aimed to regulate the right to freedom of assembly and peaceful demonstration in Iraq by stipulating all guarantees and restrictions on this right. Order 19 was temporary and has been abolished by the Iraqi legislature after the first parliamentary election that took place in 2005.

4.2. The actual obstacles to the right to freedom of peaceful assembly in Iraq:

As the above section described, both international Human right law and Iraq’s national constitution explicitly affirmed the right to freedom of peaceful assembly through international conventions and covenants to which Iraq is a member. Although the democratic transformation occurred after 2003 and the establishment of state institutions that claim to adhere to the law, Iraq has witnessed widespread political and financial corruption, human rights violations, and terrorist attacks.⁴⁵ The right to freedom of peaceful assembly is a constitutional right for individuals to enable them to express their collective opinion including protest governmental deviation and corruption.⁴⁶ The right to freedom of peaceful assembly takes different forms

⁴¹ Iraqi constitution, 2005.

⁴² Ibid., art.38 (3).

⁴³ Ibid., art. 130.

⁴⁴ Coalition Provisional Authority. Freedom of assembly. No 19, 2003. <https://govinfo.library.unt.edu/cpa-iraq/regulations/>

⁴⁵ Maxime Agator. *Iraq: overview of corruption and anti-corruption*. Transparency International, 2013, 2.

⁴⁶ Michael Hamilton. *Guidelines on Freedom of Peaceful Assembly*. OSCE Office for Democratic Institutions and Human Rights, 2010, 15.

through which people can express their opinions and demand specific rights such as demonstrations, sit-ins, marches, etc. The Iraqi constitution of 2005 explicitly referred to the right to freedom of peaceful assembly and demonstration for Iraqi citizens as a constitutional right.⁴⁷

Furthermore, there are still many violations and obstacles to which this right has been exposed, thus undermines the right of individuals to exercise the freedom of peaceful assembly and demonstration. Therefore, the author devotes this part to analyse the right to freedom of peaceful assembly in Iraq as it is claimed in practice and reveals the actual obstacles that individuals do face in exercising this right.

4.2.1. Governmental abuse of power:

Due to a significant increase in financial corruption by the ruling authorities after 2003, a decline in public services and economic, social, and other rights has occurred.⁴⁸ Therefore, the country witnessed several demonstrations and sit-ins to demand various rights, improve government performance, and adhere to the rule of law. Exercising the right to freedom of peaceful assembly is a sign of the effectiveness of constitutional rights and democratic life in the country. Among the most common of these peaceful demonstrations in Iraq were the demonstrations of 2011 and 2019. As thousands of Iraqis have participated in these peaceful demonstrations in various cities, especially the capital city Baghdad, demanding their fundamental rights which are guaranteed by international human rights laws and the Iraqi constitution.⁴⁹ However, and despite the widespread peacefulness of these demonstrations, the governmental authorities' reactions were very harsh in most cases, violating this constitutional right. In the demonstrations of 2011, led mostly by young people, the protests calling for the elimination of corruption, creating job opportunities for large numbers of the unemployed, and calling for political, economic, and social reforms.⁵⁰ Likewise, they protest the deteriorating security situation, such as the continued bombing operations in public places, the killing of civilians, and the government's inability to limit these acts. The government security force handling of these peaceful demonstrations was violent, as many of Iraqis were killed by security forces' bullets in this demonstration, and severe beatings used by the police against

⁴⁷ Iraqi constitution. Art. 38, 2005.

⁴⁸ Dave Whyte. Hire an American! Economic Tyranny and Corruption in Iraq. *JSTOR*. vol. 34, no. 2 (108), 2007, 153.

⁴⁹ Jack Healy and Michael S. Schmidt. Demonstrations Turn Violent in Iraq. *The New York Times*, 2011.

<https://www.nytimes.com/2011/02/26/world/middleeast/26iraq.html>

⁵⁰ Ibid.

demonstrators in Baghdad and other cities of Iraq.⁵¹ As part of their efforts to prevent media coverage on the course of the event, the Iraqi security forces arrested many of the media workers in Tahrir Square, which is the protest centre in Baghdad, and preventing live broadcast cars from entering Tahrir Square.

