

# The Truth of Parliamentary Opposition in the Constitution of the Republic of Iraq 2005: A Consolidate Study with Decisions of the Federal Supreme Court

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There is no doubt that the presence of the political or parliamentary opposition in any country is one of the features of the State that adopts democracy and pluralism and is the extent of its respect for the freedom of public opinion. In addition, the positive role played by the political bloc or the Opposition party in Parliament by monitoring government action and diagnosing errors. Thus, providing advice and solutions to address those mistakes. For this, we find some constitutional and legal legislations have explicitly approved and organised that right. Iraq, after the fall of the regime in 2003, is considered one of the countries that adopted political pluralism. This was manifested through the provisions of the 2005 Constitution, as well as the Political Parties Law No. 36 for the year 2015, after a system of government under the 1970 Constitution was based on a dictatorial one-party system, and thus prevented the formation of opposition parties.

**Keywords:** *Political opposition, Parliamentary, Constitutional legislation, Political parties.*

## Introduction

The research problem is embodied in the experience that the 2005 Constitution brought despite its adoption of political pluralism. However, the idea of a parliamentary opposition was not clear due to the consensual and political quotas that were followed in taking

decisions and assuming positions. Under the constitutional judiciary in Iraq, and represented by the Federal Supreme Court confirmed in some of its decisions, the issue of political and consensual quotas in decision-making is in violation of the Constitution. Subsequently, it conflicts with the establishment of the parliamentary opposition. This court also recognised the rights and duties of the political bloc that declares itself an opposition bloc in the Council of Representatives. Furthermore, there are gaps in some constitutional texts that are supposed to assume the duties of the parliamentary opposition bloc organising rights (Dr. Ahmad Salama, 2002).

Regarding the research methodology, the study will focus on the provisions of the 2005 Constitution of the Republic of Iraq that indicates the existence of a parliamentary opposition, whether directly or indirectly, as well as the internal system of the Iraqi Parliament. Furthermore, also referring to several federal court decisions related to the political bloc that declares itself as a bloc Parliamentary opposition.

As for the research plan, it consists of three sections. The first topic includes the nature of the parliamentary opposition and a statement of its legislative basis in Iraq. As for the second topic, it is devoted to a real study of the parliamentary opposition through its contribution to the formation of the Parliament and the executive authority. As for the third topic, it guarantees the effectiveness of the parliamentary opposition in the legislative field and the accountability of the government is based on two requirements. The first requirement is devoted to studying the effectiveness of the parliamentary opposition in the legislative field, while the second demand addresses the effectiveness of the parliamentary opposition in holding the executive authority accountable.

The research ends with some results and proposals that we believe are necessary to be taken in order to develop integrated legislative texts, whether in the Constitution of the Republic of Iraq for the year 2005, or the procedure role of the Council of Representatives related to the parliamentary bloc that declares itself as an opposition parliamentary bloc and in a manner that enables it to do its positive role, whether legislative or regulatory (Dr. Ashraf Mustafa, 1989).

## **Defining the Parliamentary Opposition and Clarifying Its Legislative Basis in Iraq**

### ***Definition of the Parliamentary Opposition***

#### ***The Organic Standard is the Basis for Defining Parliamentary Opposition***

The owners of this trend focus on the formal side in defining the parliamentary opposition, as they defined it as the forces and bodies that work to monitor the Government and its plans,

and it may be among its goals to replace it, whether by winning elections or others. It is also known as a minority that cannot reach government and has a weak influence on the public opinion.

### ***The Functional Criterion is the Basis for Defining the Parliamentary Opposition***

The functional criterion here refers to the activities represented in criticising the Government and monitoring its plans, and that shall be done by the forces and bodies representing the Opposition. Furthermore, it may be by categories and personalities from within the government itself, especially if it is a coalition government.

We conclude from the aforementioned, that constitutional jurisprudence did not adhere to a single method in defining the parliamentary opposition, and this discrepancy is the result of the difference in the philosophy from which every researcher or jurist is based.

In the face of these differing constitutional jurisprudence trends, we can define them as political activity practised by political blocs or parties in an organised way to achieve political aims. The most important of which is access to power, monitoring government actions, diagnosing mistakes, and providing advice and solutions to them.

