

Research  
Paper

Middle East and North  
Africa Programme

October 2021

# Iraq's electoral system

## Why successive reforms fail to bring change

Victoria Stewart-Jolley



**Chatham House, the Royal Institute of International Affairs, is a world-leading policy institute based in London. Our mission is to help governments and societies build a sustainably secure, prosperous and just world.**

## Summary

- After all but one of Iraq's parliamentary elections since 2005, the country has reformed its election laws in response to public pressure. Despite the introduction of new electoral legislation, the formation of government continues to be removed from voters and often disregards actual electoral results. Instead, the process focuses on distributing senior posts, as well as the control of 'sovereign' and state ministries, to members of a coalition that is agreed among political parties – not necessarily those that have won the most votes.
- In 2005, following the first parliamentary elections since the fall of Saddam Hussein, a coalition of parties formed a government of national unity. This model has been adopted for successive governments. In 2010, under this model, the party with the most seats was not allowed to attempt to form a government, increasing the sense of disconnect between elections and those in power. In the two elections that followed, the formation of governments and the distribution of senior posts and ministries was based on factional entitlement and political agreement, rather than the popular vote.
- The most recent reforms in 2019 and 2020 brought in a new voting system, the single non-transferable vote (SNTV). This is effectively a first-past-the-post system in multi-seat constituencies that should automatically allocate seats to those candidates with the most votes. This system tends to favour individual candidates rather than political parties.
- The adoption of the SNTV is likely to reduce the number of seats that each party can win, making it more difficult to form a coalition as a greater number of parties will need to come together to establish a government. The government formation system itself remains unaltered by the reforms.
- In order for real reform to take place, the system that allows the distribution of posts and ministries along sectarian lines needs to be both changed and regulated. In the absence of real change, government formation in Iraq will continue to be detached from the public vote, which raises the prospect of further disruption and protest.

## Introduction

Public faith in Iraq's electoral system has steadily declined in recent years. Voter turnout for the country's 2018 parliamentary elections stood at 44.5 per cent – just over half the number that voted in 2005.<sup>1</sup> In October 2019, public demonstrations spread across Iraq demanding that political elites cease distributing control of government ministries along sectarian lines and the end of cronyism, which is viewed as synonymous with Iraq's post-occupation political culture.<sup>2</sup>

### The adoption of the single non-transferable vote system in November 2020 is the most recent effort to reduce the influence of parties and factions in government formation.

Iraq has regularly held elections since 2005. Yet the process of forming a government once the votes are counted has consistently produced the same outcome: a government of national unity. While this reflected the results of the initial 2005 election, subsequent government formation processes have not. This disconnect between the result of an election and the formation of government is at the heart of frequent and ongoing demonstrations. Public pressure has focused on the electoral system and power-sharing bargains that tend to favour the governing elite – bargains that could in theory be reached without holding elections altogether. However, the government formation process remains untouched.<sup>3</sup>

Reform of the electoral system has been a consistent feature in Iraq since the occupation. Each national poll has been followed by the introduction of new electoral legislation. However, these changes – driven in part by the courts and in part by political factions – have had little to no impact on government formation. The adoption of the single non-transferable vote (SNTV) system in November 2020 is the most recent effort to reduce the influence of parties and factions in government formation. The new voting system is intended to make election results and seat allocation more transparent. While it is still untested, this approach is likely to favour independent political actors rather than parties, thereby increasing the number of groups engaged in the necessary bargaining to form a future government.

---

<sup>1</sup> United Nations Assistance Mission for Iraq (2019), *Human Rights Special Report: Demonstrations in Iraq*, Report, Baghdad, [https://www.ohchr.org/Documents/Countries/IQ/2nd\\_UNAMI\\_Special\\_Report\\_on\\_Human\\_Rights\\_in\\_Iraq\\_Demonstrations\\_5\\_November\\_2019.pdf](https://www.ohchr.org/Documents/Countries/IQ/2nd_UNAMI_Special_Report_on_Human_Rights_in_Iraq_Demonstrations_5_November_2019.pdf). It should be noted that the turn-out figures are contested, with some estimates suggesting that the actual turn-out was considerably lower than reported, see, Mansour, R. (2019), *Iraq's 2018 Government Formation: Unpacking the Friction Between Reform and the Status Quo*, LSE Middle East Centre report, London: London School of Economics and Political Science, [http://eprints.lse.ac.uk/100099/1/Mansour\\_Iraq\\_s\\_2018\\_government\\_formation\\_2019.pdf](http://eprints.lse.ac.uk/100099/1/Mansour_Iraq_s_2018_government_formation_2019.pdf).

<sup>2</sup> Dodge, T. and Mansour, R. (2020), 'Sectarianization and De-sectarianization in the Struggle for Iraq's Political Field', *Review of Faith and International Affairs*, 18(1): pp. 58–69, <https://www.tandfonline.com/doi/full/10.1080/15570274.2020.1729513>.

<sup>3</sup> Hassan, F. and Rubin, A. J. (2019), 'Iraq's New Election Law Draws Much Criticism and Few Cheers', *The New York Times*, 24 December 2019, <https://www.nytimes.com/2019/12/24/world/middleeast/iraq-election-law.html>.

In systems dominated by strong political parties, individual candidates are more dependent on these organizations for their selection and campaign support. This boosts the role of parties when forming governing coalitions and gives them more control over their members – concentrating power in the hands of party leaders and managers. In a political process where parties are weaker – as the case may be under Iraq's new SNTV system – elected candidates are more likely to have their own individual mandate and objectives. As a result, forming a coalition will include a wider range of actors and securing each person's participation and loyalty will potentially be more difficult.

This paper examines the impacts of various changes in Iraq's election laws since 2005, as well as the governments that were formed following each election. The paper then reviews the latest election law, the current voting system, and provisions for seat allocation to political parties and the likely impact on upcoming elections, scheduled for October 2021. The analysis shows that the voting system and the seat allocation system are effectively divorced from government formation except for one component: the number of seats each party can bargain with.

## Electoral law reform: 2005–11

The voting system is one of three interlinking processes that affect the formation of the government in Iraq's parliamentary system; the others are seat allocation as part of the proportional representation system and the coalition formation process. Before an election, political parties and independent candidates register with the Independent High Electoral Commission, through which they are vetted and cleared to contest in the election. After the vote, parliamentary seats are allocated to the political parties with the most votes. If no single party wins more than 50 per cent of the parliamentary seats, parties then engage in a process to form a coalition. There is an electoral assumption that the party that has won the greatest number of seats will lead this process, at least in the initial phase. However, this has not been the case since 2010, when the Supreme Court ruled that the parties that could assemble the largest coalition would have the right to form the government – regardless of which single entity won the most seats. This ruling effectively allowed government formation discussions to take place as a separate exercise from the vote. As a result, the challenge of forming a government no longer depended on who had won the greatest number of seats, but rather who could form alliances based on the distribution of 'political goods', i.e. high-level positions and the control of ministries. Subsequently, government formation has focused less on the creation of coalitions, and increasingly on the division of ministerial and executive-level posts between Shia, Sunni and Kurdish parliamentary blocs.

Successive electoral law reforms have made changes to the voting and seat allocation systems, but have not addressed the government formation process, which has become increasingly fragmented.

## The 2005 election

The first parliamentary election in December 2005 retained the 'closed list' proportional representation system that was adopted for the earlier transitional elections in January of that year. In order to ensure sufficient Sunni representation, and to contain representation of Kurds within their region, the 2005 law divided 230 of the 275 seats in the Council of Representatives among the 18 provinces based on population.<sup>4</sup> The remaining 45 'compensatory' seats were distributed to parties that had received significant numbers of votes across the 18 provinces but did not win a seat within a district, with any remaining seats after that distributed to the main winning parties.<sup>5</sup> Voters cast one vote for a party list and seats were distributed to parties based on the number of votes received.<sup>6</sup>

The voting system adopted a modified Hare quota, in which two calculations were used to distribute seats among party lists. First, to obtain the 'election quota', the number of valid votes in an electoral district was divided by the number of seats allocated to that district. Second, the number of votes obtained by each party in that district would then be divided by the 'election quota' to establish the number of seats to be allocated to the parties.<sup>7</sup> Remaining seats in the district would be distributed to parties with the greatest number of surplus votes (votes received in excess of the number required to secure a seat) – referred to as the 'highest remainder' calculation.<sup>8</sup> As mentioned above, 45 compensatory seats were awarded across all districts in two ways: to parties that had received the most votes above the 'national average' (the total number of valid votes cast nationally divided by the total number of seats) or to parties that had won the highest number of seats in districts.<sup>9</sup>

The election law did not specify how parties should allocate the seats they won to the candidates on their lists. This gave parties complete control over which candidates were awarded seats. As a result, following the elections, parties allocated seats based on their internal political preferences, often disproportionately rewarding candidates ranked lower on their list or from districts where the party had minimal support.<sup>10</sup>

The use of the Hare quota tends to distribute seats to a larger number of parties and favours smaller ones.<sup>11</sup> In the December 2005 elections, use of the Hare quota, alongside the compensatory seat system, resulted in 17 parties winning seats.<sup>12</sup> However, the decision to distribute compensatory seats to parties that had won the highest number of seats in districts – as well as to those receiving votes above

---

<sup>4</sup> Global Justice Project: Iraq (undated), 'Council of Representatives Electoral Law No. 16 2005', [http://gjpi.org/wp-content/uploads/2009/01/electoral\\_law\\_final\\_gazetted\\_12sep05eng.doc](http://gjpi.org/wp-content/uploads/2009/01/electoral_law_final_gazetted_12sep05eng.doc), Articles 9 and 15.

<sup>5</sup> *Ibid.*, Article 15.