Moreover, in October 2019, widespread peaceful demonstrations began in Baghdad and most cities in Iraq. These demonstrations lasted for months, to express the participants' discontent with the deteriorating economic, political, and service conditions and the failure of several governments that arose after 2003.⁵² The demonstrators demanded the detection of the corrupt ruling political parties, improving public services, and practicing the rights and freedom guaranteed by the constitution. Governmental authorities dealt with these peaceful demonstrations violently from the beginning, by committing violations to the right to life, physical integrity, freedom of expression, and the peaceful assembly of protesters. Iraqi High Commission for Human Rights revealed that, the use of excessive force against demonstrators in 2019 resulted in 504 demonstrators being killed and the injury of 19286 persons, including women and youths.⁵³ Despite the government's claim to prevent the use of live bullets and violence act by the security forces towards the demonstrators, the violence and killing of demonstrators continued without accountability. Likewise, the government's blocking of the internet, media harassment, and the arrest of journalists are among the means of concealing the abusive behaviour against demonstrators in Iraq.⁵⁴ It can be said that during the demonstrations of 2019, the human rights environment deteriorated significantly regarding freedom of expression and peaceful assembly, with a further decline in the fragile space available for civil society and democracy. During the demonstrations in Iraq and the exercise of the right to freedom of peaceful assembly stipulated in the constitution, the excessive and unnecessary use of force by the government authorities and its security forces causes many deaths and severely injuring of the demonstrators⁵⁵. The use of live ammunition or less-lethal weapons in a deadly manner is an unnecessary behaviour toward peaceful demonstrations in which people exercise their constitutional right against a difficult situation they are living in.

⁵¹ Stephanie McCrummen. 23 killed in Iraq's 'Day of Rage' protests, *The Washington Post*, 2011.

https://www.washingtonpost.com/world/13-killed-in-iraqs-day-of-rage-protests/2011/02/25/ABJOv6I_story.html

⁵² European Asylum Support Office. *Iraq: The Protest movement and treatment of protesters and activists*, Country of Origin Information Report. 2020, 14.

⁵³ Iraqi High Commission For Human Rights. *Demonstration in Iraq*. 2020, 3. <http://ihchr.iq/upload/upfile/en/33.pdf>

⁵⁴ Jamie Wiseman. Attacks, arrests of journalists as Iraq plunges into new unrest. *The International Press Institute*, 2019.

<https://ipi.media/attacks-arrests-of-journalists-as-iraq-plunges-into-new-unrest/>

⁵⁵ Ibid.

In addition, the arrest of about 3,000 demonstrators during the confrontations between the security forces and the demonstrators is a huge number that raises the risk of the arbitrary deprivation of freedom of peaceful assembly.⁵⁶ Among the tough measures conducted toward the demonstrations, the Judicial Council issued a statement containing that the Anti-terrorism law will apply to demonstrators who acted violently. This decision was overturned by the Federal Court of Cassation, which indicated that the misbehaviour committed by some demonstrators should be prosecuted in accordance with the Iraqi Penal Code, not the anti-terrorism law.⁵⁷ One can argue that the Federal Court of Cassation decision was correct in overturning the Judicial Council's decision, as it was a real threat to practicing this constitutional right. The government's abusive dealings with demonstrators who are exercising the constitutional right to express their opinion constitute an obstacle for individuals to exercise the right to peaceful assembly and demonstration. As the falls of many dead and wounded constitute a threat to the freedom of individuals to exercise the right to peaceful assembly guaranteed by the Iraqi constitution of 2005. Thus, lead in turn to a threat to democracy in Iraq. Likewise, the government's violations of this right and the failure to hold the killers accountable whether officials or individuals is a violation of the principle of the rule of law. The rule of law is the basic principle for establishing the state of law, as the rule of law refers to the adherence of all state authorities and individuals to the law. In the same context, Lautenbach indicated that the two fundamental elements of the rule of law are control over government power and legality.⁵⁸ As these basic elements of rule of law aim to restrict government powers to avoid the arbitrary exercise of authorities in dealing with individuals and adherence all state and non-state actors to the law. One may observe through the government's behaviour during the demonstrations and the use of excessive force against peaceful demonstrators is a clear violation of the rule of law principles. The use of any measure by the government must be based on a legal text and accountable to the law. While most of the Iraqi government measures of excessive force, use of live ammunition during the demonstration are not based on law. In addition, the government's abusive behaviour in dealing with the demonstrators is a violation of the supreme legal source in the country, which is the constitution that clearly stipulates in article 38 the right of individuals to demonstrate peacefully. Therefore, the arbitrary practice by security-force in dealing with demonstrators in a regime that claims to have a democratic

⁵⁶ European Asylum Support Office. *Iraq: The Protest movement and treatment of protesters and activists, Country of Origin Information Report*, 2020, 30.