### ***The Legislative Basis for the Parliamentary Opposition in Iraq***

There are provisions in the Basic Law of 1925 that indirectly deal with the parliamentary opposition, especially when it stipulated that the political system is a representative system in accordance with Article Two of the law. There is no doubt that this system assumes the existence of a parliamentary opposition, on the basis that this matter is one of the rules of the parliamentary system of the Parliament. As for the temporary constitutions from the Constitution of 1958 to the Constitution of 1968, it did not include a reference to the parliamentary opposition. Either because these constitutions are temporary and succinct or because the people in charge of the authority do not believe in the existence of the Opposition, either with regard to the 1970 Constitution and after the Ba'ath Party's domination of power and following the dictatorship therein. The administration of the political system has prevented the establishment of opposition parties and has even chased and executed those belonging to them and their displacement outside the State under false pretences under the so-called 'dependency'.

Regarding the Constitution of the Republic of Iraq for the year 2005, this constitution did not explicitly provide for the parliamentary opposition, but rather took it indirectly through the adoption of the parliamentary system (Osama Muhammad, 2012).

In relation to Iraq, and the form of government within it, the following is noted:

1. According to the preamble of the effective constitution, in which it says: “We, the people of Iraq, who have risen just from their repression, and who look forward confidently to their future through a republican, federal, democratic, and pluralistic system”, this clearly indicates that the system is democratic. In this system, there should be a difference in political views and positions in the Parliament between the majority and the minority (the Opposition), and there must be a parliamentary opposition within the Parliament to express its views and directions.
2. Article 38 (1) of the Constitution affirmed the freedom of expression of opinion by all means and there is no doubt that the parliamentary opposition is part of the freedom of expression of opinion.
3. The decision of the Supreme Judicial Council issued on 25 July 2019, which affirmed that political parties that choose to approach (opposing the Government) have the right to express this viewpoint by appropriate means, whether inside or outside the Council (Hassan Mustafa, 2006).
4. The Federal Supreme Court Decision No. 70 of 2019 explicitly referred to the parliamentary opposition and how to exercise its work and enjoy all the rights stipulated in the 2005 Constitution <sup>(6)</sup>.
5. There were some constitutional texts that required voting on decisions or laws within the Council of Representatives and with a specific majority, such as the absolute majority as in Article 55 of the Constitution, as well as the simple majority in Article 59 (2). This means that whoever refuses to vote, is within the parliamentary opposition.
6. Parliamentary opposition may be manifested through deliberate disturbance of the quorum of voting, such as absenteeism from the Parliament session or not to attend the Parliament session. In fact, this is what occurred.
7. The procedure role of the Iraqi Parliament has explicitly stated the term “opposition” in Article 3, in which the following stated: “The provisions of this system guarantee freedom of expression and opinion of all Members of the Parliament, whatever their political or partisan directions or affiliations, in a manner that does not contradict and the provisions of the Constitution, and guarantee freedom of objectivity and constructive criticism, and achieve cooperation between the House of Representatives and other constitutional institutions”.
8. Some political blocs in Parliament have also confirmed that they are taking the side of the parliamentary opposition, such as the Parliamentary Bloc of Wisdom.

For all the above, it can be posited that the Constitution of the Republic of Iraq has provided for the parliamentary opposition, albeit indirectly, in addition to the judicial and legislative decisions that confirm this (Dr. Rafea Khuder, 2012).

We also call on the Iraqi legislator to include in the 2005 Constitution, a clear text regulating the work, rights, and duties of the parliamentary opposition, given the importance of its work in monitoring the Government's work and evaluating that work.

### **The Real Opposition of Parliament in Iraq through Its Contribution to the Formation of Parliament and the Executive Authority**

The internal system of the Iraqi Parliament has dealt with the procedures that is followed for membership of the committees, the conditions for their members, and the powers of those committees. It is assumed that, according to the legislative text, there will be consideration for the principle of specialisation when choosing any member of these committees, and that each category of members has a real desire and willingness to discuss the topics referred to. Accordingly, the internal system of the Iraqi Council of Representatives has authorised each Member to nominate himself for the membership or chairmanship of a committee. In the event that this freedom collides with the number prescribed for each committee or with the necessity of proportional representation of political parties, it is necessary to resort to the Parliament for selection (Dr. Said Buchaer, 2013).