<sup>6</sup> *Ibid.*, Articles 9 and 12.

<sup>7</sup> *Ibid.*, Article 16.

<sup>8</sup> *Ibid.*, Article 15.

<sup>9</sup> *Ibid.*, Article 17.

<sup>10</sup> Visser, R. (2009), 'Proportional Representation Dispute in Iraq: Parliament Adjourns without Adopting an Election Law for 2010', [historiae.org](http://historiae.org), 28 July 2009, <https://historiae.org/proportional.asp>.

<sup>11</sup> O'Sullivan, M. and Al-Saiedi, R. (2014), 'Choosing an Electoral System: Iraq's Three Electoral Experiments, their Results, and their Political Implications', Belfer Center Discussion Paper, April 2014, <https://www.belfercenter.org/index.php/publication/choosing-electoral-system>.

<sup>12</sup> Independent High Electoral Commission (2005), 'Council of Representatives Elections December 15 /2005', [https://web.archive.org/web/20070709172441/http://www.ieciraq.org/final%20cand/IECI\\_Certified\\_\\_CoR\\_Candidates\\_En\\_Ar.pdf](https://web.archive.org/web/20070709172441/http://www.ieciraq.org/final%20cand/IECI_Certified__CoR_Candidates_En_Ar.pdf).

the national average – further excluded many smaller parties because the number of votes required to win a district seat (referred to as the ‘cost’ of a seat) was higher than the ‘national average’. With the number of national votes at 12,191,133, the ‘cost’ of a national compensatory seat was 44,331 votes. In contrast, the ‘cost’ of a seat in the district of Baghdad was 44,777 votes and that of a seat in Anbar was 64,407 votes.<sup>13</sup> This hurt smaller parties disproportionately, with only one that had not won a district seat gaining a compensatory one.<sup>14</sup>

## The method used by parties to select representatives sparked calls for reform from the public, who demanded greater choice through the direct election of candidates.

Voter turnout in December 2005 was relatively high with 79.63 per cent of voters casting ballots. The Shia United Iraqi Alliance (UIA) – mainly comprised of the Supreme Council for Islamic Revolution in Iraq, the Islamic Dawa Party and the Sadrists – won the most seats (128). After the elections, the UIA was invited by the president to enter negotiations to build a governing coalition with at least 138 seats.<sup>15</sup> The result was a government of national unity comprised of the UIA, the Kurdistan Alliance (or Democratic Patriotic Alliance of Kurdistan) with 53 seats, the Sunni Iraqi Accord Front (or Tawafuq) with 44 seats, and the secular Al-Iraqiya led by Ayad Allawi with 25 seats. Nouri al-Maliki (UIA) was named prime minister. The government formation process largely reflected the popular vote, with the four most popular parties entering government. However, the method used by parties to select representatives sparked calls for reform from the public, who demanded greater choice through the direct election of candidates.

### The 2010 election

Iraq's election laws were revised prior to the 2010 parliamentary election.<sup>16</sup> The changes adopted were partially in line with revisions to provincial election laws relating to the voting system and reserved minority seats.<sup>17</sup> This introduced the use of ‘open lists’ allowing the public to vote either for their preferred party or for an individual candidate within a party.<sup>18</sup> This made ‘personal votes’ possible as voters could identify candidates they wanted to elect, regardless

<sup>13</sup> Kireev, A. (2005), ‘Iraq. Legislative Election 2005 (December)’, Electoral Geography 2.0: Mapped Politics, <https://www.electoralgeography.com/new/en/countries/i/iraq/iraq-legislative-election-2005.html>.

<sup>14</sup> O’Sullivan, M. and Al-Saiedi, R. (2014), ‘Choosing an Electoral System’, p. 20.

<sup>15</sup> Constitute Project (2021), ‘Iraq's Constitution of 2005’, [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en).

<sup>16</sup> Visser (2009), ‘Proportional Representation Dispute in Iraq’.

<sup>17</sup> Visser, R. (2008), ‘The Iraqi Parliament Passes the Provincial Elections Law’, [historiae.org](http://historiae.org/muhafazat.asp), 22 July 2008, <https://historiae.org/muhafazat.asp>; International Crisis Group (2009), *Iraq's Provincial Elections: The Stakes*, Middle East Report No. 82, 27 January 2009, p. 11, <https://d2071andvip0wj.cloudfront.net/82-iraq-s-provincial-elections-the-stakes.pdf>.

<sup>18</sup> For a detailed commentary, see Visser, R. (2014), ‘The Use of the Personal Vote Option in Iraq's 30 April 2014 General Election’, *Iraq and Gulf Analysis*, 27 May 2014, <https://gulfanalysis.wordpress.com/2014/05/27/the-use-of-the-personal-vote-option-in-the-iraq-2014-general-election>.

of how parties ranked them on their lists. This type of voting system minimizes vote 'wastage' because, where successful candidates amass more votes than are required for a seat, these 'surplus' votes are retained by the party in a given district. This potentially enables the election of other candidates who did not receive enough individual votes, if the party's vote numbers surpass the electoral threshold.

Activists and demonstrators supported the change in the system. The Sadrists and Grand Ayatollah Ali al-Sistani backed public calls for greater political transparency, including the use of open lists. It proved impossible for the large parties and coalition groups to oppose the change publicly, even though they were reportedly against it in private.<sup>19</sup> The open list system was ultimately accepted by the factions, among them the UIA, headed by Prime Minister Maliki, and the Kurds.<sup>20</sup> Despite their reservations, the factions were confident that open lists and the increased focus on candidates as political personalities with individual mandates, would be favourable to them.<sup>21</sup> Subsequent parliamentary elections recorded high numbers of votes for individual candidates. In the 2010 elections, the focus on votes for individuals was exploited to great effect by the Sadrists within the National Iraqi Alliance (NIA). Later, in the 2014 elections, 44 representatives were elected by voters who identified with specific candidates and disregarded their ranking in the party list.<sup>22</sup>

The change in the electoral system also included the introduction of eight minority seats reserved for Christians, Yazidis, Sabaeans and Shabeks. The Kurds initially resisted this, seeing minority groups such as the Yazidis and Shabeks as Kurdish and not entitled to separate representation. However, the Kurds supported reserved seats for Christians – as did the Sadrists, the Islamic Supreme Council of Iraq (ISCI) and secular Sunni groups such as Al-Iraqiya, tangentially providing support for reserved seats for all identified minorities. Ultimately, the Kurds backed the provisions and their support was essential for the adoption of this change.<sup>23</sup>

For the 2010 elections, the number of parliamentary seats was increased to 325 (with 310 district seats), ostensibly to reflect an increase in the population but without the benefit of a census. The increased number of seats was the subject of considerable trading and negotiations between factions. The allocation of seats per district in the 2009 election law was based on the earlier 2005 voter estimates for provinces, which favoured Kurdish factions. However, in 2007, the Supreme Court ruled that the 2005 calculation was unconstitutional and should instead

<sup>19</sup> Visser, R. (2009), 'A Closed Assembly Will Produce a Closed List', *Iraq and Gulf Analysis*, 16 October 2009, <https://gulfanalysis.wordpress.com/2009/10/16/a-closed-assembly-will-produce-a-closed-list>.

<sup>20</sup> Al Jazeera (2014), '2009 الانتخابات العراقية [Iraqi Electoral Law (2009)]', *Al Jazeera*, 12 February 2014, <https://www.aljazeera.net/encyclopedia/events/2014/12/2/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D8%B9%D8%B1%D8%A7%D9%82%D9%8A-%D8%B3%D9%86%D8%A9-2009>.

<sup>21</sup> Visser (2008), 'The Iraqi Parliament Passes the Provincial Elections Law'.

<sup>22</sup> Visser, R. (2010), 'The Sadrist Watershed Confirmed', *Iraq and Gulf Analysis*, 29 March 2010, <https://gulfanalysis.wordpress.com/2010/03/29/the-sadrist-watershed-confirmed>; Visser (2014), 'The Use of the Personal Vote Option in Iraq's 30 April 2014 General Election'.

<sup>23</sup> Visser, R. (2018), 'Iraqi Minorities Get Special Representation in the Provincial Elections Law', *historiae.org*, 3 November 2008, <https://historiae.org/minorities.asp>.



be based on national population figures, with one seat per 100,000 residents.<sup>24</sup> It was this latter calculation that formed the basis of the revised number of representatives.

Vice-President Tariq al-Hashimi, leader of the then largest Sunni bloc, the Iraqi Accord Front, opposed using the 2005 figures. He vetoed the draft law, preferring a calculation that would favour the Sunni majority in Ninewa district.<sup>25</sup> A coalition of Shia factions consisting of Maliki's State of Law, the ISCI, and the NIA also opposed the amendment of the seat numbers. However, a compromise deal was struck through the agreement to grant Kurdistan two compensatory seats regardless of the legal provisions; this was in addition to the minority representative seats Kurdistan had already been allocated as well as the existing seats held in majority Shia areas.<sup>26</sup> The number of compensatory seats was reduced to seven, to be distributed to parties that won the highest number of district seats, and there would be eight reserved minority seats.<sup>27</sup> The Hare quota was retained with candidates ranked on the votes they personally received.<sup>28</sup> Remaining compensatory seats were now exclusively reserved for parties that had already won seats, and were 'distributed to winning lists based on the proportion of the votes they acquired'.<sup>29</sup> This shift, along with the exclusive allocation of 'remainder' seats to party's that had already won a seat, heavily favoured larger parties. In the 2010 elections, only nine parties received seats. That year, voter turnout fell to 60.98 per cent.