⁵⁷ Federal Court of Cassation. N 21488, Criminal body, 2019. <https://www.hjc.iq/view.6235/>

⁵⁸ Geranne Lautenbach. *The concept of the rule of law and the European Court of Human Rights*. 1. ed, Oxford, England, Oxford University Press, 2013, p. 18.

manner is undermining the constitutional rights including the right to freedom of peaceful assembly in Iraq. These actions lead to the violation of the fundamental aim of the rule of law, which centres on protecting and promoting human rights guaranteed by the constitution and international covenants.

Furthermore, international human rights law permits the use of force by law enforcement agencies only when it serves a purpose and fulfil the requirements.⁵⁹ As the use of potentially lethal force is permitted only by enforcement authority and when it is necessary and appropriate for self-defence or in protecting others' lives, as the most extreme measure when there is an imminent threat to life. However, this argument does not allow indiscriminate firing by security forces on the crowd of demonstrators to disperse the demonstrators. The proportional force could be used only on people who have dangerous behaviour but not toward all the demonstrators. When the use of violence by the government's security forces does not comply with reasonable standards and causes deaths, this may define as extrajudicial killing, which requires investigation and prosecution of the killers.⁶⁰ The excessive use of force by government security forces lead to an increase in violence in the demonstrations and take them away from their peacefulness. Thus, undermining the constitutional right to freedom of peaceful assembly due to the arbitrary behaviour of the government. The government's claim to prevent the use of live ammunition and violence against demonstrators does not spare it from the responsibility for the continuing violence against demonstrators in Iraq.⁶¹ Adherence to the law by the government and all its executive agencies is the path drawing by the rule of law in establishing the state of law and promoting human rights.⁶² While still there is no evidence or indication of accountability for any government officials or security officers who contributed to the killing of more than 400 protesters. One could argue that the severe violation of the rule of law by the arbitrary power of the government is a threat to democracy in Iraq. Also, the government's failure to bring those responsible for killing to trial constitutes a real obstacle for individuals to exercise freely the right to freedom of peaceful assembly. Even with the formation of a new government in which the prime minister, Mustafa Al-Kadhimi, claimed accountability for the killers of the demonstrators, no effective measures have conducted in

⁵⁹ International Covenant on Civil and Political Rights. Art.19 (3), 1966.

⁶⁰ William J. Aceves. When Death Becomes Murder: A Primer on Extrajudicial Killing. *Colum. Hum. Rts. L. Rev.* 50, 2018, 144.

⁶¹ Human Rights Watch. *Iraq: Lethal Force Used Against Protesters*. Human Rights Watch, 2019.

<https://www.hrw.org/news/2019/10/10/iraq-lethal-force-used-against-protesters#>

⁶² Simon Chesterman. The Un Security Council and the rule of law. *Institute for International Law and Justice*, New York University School of Law, 2008, 3.

this matter yet.⁶³ This makes the new government also responsible for not promoting the right to freedom of peaceful assembly and demonstration in Iraq.

Adopting democracy as a system of governing and applying the principles of rule of law where everyone is accountable to the law does not only require the existence of laws and regulations, rather it needs to have practical methods to enhance the rule of law in a country. For instance, spread awareness among the security forces in dealing with individuals, especially when exercising their constitutional right to express their opinions including freedom of peaceful assembly. One may notice that the high death toll among the demonstrators is a result of the abusive way by the state authority in dealing with them. Freedom of assembly and peaceful demonstration is a constitutional right that individuals should be practiced freely.⁶⁴ This means that government, to control public order, must train special security forces to deal with these demonstrations through self-restraint and non-violence manners with the protesters. Consequently, raising awareness among security forces that dealing with such peaceful demonstrations is essential in ensuring the rule of law and promoting human rights in Iraq.