Each of the permanent committees consists of a number of members, and no less than seven members but no more than fifteen members, according to the Article 73 of the system, as Article 74 of the bylaw stipulated: "Each committee shall elect, within a period of three days following the beginning of its formation, from among its members a chairman, a vice-president, by a majority of the number of its members".

As for the extent to which the opposition parliamentary bloc can participate in these committees, there is no doubt that the chairmanship and membership of the committees are subject to the principle of 'political quotas'. Although, the internal system specifies how to affiliate with these committees and the number of their members and their chairmanship, and thus, we find only a limited number of committees that contain this. Its membership is based on members who were chosen on the basis of competence and specialisation, while the selection of most members is on the basis of quotas<sup>(10)</sup>. This quota, that the Supreme Federal Court approved in its decision number '89-Federal-2019', is unlawful, as it is in violation of the Constitution.

It is clear from the foregoing, that the parliamentary opposition in the comparative legislation plays a fundamental role by including it in the membership of the parliamentary committees or the presidency of some of these committees. Meanwhile, we find that the Iraqi legislator did not follow that approach because the choice is based on political quotas.

### ***The Real Presence of the Parliamentary Opposition in Iraq through Its Contribution to the Formation of the Executive Authority***

There is no doubt that constitutions differ in the way the President is chosen, according to the nature of the political system of each country. There are constitutions that make the selection of the President by the people, directly after being chosen in a planned manner or indirectly. Meanwhile, other constitutions determine the selection of the President by the Parliament. As is the case in the Constitution of the Republic of Iraq for the year 2005, as Article 70 (1) states that the Council of Representatives elects from among the candidates a President of the Republic, and by a two-thirds majority of its Members. Meanwhile, paragraph two of the aforementioned Article affirms that if none of the candidates obtained the required majority, the competition is between the two candidates who obtained the highest votes. The President who receives the majority of votes in the second ballot, declares that this constitutional text does not work because the selection of the President, in practice, is by a consensus between the political blocs. Furthermore, it is mainly based on political and sectarian quotas, which the Federal Supreme Court has decided not to issue legitimacy, as this quota has started since 2005, to make the head of State from the Kurdish nationalist parties, the Prime Minister from the Shiite sect, and the speaker of the Parliament from the Sunni sect. Therefore, we suggest that this constitutional text be activated by moving away from political considerations, and the sectarian and partisan choice, when deciding the three presidencies. Furthermore, respecting the opinion of the blocs that make up the Opposition in the Council of Representatives.

### ***The Role of the Parliamentary Opposition in Choosing the Prime Minister in Accordance with the Republic of Iraq's Constitution Of 2005***

There is no doubt, that in a constitutional monarchical regime, the king is obligated to choose the Prime Minister from the bloc or party that won the majority of seats or votes in the Parliament. Subsequently, the Prime Minister selects the Ministers, but the parliamentary opposition can have a role in choosing the Prime Minister and members of his Ministry when no clear parliamentary majority is achieved. That is, when the number of seats won by each party is close, which leads to the formation of a coalition government, then the parliamentary opposition makes a role in choosing the head and members of the Ministry.

As for the republican systems, in which the head of State alone has the right to choose the head of Government without referring to the Parliament, the Opposition has no role in choosing him. However, except for the practical application of the work, wherein the head of State often consults with the speaker of Parliament, parliamentary blocs, and independent representatives when appointing the Prime Minister. This is especially the case if the parliamentary elections lead to a majority achieving opposition to the political direction of

the head of State. In this instance, the head of State will be in a difficult position when choosing the Prime Minister because the Opposition will enjoy a majority in Parliament and he will find himself in front of two choices. Moreover, he must reconcile with the majority and be aware, including or imposing a Government at the head of which is a first Minister close to him, to implement his policy. However, this will lead to the majority obstructing his work by refusing to pass the laws he provides or by taking a more decisive position by blaming him. Subsequently, the parliamentary opposition will have a role in choosing the head of State, as well as in the systems in which the Prime Minister is directly elected by the people, as they do not have a role but can make an impact indirectly by influencing the electoral committee (Dr. Shamran Hammadi, 1966).