In both the 2009 provincial elections and the 2010 parliamentary elections, voters focused consistently on nationalism and service delivery, despite the political community's emphasis on sectarian divisions following the extreme violence of 2007 and 2008.<sup>30</sup> This trend in voter priorities was reflected in the success in the parliamentary elections of Al-Iraqiya, a secular non-sectarian Sunni–Shia coalition, which was the largest winner with 91 seats. Maliki's State of Law coalition came second with 89 seats, followed by the NIA with 70 seats and the Kurdistan Alliance with 43 seats.<sup>31</sup>

<sup>24</sup> Visser, R. (2019), 'No Second Veto: The Election Law is Approved by Tariq al-Hashemi and the Iraqi Presidency', *historiae.org*, 6 December 2009, <https://historiae.org/hashemi.asp>; Visser, R. (2009), 'The 2005 Election Law Seen as Unconstitutional; Seat Distribution Key in Doubt', *Iraq and Gulf Analysis*, 24 November 2009, <https://gulfanalysis.wordpress.com/2009/11/24/the-2005-election-law-seen-as-unconstitutional-seat-distribution-key-in-doubt/>; Visser, R. (2009), 'The Hashemi Veto Backfires, Parliament Ups the Ante', *Iraq and Gulf Analysis*, 23 November 2009, <https://gulfanalysis.wordpress.com/2009/11/23/the-hashemi-veto-backfires-parliament-ups-the-ante/>; Constitute Project (2021), 'Iraq's Constitution of 2005'; Visser (2009), 'The 2005 Election Law Seen as Unconstitutional; Seat Distribution Key in Doubt'.

<sup>25</sup> Visser (2009), 'The Hashemi Veto Backfires, Parliament Ups the Ante'.

<sup>26</sup> Visser (2009), 'No Second Veto: The Election Law is Approved by Tariq al-Hashemi and the Iraqi Presidency'.

<sup>27</sup> Visser (2014), 'The Use of the Personal Vote Option in Iraq's 30 April 2014 General Election'.

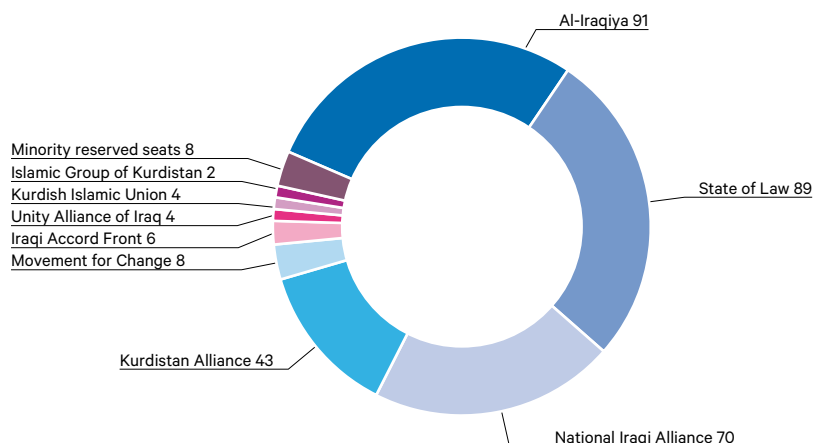
<sup>28</sup> Al Jazeera (2014), 'قانون الانتخابات العراقية 2009 [Iraqi Electoral Law (2009)]'.

<sup>29</sup> Ibid.; See also The ACE Project: The Electoral Knowledge Network (undated), 'Iraq: Regulation no. 21, Seat Allocation (2010)', <https://aceproject.org/ero-en/regions/mideast/IQ/iraq-regulation-no-21-seat-allocation-2010/view>.

<sup>30</sup> Dougherty, D. M. (2007), *Iraqi Voices: Perspectives on Sectarianism and Governance – Findings from Focus Groups with Iraqi Men and Women*, Iraqi Voices Report, Baghdad and Washington DC: National Democratic Institute for International Affairs, <http://www.ka.com.tr/Creator/UploadCenter/Files/FocusGroupsFebruary2007.pdf>.

<sup>31</sup> UN Security Council (2010), *Report of the Secretary-General pursuant to paragraph 30 of Resolution 1546 (2004)*, 14 May 2010, S/2010/240, [https://www.uniraq.com/images/SGReports/SG\\_Report\\_S\\_2010\\_240\\_EN.pdf](https://www.uniraq.com/images/SGReports/SG_Report_S_2010_240_EN.pdf).

**Figure 1.** Distribution of parliamentary seats to parties, 2010



Source: Adapted from Visser, R. (2010), 'The Uncertified Election Results: Allawi Comes Out on Top', *historiae.org*, 26 March 2010, <https://historiae.org/uncertified.asp>.

As the winner of the highest number of seats, Al-Iraqiya should have been invited to form the governing coalition, but this did not happen. Instead, the ratification of results took place 87 days after the elections and a period of protracted political wrangling followed. Prime Minister Maliki refused to leave office.<sup>32</sup> When the Council of Representatives sat on 14 June, it elected a speaker but failed to elect a new president. According to the constitution, the president should invite the leader of the largest winning bloc to form the government, but it is unclear what should happen if any of the established dates are missed or actions fail to happen. An extraordinary session of parliament could be called, but only for 30 days, and there are no provisions for a caretaker government. The government formation process in 2010 subsequently took place outside the constitution and the law.

Following the elections, a number of cases were filed with the Supreme Court, including an application on the part of Maliki's State of Law to clarify the legal position on which bloc could form a government. This was followed by a challenge by Saleh al-Mutlak and Nasir al-Ani (Al-Iraqiya) over the use of de-Ba'athification provisions whereby former Ba'ath Party members were disbarred from political participation. These provisions were used to disqualify winning candidates – a tactic that was used by the incumbent government to reduce Al-Iraqiya's slender majority. However, the court refused to rule on the challenge.<sup>33</sup> Chief Justice Medhat al-Mahmoud, under significant political pressure, including from Maliki, decided that the largest bloc could be defined as either the one that had won the highest number of seats or the largest bloc formed through post-election

<sup>32</sup> UN Security Council (2010), *Report of the Secretary-General pursuant to paragraph 6 of Resolution 1883 (2009)* 29 July 2010, S/2010/406, [https://www.uniraq.com/images/SGReports/SG\\_Report\\_S\\_2010\\_406\\_EN.pdf](https://www.uniraq.com/images/SGReports/SG_Report_S_2010_406_EN.pdf); Constitute Project (2021), 'Iraq's Constitution of 2005', Articles 54–56, 58, 61 and 76.

<sup>33</sup> Visser, R. (2010), 'The Federal Supreme Court Goes Incommunicado over De-Baathification, Compensation Seats', *Iraq and Gulf Analysis*, 1 April 2010, <https://gulfanalysis.wordpress.com/2010/04/01/the-federal-supreme-court-goes-incommunicado-over-de-baathification-compensation-seats>; UN Security Council (2010), *Report of the Secretary-General pursuant to paragraph 6 of Resolution 1936 (2010)*, S/2010/606, <https://undocs.org/S/2010/606>.

negotiations.<sup>34</sup> On the basis of this ruling, Al-Iraqiya was not allowed to try to form a governing coalition as by this time Maliki had formed a larger electoral bloc. This effectively disregarded the results of the popular vote, in favour of elite bargaining.<sup>35</sup> The judgment damaged the integrity of the Supreme Court, especially given its earlier refusal to rule on the legality of de-Ba'athification. It also marred the integrity of the electoral system, in light of the prime minister's refusal to leave office despite not winning the election.

## **Chief Justice Medhat al-Mahmoud, under significant political pressure, including from Maliki, decided that the largest bloc could be defined as either the one that had won the highest number of seats or the largest bloc formed through post-election negotiations.**

A 'national partnership government' was eventually formed at the end of 2010.<sup>36</sup> It was headed by Maliki who remained as prime minister, and it comprised State of Law as the principal coalition member and the NIA, forming a bloc of 159 seats, which in turn was supported by the Kurdish bloc. Al-Iraqiya initially attempted to negotiate the creation of a 'national council for strategic policies' to be led by Ayad Allawi, which would have afforded him a decision-making role in the administration; however, the council did not go ahead. Al-Iraqiya did secure the Council of Representatives speakership for Usama al-Nujayfi, the role of deputy prime minister for Saleh al-Mutlak, and the ministries of agriculture, education, science and technology, communications, industry and a minister of state. It only gained one 'sovereign' ministry – the core ministries of interior, oil, foreign affairs, defence and finance, without which the state would not function – in the form of the Ministry of Finance, which was to be led by Rafi al-Eisawi. Critically, the allocation of ministries did not include a security portfolio as Maliki himself held the ministries of defence, interior, and national security.<sup>37</sup> Al-Iraqiya's experience with 24.7 per cent of the vote contrasted with the Kurds who received 13 per cent of the vote, but took one deputy prime minister post, one sovereign ministry, and 17 per cent of the general ministries.

