



**Legal Analysis of Legislation (Version 9) Establishing the  
High Human Rights Commission of Iraq**

October 4, 2006

## **Introduction**

This publication provides a legal analysis of the current draft legislation for the establishment of a new High Human Rights Commission for Iraq, and is intended to assist those participating in the drafting of this important legislation. The format of the document is intended to provide a readily accessible reference, utilizing a side-by-side analysis with the draft legislation on the left and a legal commentary on the right. Although it is not possible to address every aspect of the draft legislation, efforts have been made to highlight some of the most important aspects, and in particular those provisions where further improvements may be desirable. Where possible, suggested draft language and/or references to other documents that may be of assistance to the drafters have also been included. The guiding principles that form the foundation for this analysis are the “Principles relating to the status and functioning of national institutions for protection and promotion of human rights” (Paris Principles), as well as prevailing best practice in the establishment and functioning of national human rights institutions.

References in the text to the “Reference Tool” are to a companion document also available from the Center for Global Peace. The Reference Tool provides brief explanations of some of the provisions commonly found in legislation establishing national human rights institutions, as well as illustrations of relevant provisions from existing national legislation. To obtain a copy of the Reference Tool please contact: Carole O’Leary, Project Manager at [oleary@american.edu](mailto:oleary@american.edu)

## **General comments**

The Center for Global Peace welcomes the process to establish a national human rights institution in Iraq, which will greatly assist in the protection and promotion of human rights in Iraq. The current draft legislation is reflective of a great deal of work by those engaged in the establishment process, and represents a substantial improvement over earlier iterations of the text. Despite this welcome progress, we believe there is still room for substantial strengthening of the text, particularly in the following areas:

- clearly and unambiguously granting the Commission the authority to conduct all activities needed to fulfill its mandate, such as appointing and managing staff, engaging relevant national and international bodies, and conducting investigations;
- providing further clarity regarding the selection, appointment and possible suspension/removal/release of members of the Commission;
- providing further clarity regarding the relationship of the Commission to other institutions (particularly government institutions), especially as regards joint or collaborative activities of those institutions; and
- removing any ambiguities in the text that could unintentionally interfere with the independent and autonomous functioning of the Commission, especially in regards the oversight and accountability of the Commission

We believe these issues can be readily addressed in the draft text, and are hopeful that this legal analysis will be of assistance to those seeking to address them.

## **Acronyms**

HHRC – High Human Rights Commission

NGO – Non-governmental Organization

NHRI – National Human Rights Institution

(Translation into English of version 9 of the draft legislation provided by Center for Global Peace)

**According to the provisions of Article 102 of the Constitution we have issued the following law:**

**No. (###) for the year 2006**

**The High Human Rights Commission**

**Article (1)**

**First: To establish a commission named the High Human Rights Commission in Iraq. Its headquarter is in Baghdad, the Capital. The HHRC must be financially and judicially independent and be accountable to the Council of Representatives.**

**Second: The Commission shall establish offices and branches in the provinces, Governorates and Regions.**

**COMMENTS**

**Article 1(First)** – This paragraph formally establishes the High Human Rights Commission and indicates basic characteristics such as its headquarters, financial and judicial independence, and accountability to the Council of Representatives. The articulation of independence is particularly important given the requirements of the Paris Principles that National Human Rights Institutions (NHRIs) be independent of government.

At present the text does not include essential provisions conferring legal personality upon the High Human Rights Commission (HHRC). Such provisions are commonly incorporated in legislation establishing NHRIs, and serve to ensure that the HHRC has the right to sue and be sued as well as perform other actions necessary to carry out its mandate. Drawing on relevant provisions from legislation establishing the Human Rights Commissions of South Africa and Fiji, the following additional language is suggested for inclusion:

**The Commission shall be a juristic person. The Commission may enter into contracts, may sue and be sued in its corporate name, has the power to acquire, hold and dispose of property both real and personal, and generally may do all such acts and things as are necessary for and incidental to the performance of its functions by or under the Constitution, this Act or any other law.**

**Article 1(Second)** – This provision helpfully ensures that the Commission has the power to establish additional offices and branches. However, the current formulation does not indicate the rationale for this power, and as drafted may imply that the Commission is obliged to establish such offices even if they may not necessarily be needed to fulfill its functions. The following language (drawn from the South African Human Rights Commission Act) empowers, but does not compel, the NHRI to establish offices as needed, and is suggested here as alternate language for Article 1(Second):