In Iraq, the President of the Republic assigns the majority candidate to form a government and then the Opposition has no role in choosing the Prime Minister. However, the reality, and in light of the political consensus that prevailed in the overall political process after 2003, it becomes clear to us that the parliamentary opposition has a role in the selection of the Prime Minister. In the 2005 elections, one of the political blocs objected to the candidate of the most numerous bloc, which led to the compulsion of another candidate from that most bloc. However, in all cases where the Prime Minister was chosen, the selection is based on political accommodation. It is based on the political quotas, and the Council of Representatives sends a request to the Federal Supreme Court. This includes the question of the validity of the concept of the violation in Article 76 of the Constitution, in an effort to understand from it the right of the bloc or blocs that are not organised into the largest number of parliamentary blocs or withdraw from them to represent the parliamentary opposition bloc. In other words, knowing the extent of the right of another bloc or Members of the House of Representatives to join the Opposition front or bloc with the same mechanism in which it was registered. Wherein, the Federal Court indicated in its decision the concept of the largest number of parliamentary blocs, which was formed after the elections, through one electoral list and won the most number of seats or which was gathered from two or more lists from the electoral lists and won the most number of seats. In addition, all its members attained the capacity of the Deputy after his swearing in the Constitutional oath, and whose candidate is assigned to form the Council of Ministers. Whoever is left of the deputies, is according to the parliamentary and democratic system adopted by Iraq and in relation to the text of Article 1 from its 2005 Constitution. Furthermore, they do not join the more numerous parliamentary bloc whose candidate formed the Council of Ministers. Instead, they have the choice to either form an opposition bloc, according to a specific platform, and if the Presidency of the House of Representatives feels the names of its deputies and its platform. Alternatively, to remain individually opposed to what they want to oppose from the work of the executive authority or support it with a sense of their convictions. The mass of the Opposition is formed according to its options and its approach to all the constitutional guarantees, which are assured by the Constitution and the law of the House of Representatives by exercising the powers as they

represent all Iraqi people. This serves in addition to the immunity enjoyed by what the Deputy declares during the session. The members of the opposition bloc, as well as the most numerous members of the parliamentary bloc, switch to any of the blocs during the electoral cycle, according to their convictions, and to guarantee freedom of opinion and privacy, according to Articles 17 (1), and 38 (1) of the Constitution. There is no doubt that this judicial decision issued by the Federal Supreme Court has dictated the vacuum in the 2005 Constitution with regard to the parliamentary opposition, and that it had been referred to indirectly. This decision establishes a parliamentary opposition which is real and effective, both in terms of its work or to oppose the constitutional position (Dr. Majid Najim, 2016).

### **The Effectiveness of the Parliamentary Opposition in the Legislative Field and the Accountability of the Government in Accordance with the 2005 Constitution of the Republic of Iraq**

There can be a role for the parliamentary opposition in the field of proposing and discussing laws. This was approved by several constitutional legislations, including the Constitution of the Republic of Iraq for the year 2005. It confirmed in paragraph two of Article 60, that laws proposals are submitted by ten Members of the House of Representatives or from one of its specialised committees. This is the same text approved by Article 12 of the internal system of the House of Representatives. The Council of Representatives will have a role in discussing and approving draft laws, including the draft general budget law, and the final account. It may also conduct transfers between the chapters of the general budget, and reduce the total amounts, as well as encompass the necessity to propose to the Council of Ministers to increase the total amount of expenditures, in accordance with paragraph 'i' and 'ii' of Article 62 of the Constitution.

From these texts, we can extract that the opposition parliamentary bloc can have an effective role in the discussion and approval of bills, especially the draft federal budget law.

#### ***The Effectiveness of the Parliamentary Opposition in Calling for a Session of Parliament***

Several constitutions stipulate that the parliamentary opposition should be granted the right to submit a request to hold a meeting of Parliament, especially in exceptional cases, and as a result of specific necessities. As for the Constitution of the Republic of Iraq for the year 2005, it is found that Article 58 (1) confirms that via the President of the Republic or the Prime Minister or the President of the Council of Representatives or fifty members of the Council of Representatives, the House of Representatives is invited to an extraordinary session, and the meeting is limited to the topics that necessitated the invitation to it. This means that the opposition parliamentary bloc can submit a request to call the Council of Representatives if they formed the percentage mentioned.