---

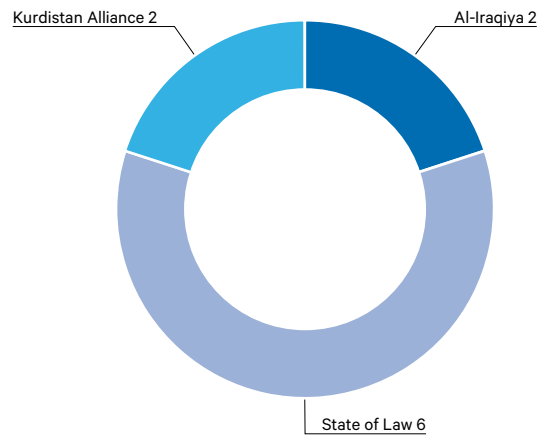
<sup>34</sup> See Khedery, A. (2014), 'Why We Stuck with Maliki – and Lost Iraq', *The Washington Post*, 3 July 2014, [https://www.washingtonpost.com/opinions/why-we-stuck-with-maliki--and-lost-iraq/2014/07/03/0dd6a8a4-f7ec-11e3-a606-946fd632f9f1\\_story.html](https://www.washingtonpost.com/opinions/why-we-stuck-with-maliki--and-lost-iraq/2014/07/03/0dd6a8a4-f7ec-11e3-a606-946fd632f9f1_story.html); Trumbull IV, C. P. and Martin, J. B. (2011), 'Elections and Government Formation in Iraq: An Analysis of the Judiciary's Role', *Vanderbilt Journal of Transnational Law*, 44: pp. 331–388; Visser, R. (2010), 'Iraqiyya Challenges the Jurisdiction of the Federal Supreme Court', *Iraq and Gulf Analysis*, 31 March 2010, <https://gulfanalysis.wordpress.com/2010/03/31/iraqiyya-challenges-the-jurisdiction-of-the-federal-supreme-court/>; Visser, R. (2013), 'The Iraqi Supreme Court Strikes Down Law Limiting Prime Minister Terms', *Iraq and Gulf Analysis*, 27 August 2013, <https://gulfanalysis.wordpress.com/2013/08/27/the-iraqi-supreme-court-strikes-down-law-limiting-prime-minister-terms>.

<sup>35</sup> al-Shadeedi, H. and van Veen, E. (2020), *Iraq's Adolescent Democracy Where to go from here*, CRU Report, The Hague: Clingendael Netherlands Institute of International Relations, p. 19, <https://www.clingendael.org/sites/default/files/2020-06/iraqs-adolescent-democracy.pdf>.

<sup>36</sup> UN Security Council (2010), *Report of the Secretary-General pursuant to paragraph 6 of Resolution 1936 (2010)*, S/2010/606; BBC News (2010), 'Iraqi parliament approves new government', 21 December 2010, <https://www.bbc.com/news/world-middle-east-12047721>.

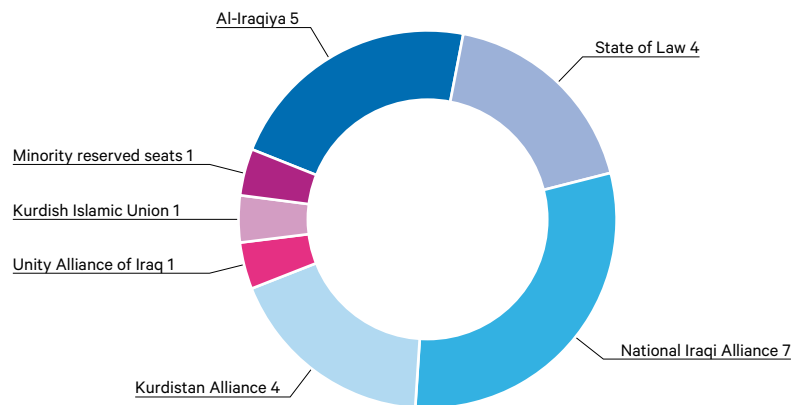
<sup>37</sup> Visser, R. (2010), 'Parliament Approves the Second Maliki Government', *historiae.org*, 21 December 2010, <https://historiae.org/Maliki-second.asp>.

**Figure 2.** Distribution of sovereign ministries (including prime minister and deputy prime minister), 2010



Source: Adapted from Visser (2010), 'Parliament Approves the Second Maliki Government'; Assyrian International News Agency (AINA) (2010), 'Ministers in the New Iraq Government', AINA, 23 December 2010, <http://www.aina.org/news/20101222202853.htm>.

**Figure 3.** Political party allocation of non-sovereign ministries, 2010



Source: Adapted from Visser (2010), 'Parliament Approves the Second Maliki Government'; AINA (2010), 'Ministers in the New Iraq Government'.

This distribution of ministries effectively disregarded the popular vote. Public anger grew and led to repeated demonstrations that demanded greater transparency in governance and improved service delivery. In response, more than \$1 billion in extra spending was promised on social care, coupled with political concessions, including an assurance that Maliki would not run for office again. Increasing levels of violence were also used against the protesters.<sup>38</sup>

<sup>38</sup> International Crisis Group (2011), *Failing Oversight: Iraq's Unchecked Government*, Middle East Report No. 113, 26 September 2011, <https://d2071andvip0wj.cloudfront.net/113-failing-oversight-iraq-s-unchecked-government.pdf>.

## Sectarianism and powerholding: the 2014 and 2018 elections

Following the 2010 elections, the Supreme Court ruled again on the election law, based on a complaint filed by the Communist Party relating to how 'surplus' or unallocated seats were distributed according to the 2009 amended law. The Supreme Court ruled that the amendments were discriminatory and invalidated them.<sup>39</sup> While the ruling was not applied retroactively and did not affect the 2010 government formation process, it resulted in another review of the election law in 2013.<sup>40</sup>

Despite an initial agreement by Al-Iraqiya and State of Law to retain the 'highest remainder' formula that they felt benefited them, changes in line with the Supreme Court's ruling were adopted.<sup>41</sup> The number of seats was increased to 328 and compensatory seats were removed completely. The eight reserved minority seats were retained. The Kurds were the main beneficiaries of this increase in seats. Shia Islamic parties opposed it due to concerns about a possible fragmentation of their vote.<sup>42</sup> The biggest change was in seat allocation, with the adoption of a modified Sainte-Laguë system (see Table 1).<sup>43</sup> Under this arrangement, the number of valid votes received by a party is divided by a weighted calculation of 1.6, and then divided by the number of seats. Allocation is undertaken over successive rounds with seats distributed to each party in order of the ratio of votes received; the party with the largest number of votes receives the first seat, the party with the next highest number of votes is then allocated the next seat and so forth until the allocation is complete.

**Table 1.** Sample seat allocation under the Sainte-Laguë system

	Party A	Party B	Party C	Party D	Party E	Party F
$V_i$	40,000	23,000	16,500	13,000	9,000	3,200
1st seat	40,000	23,000	16,500	13,000	9,000	3,200
2nd seat	13,333	23,000	16,500	13,000	9,000	3,200
3rd seat	13,333	7,667	16,500	13,000	9,000	3,200
4th seat	13,333	7,667	5,500	13,000	9,000	3,200
5th seat	8,000	7,667	5,500	13,000	9,000	3,200
6th seat	8,000	7,667	5,500	4,333	9,000	3,200
Total seats	2	1	1	1	1	0

Source: van Eck, L., Visagie, S. E. and de Kock, H. C. (2005), 'Fairness of seat allocation methods in proportional representation', *Orion*, 21(2): p. 95, <http://hdl.handle.net/10019/1/21780>.

Note:  $V_i$  (vote allocation) represents the number of seats each party receives.

<sup>39</sup> Visser, R. (2010), 'A Remarkable Case of Judicial Activism, in Iraq!', *Iraq and Gulf Analysis*, 17 June 2010, <https://gulfanalysis.wordpress.com/2010/06/17/a-remarkable-case-of-judicial-activism-in-iraq/>; Visser, R. (2010), 'Iraqiyya Challenges the Jurisdiction of the Federal Supreme Court'.

<sup>40</sup> Inter-Parliamentary Union database (2016), 'IRAQ (Council of Representatives of Iraq), Electoral system', [http://archive.ipu.org/parline-e/reports/2151\\_B.htm](http://archive.ipu.org/parline-e/reports/2151_B.htm).

<sup>41</sup> Visser, R. (2012), 'Provincial Elections Law Revisions in Iraq', *Iraq and Gulf Analysis*, 2 August 2012, <https://gulfanalysis.wordpress.com/2012/08/02/provincial-elections-law-revisions-in-iraq/>; Visser, R. (2013), 'After the Passage of Changes to the Iraqi Electoral System, Uncertainty about Their Legal Status', *Iraq and Gulf Analysis*, 11 November 2013, <https://gulfanalysis.wordpress.com/2013/11/11/after-the-passage-of-changes-to-the-iraqi-electoral-system-uncertainty-about-their-legal-status/>.

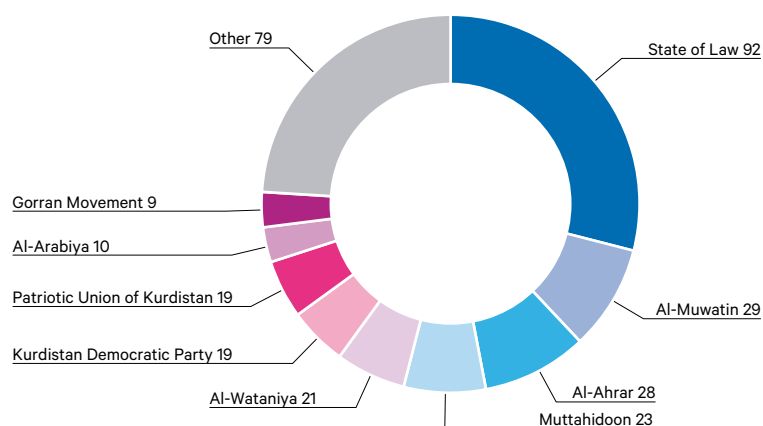
<sup>42</sup> Visser, R. (2013), 'Iraq Amends Its Electoral Law and Is Ready for Parliamentary Elections in April 2014', *Iraq and Gulf Analysis*, 4 November 2013, <https://gulfanalysis.wordpress.com/2013/11/04/iraq-amends-its-electoral-law-and-is-ready-for-parliamentary-elections-in-april-2014/>.

<sup>43</sup> Inter-Parliamentary Union database (2016), 'IRAQ (Council of Representatives of Iraq), Electoral system'.