**The Commission may establish such offices as it may consider necessary to enable it to exercise its powers and to perform its duties and functions conferred on or assigned to it by the Constitution, this Act or any other law.**

**Article (2)**

**The Commission should be independent in its work, and should submit a yearly public report to the Council of Representatives, defining its activities and the status of the human rights and freedom in Iraq. The first report is due 12 months after its creation. The Commission may provide exceptional reports, as it deems necessary.**

**COMMENTS**

**Article 2** – This article includes important provisions relevant to the accountability of the HHRC, in particular through the submission of annual reports and exceptional reports. These provisions could be further strengthened with the inclusion of more detail relating to the time of both submission as well as consideration of such reports. For example, it would be helpful to specify that:

**The Commission shall submit its annual reports within x months of the ending of each financial year.**

Given that the need for exceptional or special reports would typically arise out of a matter of urgency, it may also be helpful to specify the time period within which the Council of Representatives should consider such reports, and by when any response(s) should be provided by the Council.

### Article (3)

The Commission should achieve the following tasks and goals:

**First: Coordinate with the Ministry of Human Rights establishing a national strategy and the methods in order to support, develop, protect and respect human rights in Iraq as it is defined in the constitution and in according to endorsed international treaties. It should also put into service and spread the publication of human rights values and ensure these rights are enforced.**

**Second: Provide its opinions, develop research and studies as well as recommendations to the authorities and relevant government bodies concerned with issues related to enforcing, developing and protecting human rights in Iraq.**

**Third: Evaluate national implementation of endorsed and accepted international treaties and the steps taken to adopt them into the national legislation, as well as submit the necessary suggestions and recommendations to encourage the government to lift its reservations or to join relevant international treaties.**

**Fourth: Submit recommendations to government bodies supporting their academic and technical capabilities including training of governmental staff in general and government security agencies in specific and government civil right institutional with direct responsibilities enforcing national freedom, civil rights, political rights, economical rights, social rights and educational rights.**

**Fifth: Increase public awareness and educate the public through Public campaigns including:**

**A- Integrate human rights culture into government formal and non formal daily conducts including educational and parental programs.**

**B- Holding conferences, symposiums, workshops and cultural activities; Issue publications, flyers and launching audiovisual programs related to human rights subjects while working through the media supporting religious, cultural and sport events.**

**C- Coordination and cooperation with governmental and non governmental institutions.**

(Continued)

### COMMENTS

As noted in the Paris Principles (A2), an NHRI should have as broad a mandate as possible and this should be clearly elaborated in the relevant Constitutional or legislative text. Article 3 attempts to do this by articulating a number of the tasks and goals to be achieved by the HHRC.

**Article 3(First)** – This provision calls upon the HHRC to coordinate with the Ministry of Human Rights to establish a national strategy for supporting human rights in Iraq. Although such coordination is likely necessary for practical reasons, it should be carried out in a manner that preserves the inherently independent quality of the HHRC. It may also be helpful to broaden the language to capture additional government ministries or departments. Thus, the first sentence could be re-phrased to read:  
**With due regard for its independence, the Commission shall, to the extent appropriate, coordinate with the Ministry of Human Rights and other relevant government departments in establishing ...**

Article 3(First) also includes a definition of “human rights,” capturing human rights as it is defined in the constitution and “endorsed international treaties.” It is of great importance that the definition of human rights be comprehensive, and at present it is a little unclear as to what is meant by “endorsed international treaties.” Mindful of Iraq’s ratification of three of the core UN human rights treaties, and drawing on language in the Human Rights Commission Act of Fiji it may be useful to re-phrase the relevant language to read:

**... and respect human rights in Iraq as embodied in the Constitution and in United Nations conventions on human rights, including the International Bill of Human Rights.**

**Article 3(Second)** – This language could be further clarified and tightened by utilizing language from Paris Principles A(3)(a), which addresses research-related activities and refers to the provision of **opinions, recommendations, proposals and reports.**

**Article 3(Third)** – Mirroring of the suggested language for Article 3(First) would remove any ambiguity as to what is meant by “endorsed and accepted international treaties.” It should also be noted that the concepts addressed in this paragraph are often articulated in greater detail in establishment legislation. The Reference Tool section II provides several illustrations of legislation utilizing more detailed language that could be helpful in this regard.