### ***The Effectiveness of the Parliamentary Opposition in Amending the Constitution***

Several pieces of constitutional legislation grant opposition blocs and parties a request to amend the Constitution. Among those constitutions is the Constitution of the Republic of Iraq for the year 2005, which confirmed in Article 126 (1) that if the President of the Republic and the Council of Ministers collectively or five members of the Council of Representatives propose amending the Constitution, two-thirds of the Members of the House of Representatives must approve it, supported by the approval of the people in a public referendum, and ratification of the President of the Republic within seven days. According to this text, we can stipulate that five Members of Parliament, who may be an opposition parliamentary bloc, can propose amending the Constitution, as long as this required percentage can be achieved. However, the difficulty lies in obtaining the approval of two-thirds of the Members, as the role of the Opposition appears in amending the Constitution through Article 142, which stipulates that:

1. At the beginning of its work, the Parliament forms a committee from its Members that is representative of the main components in Iraqi society, and whose mission is to report to the House of Representatives. This must be done within a period which does not exceed four months, and which includes a recommendation of the necessary amendments that can be made to the Constitution. The committee is dissolved after deciding on its proposals.
2. The amendments proposed by the committee are presented at once to the House of Representatives for a vote, and they are approved by the approval of the absolute majority of the members of the Council. We conclude from that implicitly, that the members of the opposition bloc may be among the committee formed by the Council of Representatives, and is related to the report on the amendments' constitutionalism, as it can have a role by approving it through the absolute majority of the members of the Council.

The Federal Supreme Court has answered this question, as it has confirmed that the application of Article 126 of the Constitution, when evaluating a proposal to amend one or more articles of the Constitution, is only after deciding on the amendments recommended by the committee, as stipulated in paragraph one of Article 142 of the Constitution. We conclude from this decision that Parliament, including the opposition parliamentary blocs, cannot resort to the amendment to Article 126, and only after applying the procedures stipulated in Article 142 of the Constitution (Dr. Mohsen Khalil, 1979).



***The Effectiveness of the Parliamentary Opposition in Holding the Government to Account, in Accordance with the 2005 Constitution of the Republic of Iraq***

The parliamentary inquiry defines that a Member of Parliament can ask questions to the Government or Ministers to inquire about an issue that the Member is unaware of or with the intention to call the Government's attention to an issue (Waseem Husam, 2008).

It is also factually defined that a Member of Parliament may query a competent Minister or the Prime Minister about a specific matter related to the work of the Ministry or the Government as a whole, in which case, questioning is one of the most possible means by which the parliamentary opposition can obtain information that is not known to the liquidator or to force the Government to take a specific action. This mechanism enables monitoring the actions and activities of the Government and attempts to indirectly hold the Government accountable to it and to public opinion.

The Constitution of the Republic of Iraq 2005 organised the topic of parliamentary questions in Article 61 (A), which stipulated that “a Member of the House of Representatives can ask the Prime Minister and Ministers, questions on any subject that falls within their competence, and each of them answers the questions of Members. The questioner has the right to comment on the answer”. The internal system of the Iraqi Parliament is also organised for the issue of directing parliamentary questioning. It has approved the right for Members of the House of Representatives to direct written questions to members of the Presidency Council, heads of independent bodies, and heads of departments which are not associated with a Ministry or other members. In the matter, the Government interferes in their terms of reference. The purpose of the question by the Member of Parliament is to answer what no one knows or to highlight information regarding an incident brought to their attention or to determine the Government's intention in the order of things.

According to Article 51 of the Law, the Presidency shall include the question for which the answer is verbally in the agenda of the nearest appropriate meeting, and at least one week after the date of the notification issued to the concerned official. The response to the question may not be more than two weeks late, while Article 52 of the system also affirms that questions related to issues referred to council committees may not be included in the agenda before the committee submits its report to the council. Furthermore, it may not be included for one member more from a question in one session, and the answers to the questions will be in the order in which they are registered.

### ***The Effectiveness of the Parliamentary Opposition by Presenting a General Topic for Discussion***

This oversight method is known as one of the supervisory means by which Parliament can exchange views with the Government to reach the best policies for solving problems, whether internal or external. It is one of the supervisory methods by which the Government can create opportunities for developing an understanding between the Parliament and itself on issues. It has a certain importance, away from the accusation, in order to suggest appropriate solutions. The internal system of the Iraqi Parliament approved this right, as twenty-five members of the Council of Representatives may raise a general topic for discussion to clarify the policy and performance of the cabinet or one of the ministries and submit it to the President of the parliamentarians who are not interested. The Prime Minister sets a date for attending, with a time limit set for the Council of Representatives to discuss the matter. This means that twenty-five members of the opposition parliamentary bloc can exercise this oversight right.