4.2.2. Abuses by the armed groups:

Among the protestors demands in Iraq is to strengthen the formal state authorities through restrict the arms to the state. One of the complications of the Iraqi situation is the presence of many armed groups outside the authority of the state that plays a major role in the political process in Iraq.⁶⁵ This study reveals that the existence of such anonymous or well-known armed groups constitutes an obstacle to the freedom of individuals in exercising the right to freedom of peaceful assembly. Thus, undermines human rights guaranteed by the constitution. Some of these armed groups or militias have their origins in the armed movement against the US occupation after 2003 and others were formed during the ISIS occupation of Mosul in 2014.⁶⁶ Despite the withdrawal of US forces in 2011, following the security agreement between Iraq and US, and with the elimination of ISIS in 2017, these armed groups have not been dissolved. There are many of these armed groups that are still operating on the ground and affiliated with

⁶³ Louisa Loveluck and Mustafa Salim. Three young deaths. A vow to bring justice. And a test for Iraq's new leader. *The Washington Post*, 2020. https://www.washingtonpost.com/world/middle_east/iraq-kadhimi-protests-justice/2020/10/04/507e7be0-a020-11ea-be06-af5514ee0385_story.html

⁶⁴ Kylie Bourne. Commanding and controlling protest crowds. *Critical Horizons* 12.2, 2011, 189.

⁶⁵ David Jackman. Small Arms and Security in Iraq, *The Ploughshares Monitor Autumn*, 2003. https://ploughshares.ca/pl_publications/small-arms-and-security-in-iraq/

⁶⁶ Ibid.

some political parties in Iraq.⁶⁷ Despite the negative effects of the existence of these armed groups on civil peace and undermining the rule of law in Iraq, the successive governments after 2003 did not take realistic measures against these groups. Due to the numerous violations of human rights by these armed groups and their use to silence dissenting voices, one of the main demands of the demonstrations in Iraq is the elimination of these Militias and strengthen rule of law in the country.

Likewise, it is worth noting that the Iraqi constitution explicitly prohibited the formation of militias outside the framework of the state's armed forces.⁶⁸ Still, many acts of violence against demonstrators were recorded by unidentified armed groups that contributed to the killing and kidnapping of many civilian activists. According to the Office of the United Nations High Commissioner for Human Rights, 108 demonstrators were killed, and more than 800 people were injured by unidentified armed groups during the demonstrations in 2019-2020.⁶⁹ The unidentified armed groups have attacked the peaceful demonstrations in different way to stop them. In addition, 32 demonstrators were kidnapped, tortured, and 23 still missing by these armed groups.⁷⁰ Such armed militias, which are not subject to law, threaten individuals in exercising their constitutional rights including the right to freedom of peaceful assembly. Therefore, the failure of state authority in Iraq to stop these armed groups from interfering with the freedom of individuals is a breach of the government's fundamental obligation to impose the rule of law and to ensure that everyone is equally subject to the law.

One may argue that even if the government claims that it did not issue orders to kill protesters or use live ammunition against peaceful protesters, this does not pardon the government of its responsibility to protect protesters and hold accountable individuals and armed groups that attack them. In this context, some researchers argue that the principle of the rule of law explains the importance of protecting human rights.⁷¹ In addition, they classify political and civil rights, including the right to peaceful assembly as negative rights that require the government not to interfere in individuals exercise of these rights.⁷² This does not prevent or exempt the government from its positive obligation in protecting demonstrators in exercising this right

⁶⁷ Pirnie Bruce and O'Connell Edward. *Counterinsurgency in Iraq (2003-2006)*. Santa Monica, CA, Rand, 2008, 23.

⁶⁸ Iraq Constitution, art. 9 (b), 2005.

⁶⁹ UNAMI & OHCHR. *Human Rights Violations and Abuses in the Context of Demonstrations in Iraq*. Baghdad, Iraq, 2020, p.27.

⁷⁰ Ibid.

⁷¹ Geranne Lautenbach. *The concept of the rule of law and the European Court of Human Rights*. 1. ed, Oxford, England, Oxford University Press, 2013, 54

⁷² Isaiah Berlin. *Two Concepts of Liberty*. Four Essays on Liberty, London: *Oxford University Press*. New ed. in Berlin, 1969, 4.

from attacks by other individuals.⁷³ In Iraq, this is evidenced by the lack of effective action in revealing the results of investigations into the killing of peaceful protesters, and the failure to bring the perpetrators to trial despite the continuing of attacks.⁷⁴ The concept of rule of law emphasizes the importance of adherence all state and non-state actors to law to establish a state of law and strengthen human rights.⁷⁵ The failure of the governmental authority to stop the armed groups 'violations on the freedom of individuals to exercise their rights guaranteed by the constitution is a clear violation of the rule of law principles. Thus, makes the existence of such armed groups constitutes a real obstacle for individuals in exercising the right to freedom of peaceful assembly due to the fear of being killed and harmed by these groups.