(Continued)

**Sixth: Submit recommendations and comments to relevant government agencies tasked with reporting human rights issues to UN agencies aimed at satisfying Iraq international obligations. Support Iraq's human rights agencies investigate and respond to requirements and clarifications submitted to Iraq by international committees responsible for researching such reports.**

**Seventh: Establish working strategies allowing HHRC to coordinate with the ministry of human rights and relevant agencies and committees tasked with recording human rights violations committed by the previous regime under previous laws.**

**Eight: Establish meaningful contacts with governmental and non-governmental agencies including national and international committees and the private sector.**

**Ninth: The High Independent Human Rights Commission:**

**A- HHRC has the right receiving complains from individuals, groups, civil rights groups and NGOs while maintaining the privacy of the information and protecting the secrecy of the informant's identity.**

**B- The right to undertake preliminary investigatory procedures to verify the validity of complaints.**

**C- HHRC has the rights to initiate legal procedures preventing human rights violations without receiving any related complains and has the right to use various channels to prevent human rights violations.**

**D- HHRC has the right to refer complains and recorded human rights violations to the Higher Judicial Council or to the relevant government agencies to enforce the related laws.**

**Tenth:**

**The commission has the right to inspect without prior notice, prisons, custodies, and detention centers and other locations designated for the treatment, reforming or protection of prisoners, meet with them in private, in order to evaluate their situations in these locations and for assuring the implementation of the related laws and, in case of violations, to make public such violations while protecting victims of recorded violations.**

**Eleventh: Any other necessary tasks protecting Iraqis human rights.**

## COMMENTS

**Article 3(Fourth)** – References to capacity building are very useful and in keeping with Paris Principles references to the teaching of human rights in A(3)(f). However, as drafted it is unclear whether the HHRC would engage in these activities or whether it would only “submit recommendations.” It would be preferable for the language to more clearly indicate that the HHRC will also participate in the execution of such activities, and that such activities would be available to people beyond the government. For instance, Paris Principles A(3)(f) refers to the carrying out of such activities in “schools, universities and professional circles.”

**Article 3(Fifth)** – The activities highlighted in this provision are helpful, but at present are not clearly tied to a specific goal or objective. It would then be appropriate to more specifically elaborate the activities listed, so that they would clearly relate to the goal referenced in the chapeau. Drawing on relevant legislation from South Africa, an alternative chapeau might read:

**Promote respect for human rights and foster a culture of human rights through:**

**Article 3(Sixth)** – As currently phrased this provision could inadvertently lead to a violation of the Paris Principles requirement of institutional independence. The HHRC should not participate in the filing of reports or information to international committees *on behalf of* Iraq, as this falls within the purview of the government, and participation in the submission of such reports would violate the principle of independence. The HHRC should only participate in the submission of independent reports to international committees or other relevant institutions, and thus the language could be amended to read:

**Submit independent reports to United Nations bodies or committees on the state of human rights in Iraq.**

**Article 3(Seventh)** – No comment.

**Article 3(Eight)** – This addresses important issues of collaboration and outreach, but it is unclear what “establish meaningful contacts” would mean and a non-exclusive list of actors would be broader. A suggested reformulation would read:

**To consult and cooperate with other persons and bodies concerned with the promotion and protection of human rights, including but not limited to international organizations, similar organs of other countries, and national or international nongovernmental organizations.**

**Article 3(Ninth)** – This section addresses important issues related to the investigatory functions of the HHRC. Because of the importance of this issue it would be preferable for the legislation to elaborate these functions in more detail, so that the HHRC has clarity of purpose, mandate and authority. The unambiguous elaboration of the investigatory functions of the HHRC is equally important for the HHRC, complainants, those against whom complaints are made, and those bodies (such as the courts) to whom complaints may be referred. Issues that should specifically be addressed in the legislation include: (i) when a complaint may or may not be considered; (ii) investigation of the complaint and powers available to those carrying out a complaint (e.g. ability to demand documents or other evidence); (iii) how to address security concerns; (iv) report of findings; (v) possible referral to other authorities; (vi) conciliation; and (vi) ultimate disposition of the complaint. In particular, it is critical that the legislation not only discuss the relevant activities but clearly confer upon the HHRC the authority to engage in the full range of activities envisioned. As noted by the Commonwealth Human Rights Initiative (CHRI), “A broad range of functions is meaningless if not accompanied by authority that guarantees unhindered performance of its duties.” It may therefore be helpful to include provisions requiring all state organs to provide the HHRC with such assistance as may reasonably be required for its exercise of the duties and functions envisioned in Article 3(Ninth). It may also be helpful to include provisions allowing for fines or other penalties to be imposed against anyone willfully obstructing or interfering in the HHRC’s carrying out of its functions and duties.  
(See Reference Tool section V for illustration of legislation that addresses these issues in more detail.)

