

مركز البيدر للدراسات والتخطيط

Al-Baidar Center For Studies And Planning



# CONSTITUTIONAL REFORM IN IRAQ PROBLEMS AND SUGGESTIONS

group of researchers

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**Constitutional Reform in Iraq .. Problems and Suggestions**

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### **Center Introduction**

Constitutions are the mainstay in every modern state, and a state cannot be imagined in our Contemporary world without a basic law or constitutional document - written or unwritten - representing the basic and general rules in which the political, legal, social and economic institutions are organized in the structure of the state, in essence, it regulates the relationship between power and freedom and defines its guarantees.

Constitutions, as well, are the result of the social and political conditions from which they emanate. It carries the ideas and perceptions of those who formulate it, according to the backgrounds to which they belong – the founders- socially, Intellectually and Politically.

Moreover, constitutional experiences in various western and eastern countries have undergone to continuous restoration, maintenance and modification processes, in order to avoid shortages and gaps; Because it written by humans who expose error and negligence as well as correctness and prudence on the one hand, and on the other hand to keep pace with political, social and economic developments and changes in the course of society and the state and institutions, and these are the experiences of many countries that have practiced the process of amending their constitutions, In front is the American Constitution, which is the first written constitution and describes who wrote it (Demigods), But it has been amended more than 25 times.

The permanent constitution of Iraq for the year 2005 came after the fall of the former regime, which had dominated the Iraqi people more than 35 years, as the first permanent constitution in the republican era and after a series of the provisional constitutions that were promulgated in it, and for the first time the Iraqi people have voted and freely on a constitution, in addition to the fact that this constitution was drafted by various elites representing the spectrum of the people. There are also many modern constitutional concepts and rules in nations building, Whether with regard to the peaceful transfer of power and the adoption of the people as a source of authorities, their legitimacy and dedication the principle of popular elections and the principle of separation of powers, as well as

Concerning the establishment of a set of different rights and freedoms.

Despite all the advantages included in the Iraqi constitution of 2005, it contained shortcomings and gaps surrounded many of its provisions and legislations, both in form and content, The birth of the Iraqi constitution came in light of a complex and confusing political and social environment and in the context of projects and regional and international affairs changes inside and outside Iraq, in addition to the difference in visions and perceptions between the members of the committee entrusted with writing the constitution, and the absence or skipping of the representatives of a particular component of the constitution-writing process, so it was the calls to amend the constitution have been present and strong since the moment the constitution was written and approved, and this is what I mentioned provisions of Article 142 of the Constitution, then expanded demands from the various social and religious elites, even those who were on the committee writing the constitution. Various attempts have emerged to amend the constitution in 2005, in which official and non-official sides and institutions contributed to pushing for the formulation of amendments and constitutional proposals on the 2005 constitution.

Despite all the difficulties and obstacles facing the path of advancing constitutional reform and an amendment to the 2005 constitution, and perhaps the most important of these obstacles is the mechanism established by Article 142 of the constitution, as well as what was issued by the Federal Supreme Court emphasizing the necessity of taking the exceptional road in Article 142 in making any constitutional amendment before resorting to Article 126 and taking the

usual practice of constitutional amendments. However, this neither cancels nor diminishes the necessity of making an amendment on the 2005 constitution; The result of the general awareness - political and non-political - of this topic

and its necessity, and because of what was produced by the constitutional, political, and social experience in Iraq after 2003 to present, and the emergence of many changes and developments that must be reformulated and modified many articles and constitutional provisions in light of them.

Therefore, Al-Baidar Center for Studies and Planning made the subject of constitutional amendments as one of the basic topics of the centers work, and has hired a number of specialists and experts in this field and held workshops

and discussion sessions, in this occasion we extend our sincere thanks and appreciation to all researchers participating in this book, we are pleased to present this publication to all the scientific, intellectual and political elites, and we hope that it will be a scientific and knowledge asset to benefit from the suggestions and solutions that were put forward in this context, Hopefully the constitutional amendments step be a constructive and stimulating start to address the imbalances that Iraq suffers from at the level of society and institutions.

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## About Center

Baidar Center for Studies and Planning is a non-governmental and non-profit organization established in 2015 and registered with the NGO Directorate in the General Secretariat of the Council of Ministers in Baghdad.

The Center seeks to contribute to developing the state and its institutions, by proposing ideas and practical solutions to the main problems and challenges facing the state, including improving public sector management, policies and strategic planning, using reliable data and best practices. The Center engages the relevant authorities in the state with regular meetings to support this objective and utilises the support of international organizations dedicated to assisting Iraq's development. The Center also seeks to support economic reforms, sustainable development and provide technical assistance to the public and private sectors. The Center also seeks to support development of the private sector to provide job opportunities for citizens through training and upskilling, in a way that reduces dependence on government institutions and contributes to supporting and diversifying the country's economy.

The Center aims to utilise the vast amount of potential in Iraq's human resources by organizing programs to prepare and develop promising young people, including leaders capable of proposing, adopting and implementing visions and future plans that advance society and preserve its value system based on the commitment to a high moral standard and rejection of all types of corruption.

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