4.2.3. Lack of legal regulation to the right to freedom of peaceful assembly:

The legal regulation of the right to freedom of peaceful assembly and demonstration is important, as the government's interaction with demonstrators should be based on law. This thesis reveals that one of the obstacles facing the right to freedom of peaceful assembly in Iraq is the lack of legal regulation or the existence of special law to this constitutional right. While the constitution of 2005 explicitly referred to the right to freedom of peaceful assembly in Article 38 and mentioned that it should be regulated by law.⁷⁶ The legislative authority in Iraq has not succeeded so far in legislating a special law that regulates the right to freedom of peaceful assembly. Thus, the government and its security forces deal with demonstrators without relying on a special law. The lack of legal regulation to this right constitutes a fundamental obstacle to the persons in exercising the right to freedom of peaceful assembly in Iraq. In addition, the security forces are still dealing according to the previous laws that were in effect in the previous regime before 2003, which were strict laws that did not correspond to the democratic transformation in Iraq. For example, the Law of Police Officers' Crime Prevention Duties passed in 1980, which permits the use of excessive police force to quell and end disturbances that threaten public order and security.⁷⁷ This law also permits the use of live ammunition even if it causes death. One may argue that this law deals with cases of unrest and gatherings that threaten public order but does not regulate how security forces should deal with

⁷³ Moeckli Daniel et al. *International human rights law*. 3. ed, Oxford, Oxford University Press, 2018, 228

⁷⁴ National Democratic Institute. *We Want A HomeLand, Key Findings of Qualitative Research Conducted in five provinces in Iraq*. NDI, 2020, 24.

⁷⁵ Leanne McKay. *Toward a rule of law culture: Exploring Effective Responses to Justice and Security Challenges*. *United States Institute of Peace*, Washington D.C, 2015, 31.

⁷⁶ Iraqi constitution. Art. 38 (3), 2005.

⁷⁷ Law of Police Officers' Crime Prevention Duties. No. 176, art. 4. 1980.

peaceful demonstrations that guarantees by the constitution. This may explain the use of excessive force in dealing with peaceful demonstrators which constitute a violation to the constitutional human rights. It is illogical and not possible to accept applying laws that belonged to an authoritative regime in a new system claimed to have democratic foundations and based on rule of law. There is a clear contradiction between continuing to apply previous laws in a new political system that guarantees individuals' exercise of rights and freedoms peacefully.

Furthermore, the ongoing implementation of these laws is a clear violation of the Iraqi constitution. As the supremacy of constitution is requiring revoke any law or decisions that opposed the constitution.⁷⁸ While the constitution explicitly stipulates that there may be some restrictions to these rights, but it must not contradict the principles of democracy and the basic rights guaranteed by the constitution, such as the right to life, freedom of peaceful assembly, and others.⁷⁹ Therefore, continuing to rely on the Law of Police Officers' Crime Prevention Duties in dealing with peaceful demonstrators is a violation of the constitution and human rights principles. Most of the previous laws that were enacted at the time of the Ba'ath Party do not correspond to democratic transformation as well as the protection of freedoms and rights guaranteed by the constitution of 2005. In the same context, the Iraqi Penal Code of 1969 where many of its articles are still in effect, which opposes freedom of peaceful assembly and expression and imposes many restrictions on it.⁸⁰ One may argue that prohibition of offending any public employee or institution which extends to include criticize them and criminalize this act restricts the freedom to oppose these institutions or public officers. Perhaps, it is more appropriate for these restrictions to be within a civil law in response to the democratic transformation. Thus, not to threaten individuals with criminal penalties when exercising their constitutional rights including the right to peacefully assembly in expressing their opposition to certain officials and policy under the pretext of protecting public order.

Moreover, after 2003 the Coalition Provisional Authority represented by Paul Bremer tried to suspend applying of these provisions of the Penal Code. Coalition Provisional Authority issued temporary order to regulate the right of peaceful assembly as one of the essential criteria for the democratic process in Iraq.⁸¹ Coalition Provisional Authority Order 19 regulated the right to freedom of peaceful assembly in Iraq but at the same time imposed many restrictions on this

⁷⁸ Iraqi constitution. Art. 13, 2005

⁷⁹ Ibid., art. 46.

⁸⁰ Iraqi Penal Code. No. 111, 1969.