### ***The Effectiveness of the Parliamentary Opposition through Parliamentary Interrogation***

As the interrogation may lead to the resignation of the Government or the interrogated Minister, all substantive formalities must be followed. The Constitution of the Republic of Iraq for the year 2005 has explicitly stipulated these procedures. It is confirmed in Article 61 (7/c), that for a member of the Council of Representatives, and with the consent of twenty-five members, an interrogation is directed to the Prime Minister or one of the ministers to hold them accountable for the affairs that fall within their competence. The discussion in the interrogation does not take place until at least seven days after it was submitted. This is the same text that the internal system of the Iraqi Parliament came to, as an interrogation request is submitted by the Parliamentary Member headquarters, with the consent of twenty-five Members in written form. The interrogation may end either with the conviction of the members of the Council of Representatives to answer the interrogator, and here the interrogation will be terminated or the interrogation may be proven during the performance of the Government or Minister, which leads to condemnation, and thus, the withdrawal of confidence from the Government or Minister.

We conclude from the above that a member of any opposition parliamentary bloc can submit a request to interrogate the Prime Minister or a Minister, provided that the request is accompanied by the support of at least twenty-five Members of Parliament.

### ***Effectiveness of the Parliamentary Opposition through a Parliamentary Investigation***

A parliamentary investigation is defined as a process of fact-finding on a specific situation in the executive and related public bodies which is practiced by a committee composed of a

certain number of members of the Legislative Council. This aims to reveal the weaknesses, defects, and deficiencies in the existing system, whether in the political, economic, or social council. It requires the preparation of a detailed report on the outcome of work, submitting it to the Legislative Council for discussion, and taking into consideration what is deemed appropriate.

The investigation is carried out by committees called investigation committees or fact-finding committees, which are temporary oversight methods that do not lead to government accountability. However, it is only the collection of evidence and data, and if it is found that there is a default, this may lead to a request for interrogation. Most constitutions and internal regulations have stipulated how to form and produce a terms of reference. While the Constitution of the Republic of Iraq for the year 2005 has not provided for this, the internal system of the Council of Representatives has provided for the committees. However, it did not stipulate the number of members and the method of their selection. In relation to what must be observed through practical reality, we find the agreement and political quotas, and they are the basis for a choice. We propose that the Constitution or the rules of procedure of the Council of Representatives provide for the formation of investigative committees by showing the number of members and the method of their choice on the basis of competence and jurisdiction, away from the political and sectarian quotas.

As for Article 82 of the procedural role, it affirms the right of the Parliament to form an investigation committee according to the work requirements and the issues presented to it. Meanwhile, Article 83 of the procedural role has indicated that the approval of the formation of investigative committees is performed by a majority of the Council members present, and is based on a proposal submitted by the Presidency of the Council or fifty members of the Council of Representatives. Through this text, we find that the members of the opposition parliamentary bloc can form an investigative committee according to a proposal submitted by fifty members. We believe that this percentage is difficult to achieve. Thus, we propose Article 83 of the procedural role by giving the parliamentary bloc the opposition to the right to submit a proposal to form an investigation committee.

## **Conclusion**

### ***Results***

1. The constitutional jurisprudence did not agree in defining the concept of the parliamentary opposition. Several relied on the organic standard, and others relied on the functional aspect. According to this disparity, we can define it as the political activity practised by political blocs or parties in an organised way to achieve the most

important political goals, including reaching power, monitoring government actions, diagnosing mistakes, and giving advice and solutions to them.