The modified version of the Sainte-Laguë system that adopted the weighted calculation of 1.6 delivers very similar results to the Hare quota – and was promoted by the State of Law coalition.<sup>44</sup>

This method of seat allocation was used for the 2014 elections. It produced the most diverse parliament yet, reflecting the fracturing of established political parties and coalitions. Forty-two parties received seats. Voter turnout remained at 60.5 per cent, which was 20 per cent lower than the historic turnout in 2005. The election was held in April and the government was formed on 8 September 2014, with 12 parties taking ministerial posts.<sup>45</sup>

**Figure 4.** Distribution of seats to parties, 2014



Source: Adapted from Duman, B. (2014), 'The 2014 Elections, ISIS Operations and the Future of Iraq', *ORSAM Report* No. 190, June 2014 <https://www.orsam.org.tr/en/the-2014-elections-isis-operations-and-the-future-of-iraq>.

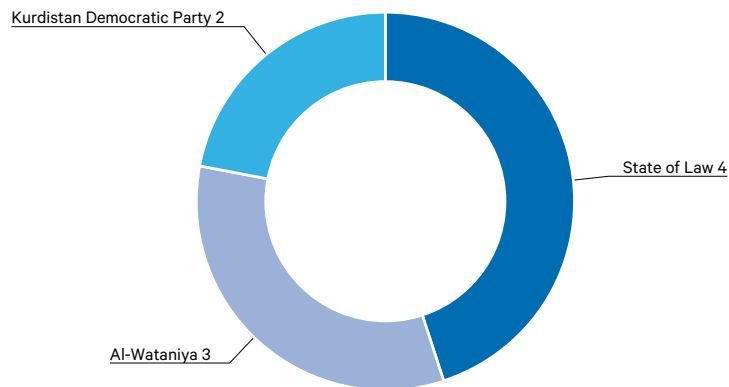
The largest single winning bloc was State of Law under Maliki's leadership with 92 seats, followed by Al-Muwatin headed by Ammar al-Hakim, and Al-Ahrar led by Muqtada al-Sadr.<sup>46</sup>

<sup>44</sup> See Visser, R. (2012), 'Iraq Adopts the Sainte-Lague Method for Its Election Law', *Iraq and Gulf Analysis*, 13 December 2012, <https://gulfanalysis.wordpress.com/2012/12/13/iraq-adopts-the-sainte-lague-method-for-its-election-law/>; Visser, R. (2013), 'After the Passage of Changes to the Iraqi Electoral System, Uncertainty about Their Legal Status'.

<sup>45</sup> UN Security Council (2014), *First report of the Secretary-General submitted pursuant to paragraph 6 of Resolution 2169 (2014)*, S/2014/774, <https://undocs.org/S/2014/774>; Visser, R. (2014), 'The Iraqi Parliament Approves the Abbadi Cabinet', *Iraq and Gulf Analysis*, 9 September 2014, <https://gulfanalysis.wordpress.com/2014/09/09/the-iraqi-parliament-approves-the-abbadi-cabinet/>.

<sup>46</sup> Visser, R. (2014), 'The Iraq Elections Result: Maliki's Complicated Win', *Iraq and Gulf Analysis*, 19 May 2014, <https://gulfanalysis.wordpress.com/2014/05/19/the-iraq-elections-result-malikis-complicated-win/>.

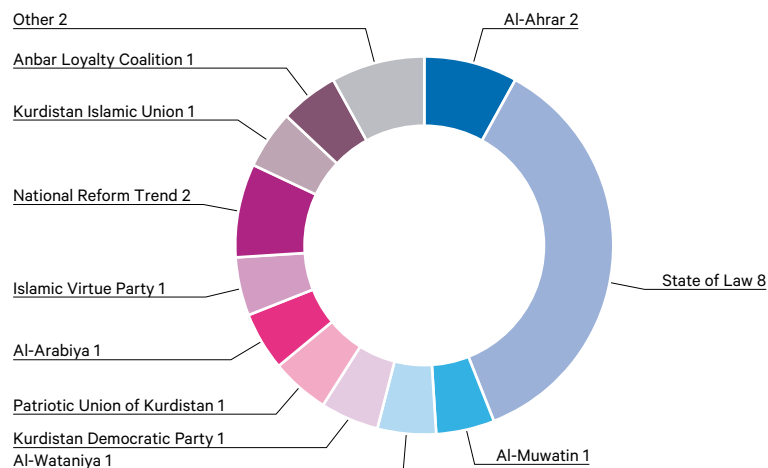
**Figure 5.** Distribution of sovereign ministries (including prime minister and two deputy prime ministers), 2014



Source: Adapted from Duman (2014), 'The 2014 Elections, ISIS Operations and the Future of Iraq'.

Despite leading the winning alliance in the election, Maliki stood down – as agreed in response to demonstrations following the 2010 election – and was replaced as prime minister by Haider al-Abadi, a compromise candidate with a 'neutral' power base.<sup>47</sup> While the new government appeared to be inclusive, the distribution of ministerial posts on sectarian lines was, if anything, strengthened as each, now splintered, faction, sought its share of the Shia or Kurdish ministerial assignments.<sup>48</sup>

**Figure 6.** Distribution of general ministries, 2014



Source: Adapted from Duman (2014), 'The 2014 Elections, ISIS Operations and the Future of Iraq'.

<sup>47</sup> al-Shadeedi and van Veen (2020), *Iraq's Adolescent Democracy Where to go from here*; Visser, R. (2014), 'The New Iraqi Parliament Opens', *Iraq and Gulf Analysis*, 1 July 2014, <https://gulfanalysis.wordpress.com/2014/07/01/the-new-iraqi-parliament-opens>; Visser, R. (2014), 'Haydar al-Abadi Is the New Iraq PM Candidate', *Iraq and Gulf Analysis*, 11 August 2014, <https://gulfanalysis.wordpress.com/2014/08/11/haydar-al-abbadi-is-the-new-iraq-pm-candidate>.  
<sup>48</sup> Higel, L. (2020), 'On Third Try, a New Government for Iraq', *Middle East and North Africa Commentary*, International Crisis Group, 8 May 2020, <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/third-try-new-government-iraq>.

The State of Law bloc received 28 per cent of votes but took 45 per cent of senior posts and sovereign ministries, and 36 per cent of general ministries. Ibrahim al-Jaafari, head of the National Reform Trend, was appointed minister for foreign affairs; Adel Abdul Mahdi (the National Wisdom Movement (formerly ISCI)) was assigned to lead the oil ministry, while Haider al-Zamili (Fadila) retained control of the Ministry of Justice. Sunni and secular parties in alliance with Salim al-Jibburi and Usama al-Nujayfi received seven ministries, with Saleh al-Mutlak as deputy prime minister. As part of the government formation process, three vice-presidents were also appointed – Maliki, Allawi and al-Nujayfi.<sup>49</sup> The Ministry of Defence was awarded to Khaled al-Obeidi of the Al-Wataniya alliance (formerly known as Al-Iraqiya).

### **Government formation was decided on the basis of internal agreements to divide up ministries among political blocs. While this included allocation to parties with the largest number of seats, it was not proportional to the results.**

Members of the Kurdish bloc were appointed to head the ministries of migration, tourism, culture and women as well as the Ministry of Finance, a post previously held by Al-Iraqiya.<sup>50</sup> In addition, members of the bloc took up roles as minister of state and deputy prime minister. Sovereign ministries were again divided between the State of Law, Al-Wataniya and the Kurds (specifically the Kurdistan Democratic Party, which held 6.5 per cent of the vote). The Sadrists won 28 seats, but were not awarded any senior posts or sovereign ministries and only 9 per cent of general ministries. Although these allocations nodded to the election results, they did not reflect them in any meaningful way. Government formation was decided on the basis of internal agreements to divide up ministries among political blocs. While this included allocation to parties with the largest number of seats, it was not proportional to the results.

Unlike previous election cycles, electoral legislation was not reformed prior to the 2018 election and the method of seat allocation for the now 329-seat parliament (one extra minority seat was added in 2018) was retained.<sup>51</sup> As in 2014, a large number of parties (37) won seats and of those, 10 received senior posts or ministries.

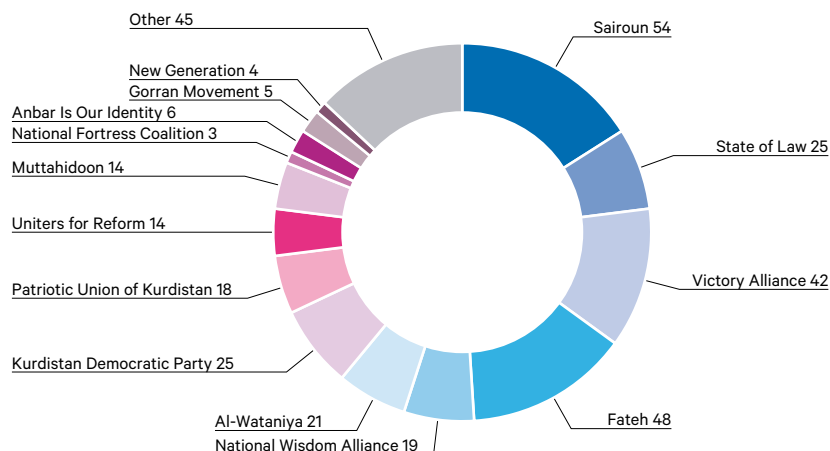
<sup>49</sup> Duman, B. (2014), 'The 2014 Elections, ISIS Operations and the Future of Iraq', *ORSAM Report* No. 190, June 2014, <https://www.orsam.org.tr/en/the-2014-elections-isis-operations-and-the-future-of-iraq>; Visser (2014), 'The Iraqi Parliament Approves the Abbadi Cabinet'.