⁸¹ Coalition Provisional Authority. Freedom of assembly. No 19, Coalition Provisional Authority, 2003.

right. These restrictions were represented in informing the authority before the demonstration or limiting the time for the demonstration, giving the maximum number of participants and the full information of the organizers and the leaders of such assemblies.⁸² The orders of the Coalition Provisional Authority did not have legislative power because they were not issued by the Iraqi legislative authority. Therefore, these orders were temporary and been abolished after the first national elections that took place in Iraq in 2005. The Coalition Authority's attempt to regulate the right to freedom of peaceful assembly in Iraq is a recognition of the importance of this right in the democratic transition after 2003. Despite of the criticism about some of these restrictions, the abolish of this order and the failure to enact a special law regulating the right to a peaceful assembly led to more chaos and abusive behaviour in dealings with demonstrations.

Furthermore, legality resides at the core of the concept of the rule of law and linked to its goals.⁸³ There are different meanings of legality but could be understood in the general sense as requiring the government to work only within the law and not to cross the boundaries that the law has set for it.⁸⁴ Therefore, the primary purpose of legality is the public authority's strict adherence to the law, and that the government is subject to control and check. In addition to the general meaning of legality in the necessity of having laws upon which the authority relies on, legality emphasized the need for the law to comply with the requirements of generality, clarity, and stability.⁸⁵ In the same context, the reference to the generality of law basically means the existence of rules because the law must be more than an exercise of political power. Thus, the Iraqi authorities' violent dealing with peaceful protesters and the use of excessive force without relying on an explicit law is a violation of the core concept of the rule of law. The stability of the law is important in a similar context, as it allows individuals to be guided by the law and adhere to it through their knowledge of the law.⁸⁶ As if the law changes frequently, it becomes hard for the people to comply with the rules. Therefore, the lack of statutory laws regulating the right to freedom of peaceful assembly in Iraq constitutes a current and future obstacle in exercising this right by individuals. Thus, the government's authority ignorance of dealing with these demonstrations in ways that are based on the law.

⁸² Coalition Provisional Authority. Freedom of assembly. No 19, Coalition Provisional Authority, 2003. Sec. 4-5, 2003.

⁸³ Geranne Lautenbach. *The concept of the rule of law and the European Court of Human Rights*. 1. ed, Oxford, England, Oxford University Press, 2013, 37.

⁸⁴ *Ibid.*, 38

⁸⁵ Lon L. Fuller. *The morality of law*. Rev. ed, New Haven, 1969.

⁸⁶ *Ibid.*

5. Conclusion

This thesis focuses on the right to freedom of peaceful assembly in Iraq after 2003. The aim of this thesis is to investigate the right to freedom of peaceful assembly in Iraq by analysing how this right was protected and regulated in international human rights law and the national law of Iraq. Also, try to find out and identify the actual obstacles that Iraqis face in exercising the right to the peaceful assembly during the 18 years of democratic transition in Iraq. To achieve the aim of this study, the author used the doctrinal-legal research method in conducting this thesis.

According to the finding of this thesis, the right to freedom of peaceful assembly is a fundamental right for every person. This right has regulated and protected in many international covenants, which obligated member states including Iraq to respect and promote this right, such as the International Covenant on Political and Civil Rights, the Universal Declaration of Human Rights, and the International Covenant on the Elimination of All Forms of discrimination. In addition, the national law of Iraq clearly referred to the right to freedom of peaceful assembly. The Iraqi constitution of 2005 explicitly regulated the right to freedom of peaceful assembly and demonstration in article 38, which in turn become a superior right for everyone in Iraq that should not be violated.

Moreover, this study revealed that there are actual obstacles Iraqi's face in exercising the right to freedom of peaceful assembly despite the democratic transformation in the country after 2003. These actual obstacles include the abuse of power by the government through the assault and killing of many demonstrators to prevent these peaceful demonstrations such as the use of excessive force in the demonstrations of 2011 and 2019 in Iraq. In addition, the lack of human rights awareness of the security force, the lack of training of a special force to deal with peaceful demonstrators caused the frequent violation of this right. This study revealed also that the existence of militias and armed groups that are not subject to the law constituted a real threat and an obstacle for individuals in exercising the right to peaceful assembly. This obstacle was represented by killing some demonstrators and attacking them without the governmental authorities' interference to protect the demonstrators from these armed groups.

Likewise, the lack of special law or legislation regulating the right to freedom of peaceful assembly in Iraq constituted a fundamental obstacle to this right in practice. As the government and its security forces deal with these peaceful demonstrations without relying on a special law. The failure of the successive legislature to enact a special law that regulates the right to

peaceful assembly, has made the state authority in Iraq rely on previous laws belonged to the authoritarian regime in dealing with peaceful demonstrators.

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