2. Regarding the position of the Iraqi constitutions pertaining to the approval of the political or parliamentary opposition system, it is in accordance with the text of Article 2 of the Basic Law of 1925, which stipulates that the parliamentary system is followed. This text assumes that there is opposition, however this opposition is weak in practice. The temporary constitutions from the 1958 Constitution to the 1968 Constitution did not include a reference to the parliamentary opposition because these constitutions are temporary and succinct, and also because the holders at the head of power did not believe in the existence of the political opposition. However, after the constitution of 1970, the Ba'ath party assumed power and applied dictatorship. Subsequently, opposition parties have been prevented from emerging, and their executions conducted or expelled outside the country.
3. With regard to the Constitution of the Republic of Iraq for the year 2005, and in general, there are some problems that hinder the crystal opposition of the Parliament clearly due to the wrong practical implementation of the exercise of power. It is on the basis of consensus, both in decision-making and the distribution of positions. This 'compatibility' is mainly based on 'quotas', including the political, which undoubtedly violates the Constitution in form and content, in addition to violating the will of the electors when choosing Members of the House of Representatives. For this, the Federal Supreme Court confirmed in its decision '89 - Federal – 2019', those quotas in the distribution of positions, but that it violates the principle of equality as stipulated in Article 14 the Constitution, as well as article 16, which guarantees the principle of equal opportunities.
4. The legitimacy of the work of the parliamentary opposition, even if it is not stipulated in the legislation, was confirmed by the Iraqi Federal Supreme Court in its decision '70 - Federal – 2019'.
5. The Federal Supreme Court decision '70- Federal – 2019', dictated the void in the 2005 Constitution with regard to the parliamentary opposition. Furthermore, if referred to indirectly, it establishes an effective and real parliamentary opposition, whether in terms of its work or its constitutional position.
6. In the Constitution of the Republic of Iraq for the year 2005, it stipulates that the selection of the head of State is in accordance with the conditions stipulated in Article 68 or according to the procedures mentioned in Article 70. In the selection, it is made by a consensus between the political blocs that is mainly based on the political and sectarian quotas, which the Federal Supreme Court has recognised as unlawful. This quota began and has been used since 2005, to make the head of State a Kurdish national, to take the Prime Minister from a Shiite sect, and to select the Speaker of the Council of Representatives from the Sunni community.

### ***Proposals***

1. We suggest that the provisions of the 2005 Constitution of the Republic of Iraq relating to the exercise of power be activated in a manner consistent with the nature of the political system approved by this constitution, away from political consensus, which is mainly based on ‘political quotas’ in making decisions within the Parliament. This will lead to the effectiveness of the parliamentary opposition, enabling it to exercise its legislative or supervisory role.
2. We suggest that the Iraqi legislator includes in the 2005 Constitution an explicit text that regulates the work, rights, and duties of the parliamentary opposition, given the importance of its role in monitoring the Government’s work and evaluating that work, as stipulated in several comparative legislations.
3. In order to activate the characteristics and features that the opposition parliamentary bloc must adhere to, we suggest that the Iraqi legislator, whether in the 2005 Constitution or in the internal system, expressly stipulates clarifying the procedures to be followed by the bloc, and commitment to the legitimacy and peacefulness of its work and its existence. This is required because a decision by the Federal Supreme Court (70 - Federal - 2019) did not outline the procedures in detail. Furthermore, the Council of Representatives must publish this in detail on its website.
4. We suggest that the selection of parliamentary committees be undertaken based on competence and efficiency and be far removed from quotas and political considerations. This requires the amendment of the text of Article 73 of the internal system of the Iraqi Parliament, as follows: “each of the permanent committees consists of a number of members, no less than seven members and no more than fifteen members. The formation of competence and specialisation shall be observed in its formation, and it should include several members of the opposition parliamentary blocs in its membership”.
5. We suggest activating in the text of Article 70 of the Constitution of the Republic of Iraq for the year 2005, that Members of Parliament, including members of the opposition parliamentary bloc, have the freedom to choose the head of State away from a consensus, quotas, and pressure from the heads of political blocs.
6. In order to enable the opposition parliamentary bloc to exercise its right to submit a request to amend the Constitution, we propose to amend paragraph one of Article 142 of the Constitution of the Republic of Iraq for the year 2005, according to the following formula: the Parliament represents at the beginning of its work, a committee of its members to include members of the opposition parliamentary bloc, and it is represented by the main components of Iraqi society.
7. We suggest that the Constitution of the Republic of Iraq for the year 2005 provide for the formation of investigative committees by indicating the number of their members



and the method of selecting them on the basis of competence, and removed from the influence of political and sectarian quotas.

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### **Judicial Decisions and Magazines**

- The decision of the Supreme Judicial Council on 25-7-2019 is published on the [www.hjc.iq](http://www.hjc.iq).
- 2- Federal Supreme Court Decision No. 70-Federal-2019, published on the website [www.iraqfsc.iq](http://www.iraqfsc.iq)
- 3- Federal Supreme Court Decision No. 89- Federal- 2019 published on the website, [www.iraqfsc.iq](http://www.iraqfsc.iq).
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