<sup>50</sup> Visser, R. (2014), 'Additional ministers approved for the Iraq cabinet', *Iraq and Gulf Analysis*, 18 October 2014, <https://gulfanalysis.wordpress.com/2014/10/18/additional-ministers-approved-for-the-iraq-cabinet>; Al Jazeera (2013), 'Iraq Finance Minister Escapes Bomb Attack', 13 January 2013, <http://www.aljazeera.com/news/middleeast/2013/01/201311320337975378.html>; Ruhayem, R. (2013), 'Protests engulf west Iraq as Anbar rises against Maliki', BBC News, 2 January 2013, <http://www.bbc.co.uk/news/world-middle-east-20887739>.

<sup>51</sup> Al Shahid (2018), 'Seat Reserved in Parliament for Feyli Kurds', 23 January 2018, <https://alshahidwitness.com/seat-parliament-reserved-feyli-kurds-iraq>.



**Figure 7.** Distribution of seats to parties, 2018



Source: Adapted from Duman (2014), 'The 2014 Elections, ISIS Operations and the Future of Iraq'; IFES Election Guide (2018), 'Elections: Iraq Parliament 2018', <https://www.electionguide.org/elections/id/3060>.

The Sairoun bloc (a Shia non-sectarian Sadrist–communist alliance) won 54 seats, the Fateh Alliance (a new Shia, non-sectarian group formerly part of the State of Law coalition) won 48 seats, and the Victory Alliance (also a new Shia, non-sectarian bloc formerly under the State of Law coalition) won 42 seats. The remainder of the State of Law coalition secured 25 seats, the National Wisdom Movement 19 seats, and Al-Wataniya and Uniters for Reform (previously both part of Al-Iraqiya) secured 21 and 14 seats, respectively. Kurdish parties won 43 seats.<sup>52</sup>

The fracturing of the Shia parties into rival coalitions – Binaa headed by Maliki and Islah headed by al-Sadr – hampered the formation of the government, as neither could form a large enough bloc.<sup>53</sup> Internal party discipline was weak with individual members choosing their own alliances. For example, while Fateh was ostensibly allied to the Sadr movement, individual members of parliament refused to join the Sadrists and allied with Maliki instead.<sup>54</sup> The Sunni parties, Al-Wataniya and Uniters for Reform, also split, with a third group forming after the election.<sup>55</sup> Government formation again centred on the division of ministries, rather than the parties elected by the Iraqi people. The post of prime minister was eventually given to Adel Abdul Mahdi, who was backed by al-Ameri (of Fateh) with the agreement of Sadr. As an independent candidate, Mahdi was supported as a compromise but did not represent the most popular parties.<sup>56</sup>

<sup>52</sup> Research interviews carried out for the Chatham House Iraq Initiative project with government officials, under the condition of anonymity, Baghdad, March 2021.

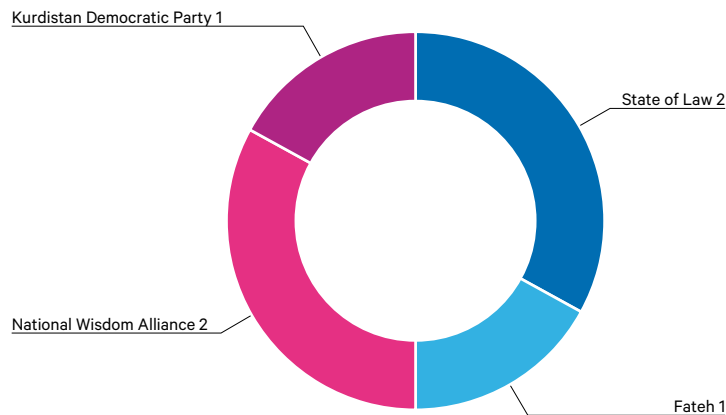
<sup>53</sup> Mansour (2019), *Iraq's 2018 Government Formation: Unpacking the Friction Between Reform and the Status Quo*; al-Shadeedi and van Veen (2020), *Iraq's Adolescent Democracy Where to go from here*.

<sup>54</sup> al-Shadeedi and van Veen (2020), *Iraq's Adolescent Democracy Where to go from here*, p. 13.

<sup>55</sup> *Ibid.*, p.15.

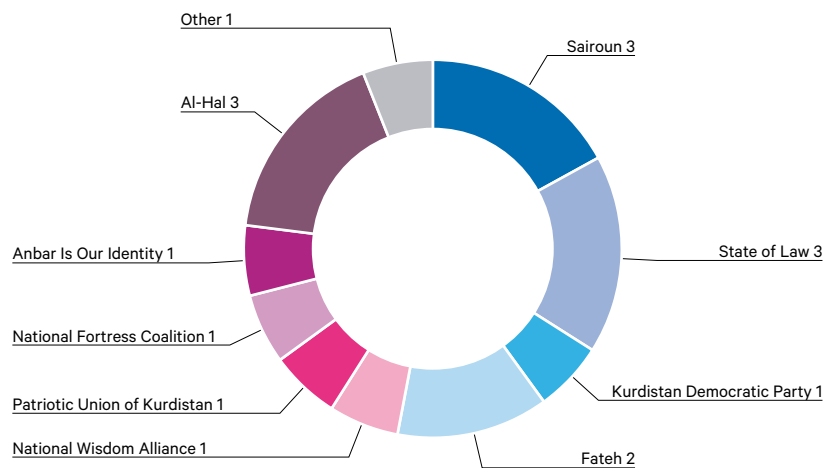
<sup>56</sup> *Ibid.*, p. 17.

**Figure 8.** Distribution of role of prime minister and sovereign ministries, 2018



Source: Adapted from Duman (2014), 'The 2014 Elections, ISIS Operations and the Future of Iraq'; IFES Election Guide (2018), 'Elections: Iraq Parliament 2018'.

**Figure 9.** Distribution of general ministries, 2018



Source: Adapted from Duman (2014), 'The 2014 Elections, ISIS Operations and the Future of Iraq'; IFES Election Guide (2018), 'Elections: Iraq Parliament 2018'.

Again, the State of Law bloc gained a disproportionate number of ministries. It won 9 per cent of the vote but received 28 per cent of sovereign ministries and 17 per cent of general ministries. The Sairoun coalition won 18 per cent of the vote but received no senior posts or sovereign ministries. The Sadrists won 18 per cent of votes and received 17 per cent of ministries; and Fateh gained 16 per cent of votes, secured 12 per cent of ministries and control of a sovereign ministry. The Al-Hal bloc, which was formerly part of Al-Iraqiya, received three ministries, without standing in the election as a party. In contrast, Victory Alliance with 14 per cent of the vote, received no ministerial posts at all. Of the top nine alliances, only six received posts. The Kurdish Democratic Party (KDP), with 9 per cent of the vote, received 29 per cent of senior posts and sovereign ministries.

A clear pattern of seat allocation and power-holding has emerged over the course of the 2010, 2014, and 2018 election cycles. Both the State of Law and the KDP have an established stake in government, holding senior posts and sovereign ministries regardless of the votes cast and the actual percentage of the votes they received. The same does not follow for other parties, where generally ministries are awarded on the basis of the proportion of the electorate they secure.

## Protests and reforms

Protests continued in 2019 across Iraq focusing on the remote, seemingly untouchable, elite that continued to govern the country. Demonstrators demanded employment opportunities, economic reforms, effective and impartial governance, reliable public services, accountability and an end to corruption.<sup>57</sup> Of particular importance were the protests' repudiation of sectarianism and their demand for changes to the constitution and election law, which are viewed as having exacerbated sectarian divisions.<sup>58</sup> Protestors have consistently called for a new election law, the abandonment of compensatory seats and the end of the sectarian allocation of posts. In addition to election law reform, demonstrators demanded that future prime ministers relinquish membership of a political party and that all party-affiliated militias be disbanded to bring the use of force back under the control of the state.<sup>59</sup>

While the government's initial tactic was to violently crack down on demonstrators, it also responded with a number of political measures, many of which echoed those taken after the 2011 protests. First, it launched a significant recruitment drive to address calls for increased employment.<sup>60</sup> The 2019 budget created 56,000 new posts in the public sector, increasing the total to 2.9 million at a cost of \$36 billion to the public purse.<sup>61</sup> In October 2019, Prime Minister Mahdi announced a further 30 measures to boost employment, and to provide housing and social insurance.<sup>62</sup> Reforms were agreed to raise the educational requirements to be a minister, to increase the role of women and youth in decision-making, and to reduce ministerial salaries. Anti-corruption measures were also adopted but the calls for Mahdi to resign as prime minister intensified. Following pressure from Ayatollah

---

<sup>57</sup> UN Security Council (2019), *Report of the Secretary General: Implementation of Resolution 2421 (2018)*, S/2019/365, <https://undocs.org/en/S/2019/365>; UN Security Council (2019), *Report of the Secretary General: Implementation of Resolution 2470 (2019)*, S/2019/903, <https://undocs.org/en/S/2019/903>.

<sup>58</sup> National Democratic Institute for International Affairs (2020), *Iraq: We Want a Homeland – Key Findings of Qualitative Research Conducted in five provinces in Iraq: Baghdad, Basra, Diyala, Erbil, and Nasiriyah*, Report, [https://www.ndi.org/sites/default/files/Iraqi%20Protests%20Research%20Report\\_EN.pdf](https://www.ndi.org/sites/default/files/Iraqi%20Protests%20Research%20Report_EN.pdf); Dodge and Mansour (2020), 'Sectarianization and De-sectarianization in the Struggle for Iraq's Political Field'.

<sup>59</sup> Ibid.

<sup>60</sup> UN Security Council (2020), *Report of the Secretary General: Implementation of Resolution 2522 (2020)*, 11 August 2020, S/2020/792, <https://undocs.org/en/S/2020/792>.

<sup>61</sup> Al-Mawlawi, A. (2019), *Public Payroll Expansion in Iraq: Causes and Consequences*, LSE Middle East Centre report, London: London School of Economics and Political Science, pp. 9, 14–15, [http://eprints.lse.ac.uk/102576/1/Al\\_Mawlawi\\_public\\_payroll\\_expansion\\_in\\_Iraq\\_published.pdf](http://eprints.lse.ac.uk/102576/1/Al_Mawlawi_public_payroll_expansion_in_Iraq_published.pdf).

<sup>62</sup> UN Security Council (2019), *Report of the Secretary General: Implementation of Resolution 2470 (2019)*.

al-Sistani, he resigned in November 2019.<sup>63</sup> Mustafa al-Kadhimi was nominated to the post of prime minister in April 2020 and formed a new government in May that year.<sup>64</sup>

In effect, the reforms and measures taken in response to the demonstrations were a combination of appeasement and containment. The reforms did not materially change the political or government system, and effectively enabled business as usual to continue, albeit with a slightly modified governing administration.

## The new election law

In December 2019, parliament published a new draft election law, which also sought to address the demands of the protests. However, it did not cover the designation of districts or the allocation of seats within districts, reflecting the haste with which politicians attempted to respond to the demands.<sup>65</sup> These provisions were included in a later draft that was issued in October 2020. The law was adopted in November 2020 in the context of calls for early elections.<sup>66</sup> The constitution sets four-year parliamentary terms, yet it does not make provision for the calling of early elections.<sup>67</sup> The Council of Representatives can be dissolved by a majority vote of its members, though whether this can legitimately be done through planned legislation, as opposed to in reaction to circumstance, is an open question.<sup>68</sup> Furthermore, while calling elections is a constitutional privilege of the president, the new election law gives that power to the Council of Ministers in coordination with the Independent High Electoral Commission, but without amending the constitution the presidential powers remain.<sup>69</sup> As such it is doubtful that this power has actually been transferred to the Council of Ministers.

The new law was supported by the Sadrists and the Sairoun bloc and the majority of Shia factions, but was opposed by Maliki's State of Law, the Patriotic Union of Kurdistan and the Kurdish Islamic Union. Those that opposed the law are concerned that it will reduce the number of seats that they can win – and accordingly, would limit their bargaining capacity in government formation.

---

<sup>63</sup> UN Security Council (2020), *Report of the Secretary General: Implementation of Resolution 2470 (2020)*, 21 February 2020, S/2020/140, <https://undocs.org/en/S/2020/140>.

<sup>64</sup> UN Security Council (2020), *Report of the Secretary General: Implementation of Resolution 2522 (2020)*, S/2020/792, <https://undocs.org/en/S/2020/792>.

<sup>65</sup> The Library of Congress (2020), 'Iraq: Prime Minister Announces Early Parliamentary Elections and Urges Implementation of New Election Law', 14 August 2020, <https://www.loc.gov/law/foreign-news/article/iraq-prime-minister-announces-early-parliamentary-elections-and-urges-implementation-of-new-election-law>.

<sup>66</sup> Constitute Project (2021), 'Iraq's Constitution of 2005'.

<sup>67</sup> *Ibid.*, Article 56.

<sup>68</sup> *Ibid.*, Article 64.

<sup>69</sup> Ministry of Justice of Iraq (2020), 'House of Representatives Election Law No. 9 2020', Official Gazette No. 4603, 9 November 2020, <https://www.moj.iq/upload/pdf/4603.pdf>.

## Two major changes

Through the adoption of district-based constituencies and the single non-transferable vote (SNTV) system, the new law aims to address calls from the electorate for greater transparency and to counter sectarian divisions of power that have worsened with the political bloc system.<sup>70</sup>

First, the law creates district-based, as opposed to province-based, constituencies, with a total of 329 seats. Post-occupation, Iraq's initial province-based multi-seat constituency system would have been in line with a proportional representation parliamentary model, but the compensatory seat system and the bloc system that evolved led to factional interests overriding the popular vote. The 2020 law also lowers the minimum age for standing as a candidate from 30 to 28, in an attempt to appease calls from young people in Iraq.<sup>71</sup> Under the law, provinces will be divided into multi-seat districts, with one seat per 100,000 residents, which is in line with the earlier 2007 Supreme Court ruling. The lack of an accurate census is unlikely to be a stumbling block in drawing electoral boundaries as population data is taken from the public rationing system, which has proven to be accurate. Each multi-seat district will contain three to five seats. These will include separate provisions where one seat is guaranteed for candidates that are women within a constituency; this should result in no fewer than 25 per cent of seats being awarded to women in each province.<sup>72</sup> Should the number of women elected represent less than 25 per cent of the seats in a province, the law contains a provision for adding a 'virtual' seat to be won by any woman in the province who is the next highest vote-receiving female candidate.<sup>73</sup>

**Should the number of women elected represent less than 25 per cent of the seats in a province, the law contains a provision for adding a 'virtual' seat to be won by any woman in the province who is the next highest vote-receiving female candidate.**

Second, the law also introduces the SNTV voting system.<sup>74</sup> A proportional representation system, SNTV functions within each multi-seat district as a first-past-the-post system bringing simplicity and transparency to voting and seat allocation. The candidates with the highest number of votes win the seats in each district and there is no longer the need for a seat allocation system.<sup>75</sup> As such, the SNTV system gives voters absolute control over who is elected, putting their choice above party preference and addressing a core demand of protesters.

<sup>70</sup> Hassan and Rubin (2019), 'Iraq's New Election Law Draws Much Criticism and Few Cheers'; Wali, Z. Z. (2020), 'Iraq's new electoral law allocates constituencies based on women in parliament', *Rudaw*, 24 October 2020, <https://www.rudaw.net/english/middleeast/iraq/241020205>.

<sup>71</sup> Ministry of Justice of Iraq (2020), 'House of Representatives Election Law No. 9 2020'.

<sup>72</sup> Wali (2020), 'Iraq's new electoral law allocates constituencies based on women in parliament'; Iraqi Parliament Election Law No. 9 of 2020 attached seat allocation tables.

<sup>73</sup> Ministry of Justice of Iraq (2020), 'House of Representatives Election Law No. 9 2020'.

<sup>74</sup> *Ibid.*, Article 31.

<sup>75</sup> *Ibid.*, Article 15.

However, the SNTV system is a controversial choice given that it is said to fracture party bases. The greater the number of seats in a constituency, the more proportional the system can become. No vote cast for a candidate can be redistributed to others on party lists as a 'surplus', as was the case in the open or closed list proportional representation system. This has two outcomes. One, a significant number of votes for winning candidates are wasted as 'surplus' and votes cast for losing candidates are discarded. Two, it creates an incentive structure that is almost exclusively focused on individual attainment. A given candidate is not only competing against other parties, but is also competing with members from their own parties should more than one candidate be fielded per district. Thus, success is based on political individualism and 'everyone for themselves' strategies.

Parties also have to calculate carefully how best to maximize their own winning capacity across districts. A party or alliance can only win representation in line with its voter support if it manages to satisfy three conditions: anticipating accurately what its support level will be in a constituency, nominating the correct number of candidates to run given that level, and persuading its supporters to distribute their votes equally among these candidates. Nominating too many candidates runs the risk of diffusing the votes of supporters among them and not securing any seats or fewer seats as votes cannot be shared collectively by a party.<sup>76</sup> Under the open list system these calculations would not have been so critical; a party could field any number of candidates and use this to test the popularity of a range of options and ideological approaches with the electorate. The SNTV system removes the incentive for parties to field a range of candidates who appeal to a broader spectrum of political views, as would be the case in an open list where marginal candidates within a popular party can secure a seat through the redistribution of excess votes. As each candidate will have to secure a unique and specific mandate within a district, the potential range of political views will become narrower.

The issue of vote wastage is also extremely significant, as illustrated by electoral outcomes in Afghanistan where the SNTV system was also used. In 2005, only 32 per cent of votes cast were received by winning candidates. This pattern was repeated in 2010, when 37 per cent of votes were cast for winning candidates, with 63 per cent of votes effectively wasted. According to one study, 'as many as three-quarters of valid ballots cast in Afghan elections [did] not contribute to the election of any representative... In comparison, in the first Iraqi general elections of January 2005, only five per cent of votes were wasted.'<sup>77</sup>

## The impact of SNTV and other changes

The 2020 election law leaves the provisions for voter registration, the election campaign and electoral crimes largely unchanged from the 2013 law.<sup>78</sup> However, significant changes have been made to the counting process. Previously, there

<sup>76</sup> The ACE Project (2020), 'Advantages and Disadvantages of SNTV', <https://aceproject.org/ace-en/topics/es/esd/esd04/esd04a/esd04a01>.

<sup>77</sup> Reynolds, A. and Carey, J. (2012), *Fixing Afghanistan's Electoral System: Arguments and Options for Reform*, Briefing Paper Series, Kabul: Afghanistan Research and Evaluation Unit, <https://cpb-us-e1.wpmucdn.com/sites.dartmouth.edu/dist/2/109/files/2013/02/RC-Fixing-Afghanistans-Electoral-System-AREU-2012-FINAL.pdf>.

<sup>78</sup> Ministry of Justice of Iraq (2020), 'House of Representatives Election Law No. 9 2020'.

was a manual count in each polling station, observed by party agents who were provided with copies of the results.<sup>79</sup> In the new system, the count will be conducted electronically, along with a sample manual count in one polling station per polling centre. Should there be an anomaly of more than 5 per cent between electronic and manual tallies, there will be a manual recount for the whole polling centre. In the event of an appeal, the Independent High Electoral Commission can also order a manual count of the whole polling centre.<sup>80</sup> The change to an electronic count in the manner adopted is likely to result in less transparency, as the vote counting will be harder to observe in the first instance. While the requirement to undertake a sample count provides some oversight, the opaque nature of electronic tallying is likely to make this process highly contested.<sup>81</sup>

The law also contains a new clause that prohibits parties from changing declared coalition partners until after the elections, ensuring that votes cast are received by a bloc as it is declared on the ballot.<sup>82</sup> However, as the provision does not address the period after the election, at that point the bloc can dissolve or amalgamate with other blocs. As such, the provision is likely to have little effect, if any, on government formation as the coalition formation process is unchanged. That said, SNTV will affect government formation in one crucial way, through its potential to fracture party bases. Any fracturing of the party base will result in individual members of parliament having their own mandates from voters and therefore not being necessarily beholden, or even answerable, to a party. This will create stronger links between individual elected politicians and voters.

Having more individually elected politicians in parliament, however, makes it harder to win support when forming coalitions. They can operate independently, more akin to a consultant than a party 'employee' and can join whatever faction is acceptable to them. The cost of securing their allegiance, either politically or fiscally, is broadly indeterminate. Their allegiance is not necessarily ever completely secured – in other words their continued loyalty will come at a perpetual price. The SNTV system will undoubtedly increase participation of smaller parties in government; it will also increase the bargaining power of individual representatives who have entered parliament on their own terms.

Reforms have also been made to the composition of the Independent High Electoral Commission, establishing a nine-member commission of which seven are members of the judiciary.<sup>83</sup> Previously, while commissioners were required to be politically independent, they did not need any professional qualifications, and they were proposed by political factions and appointed by the Council of Representatives.<sup>84</sup> Under the reforms, members of the judiciary will be appointed to the commission by ballot from nominations prepared by the bench, avoiding

---

<sup>79</sup> Inter-Parliamentary Union database (2021), 'IRAQ (Council of Representatives of Iraq), Electoral system', [http://archive.ipu.org/parline-e/reports/2151\\_B.htm](http://archive.ipu.org/parline-e/reports/2151_B.htm).

<sup>80</sup> Ministry of Justice of Iraq (2020), 'House of Representatives Election Law No. 9 2020'.

<sup>81</sup> Sattar, O. (2020), 'New electoral law raises controversy in Iraq', *Al-Monitor*, 3 January 2020, <https://www.al-monitor.com/pulse/originals/2019/12/iraq-elections-law-protests.html>.

<sup>82</sup> Ministry of Justice of Iraq (2020), 'House of Representatives Election Law No. 9 2020'.

<sup>83</sup> Al Monitor (2019), 'Judges to run Iraq's Independent High Electoral Commission', 27 December 2019, <https://www.al-monitor.com/pulse/originals/2019/12/iraq-parliament-reform-electoral-commission.html#ixzz6cLc1ojkr>.

<sup>84</sup> Ibid.

political influence and providing technocratic expertise.<sup>85</sup> However, a quota for Kurdish judges has been adopted, compromising the non-sectarian principles demanded by demonstrators.<sup>86</sup>

Media coverage of the law reform has depicted as apparently 'new' the fact that independent candidates can stand for election and voters can select specific candidates.<sup>87</sup> In fact, independent candidates have been able to run for election since 2005 and voters have been able to vote directly for a preferred candidate since 2009.<sup>88</sup> Altogether, 27 of 50 clauses in the election law were present in the previous law and have not been altered.<sup>89</sup>

## Conclusion

Elections in their basic form are a representative appointment mechanism. As such, reforming the election law will only affect who can stand for election and therefore who can participate in the bargaining process but not the eventual outcome. The recent demonstrations in Iraq demanded the delivery of services, the creation of a culture of responsible governance within the political elite and the appointment of candidates voted for by the public in key government positions.<sup>90</sup> The response to these demands consists of adaptations to the electoral processes. The reforms have been praised by some politicians, including Shia leader al-Sadr.<sup>91</sup> The new election law will remove the focus on political parties, however, candidates will have to enter coalition blocs after an election in order to form a government. The reform therefore simply moves the parameters of engagement rather than overhaul the whole system. This is illustrated by the large numbers of so-called independent candidates being put forward by parties, in effect overriding the system and retaining focus on the elite bargaining system operating separately from the election process. Any further reform focusing on the electoral system alone would result in the same limited outcome. Real structural change to the political and government formation system in Iraq requires three things.

First, a review of the constitution's federal make-up and sectarian framing, with the aim of producing a new constitution that is inclusive and adhered to. Such a review should address the pattern that has developed of pushing aside the constitution, when expedient, in the process of forming governments. This has had a corrosive effect on the rule of law and inhibited the development of a governance system.

---

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Rwanduzy, M. (2019), 'Is Iraq's new electoral law a victory for protesters?', *Rudaw*, 25 December 2019, <https://www.rudaw.net/english/analysis/25122019>; Abadian, R. H. (2019), 'New Iraqi election law: Mechanisms that have changed', *Modern Diplomacy*, 30 December 2019, <https://moderndiplomacy.eu/2019/12/30/new-iraqi-election-law-mechanisms-that-have-changed>.

<sup>88</sup> Global Justice Project: Iraq (undated), 'Council of Representatives Electoral Law No. 16 2005'; Al Jazeera (2014), '2009 الانتخابات العراقية [Iraqi Electoral Law (2009)]'.

<sup>89</sup> Rwanduzy (2019), 'Is Iraq's new electoral law a victory for protesters?'.

<sup>90</sup> National Democratic Institute for International Affairs (2020), *Iraq: We Want a Homeland – Key Findings of Qualitative Research Conducted in five provinces in Iraq*.

<sup>91</sup> Rwanduzy (2019), 'Is Iraq's new electoral law a victory for protesters?'.



Second, the introduction of a governance structure that can meet public expectations. A professional civil service plays a vital role in realizing this goal, by downplaying the current division of ministries along sectarian lines and instead engaging on a technocratic level, making the governance of the state a central objective, as opposed to the basic acquisition of power. Another option is to increase the role of provincial councils as governance mechanisms, decreasing the centralization of power as it relates to revenue allocation and service delivery, and creating more direct accountability between the polity and the electorate. This would require the significant development of local governance structures, in order to ensure both representation and accountability, which to date has not taken place, but it remains an option.

Third, a process that results in the formation of a government that reflects the choice of voters. The bloc with the largest number of seats at the point of election should be invited as a matter of course to form a government. Whether it succeeds or fails in this should not take precedence over the principle that it has a public mandate to try, which should be honoured. This would overturn the Supreme Court decision of 2010 and reaffirm the link between elections and the formation of government. The process of distributing senior government posts and ministries should be subject to review and the development of an agreed system, which is both transparent and based on the rule of law. The culture that is developing whereby sovereign ministries are viewed as 'belonging' to specific blocs needs to be eradicated as a priority. The electorate have a right to assume that their choice at the ballot box is honoured; at present this is only partly the case and this is eroding voter trust and engagement.

These three objectives are not easily addressed, but they are what demonstrators demand.<sup>92</sup> Tinkering with the voting and seat allocation systems will not bring about the necessary far-reaching changes that would satisfy protestors and enable the formation of a more representative government.

---

<sup>92</sup> Ibid.

## About the author

Dr Victoria Stewart-Jolley worked as a legal adviser on electoral processes for the United Nations for over 15 years, holding positions in East Timor, Afghanistan, Sierra Leone, Iraq, the Solomon Islands, Papua New Guinea, Montenegro, Albania and Libya. She has detailed comparative knowledge of electoral systems and specializes in legislation development and electoral dispute resolution management. She completed her PhD in 2020, which focused on the democratization processes of Afghanistan and Iraq, from both legal and international relations perspectives, and included an examination of the understanding of democracy, political rights and state transformation.

## Acknowledgments

The author would like to thank the Iraq Initiative at Chatham House, especially Renad Mansour and Georgia Cooke, for all their support in facilitating the publication of this paper; the two anonymous reviewers for their detailed comments on an earlier draft of this paper; and the Iraqi officials who provided invaluable information.

### Iraq Initiative at Chatham House

The project tackles the root causes of state fragmentation in Iraq, and challenges assumptions in Western capitals about stabilization and peacebuilding. The aim is to reach a more nuanced approach to navigating Iraq's complex and interlinked political, security and economic environments.

The initiative is based on original analysis and close engagement with a network of researchers and institutions inside Iraq. At the local level, it maps key political, business, military and societal figures across Iraq. At the national level, it explores the struggle over the state.

The project uses these field-based insights to inform international policy towards Iraq. Chatham House convenes Iraq Initiative activities in various cities in the Middle East, the UK, the US and Europe.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical including photocopying, recording or any information storage or retrieval system, without the prior written permission of the copyright holder. Please direct all enquiries to the publishers.

Chatham House does not express opinions of its own. The opinions expressed in this publication are the responsibility of the author(s).


Copyright © The Royal Institute of International Affairs, 2021

Cover image: Posters of political candidates line the streets of Baghdad in the run-up to the 2018 Iraqi parliamentary election.

Photo credit: Copyright © Anadolu Agency/Contributo/Getty Images

ISBN 978 1 78413 442 6

This publication is printed on FSC-certified paper.  
[designbysoapbox.com](http://designbysoapbox.com)



**Independent thinking since 1920**



**The Royal Institute of International Affairs  
Chatham House**

10 St James's Square, London SW1Y 4LE

T +44 (0)20 7957 5700

[contact@chathamhouse.org](mailto:contact@chathamhouse.org) | [chathamhouse.org](http://chathamhouse.org)

Charity Registration Number: 208223