**Article 3(Tenth)** – This provision addresses very important issues related to the protection of those in detention. However, as drafted the provisions are very prison-orientated and do not reach those subject to other types of confinement who may be equally at risk of human rights violations. It is suggested that the provision be re-phrased more broadly to say:

**The commission has the right to inspect without prior notice, any place of custody, reformation, rehabilitation or treatment, such as a police station, prison, juvenile home, women’s home, retirement home, homeless shelter, hospital, mental health facility, refugee camp, or like facility, in order to evaluate the human rights situation of individuals in these locations, to assure the enjoyment of human rights by such individuals and, in case of violations, to address such violations through complaints and/or other relevant actions while protecting the privacy of victims.**

**Article 3(Eleventh)** – No comment.

**Article (4)**

**First – Government ministries and non-governmental organizations are obliged to provide documents, declarations, statistics and information related to the tasks and activities of the commission within a specific date. The commission has the right to invite or call upon any individual or governmental or non-governmental employee for issues concerning these tasks.**

**Second - The Commissioners and employees should enjoy relevant protection and immunity from prosecution by agencies for performing their duties and according to the law.**

**COMMENTS**

**Article 4(First)** – It is not entirely clear what the purpose of this article is. Elements of the provision seem to address the provision of information by those outside the HHRC, which could relate to information needed to facilitate the investigation of complaints. If this is the case it may be better to address these issues within the context of Article 3(Ninth), and also to specify what is meant by “specific date” and how relevant dates would be established. (See comments, above, regarding the authority of the HHRC to demand information and the duties incumbent upon government and other entities to cooperate in the carrying out of investigations.) Alternatively, this provision could relate to the need to cooperate with other actors, in which case it may be more appropriately placed in Article 3(Eight).

**Article 4(Second)** – This provision addresses guarantees of immunity of HHRC members and staff from legal action in relation to legitimate, official duties performed in the course of their appointment. This guarantee is a fundamental aspect of independence and serves as a protection against legal action pursued by those who object to NHRI decisions or recommendations. The immunity does not, of course, extend to abuse of office or acts performed in bad faith. A slightly expanded provision, drawn from relevant Ugandan legislation, would incorporate the concept of acts done in good faith in the course of performing official functions:

**A member of the Commission or any employee or other person performing any function of the Commission under the direction of the Commission, shall not be personally liable to any civil or criminal proceedings for any act done in good faith in the performance of those functions.**

**Article (5)**

**First: The commission consists of nine members, including a Chairperson. Together they constitute the Board of the High Commission of Human Rights. The members of the Board achieve their work through this full time jobs working full time hours.**

**Second: The board should consist of:**

**A- The Chairperson (man or a woman) and the (8) members of the board of commissioners are named by the Council of Representatives. The Chairperson should be designated as a Ministerial position.**

**B- The Chairperson and the (8) members should be Iraqi born citizens offering relevant professional expertise with demonstrated integrity and must have a college degree. The nine members should be clear of past violations perpetrated any human rights violations and must not be members of the former Ba'ath Party. Their selection must take into consideration local representation of all Iraqi's minorities. Members chosen must include at least one third women. Members including the chairman or chairwoman duration of service is to be stated as four years with one extension and commissioners to be appointed as special first grade.**

**- The Board of Commissioners has the right to invite representatives of civil society organizations, who are elected for the commission's advisory council membership, in order to attend relevant meeting.**

**C- The Board of Commissioners has the right when necessary to invite governmental or non governmental representatives to attend the meetings of the board of commissioners.**

**Third: The board should convene periodically meetings at least once a month to issue recommendations and decisions; decisions are adopted through voting process and when votes are equal, the chairperson's group has the deciding vote.**

**COMMENTS**

**Article 5(First)** – The provisions requiring members of the HHRC to be full-time members is very encouraging, as the use of part-time members can greatly limit the ability of the NHRI to perform its functions.

**Article 5(Second)(A)** – This provision indicates that the Council of Representatives will select the HHRC members, but there are no details given regarding the procedures to be followed by the Council in this regard. Further elaboration would be extremely helpful in ensuring that the selection process is carried out in a transparent and timely manner, and that those engaged in the selection process include a balanced representation of Iraq's political diversity. It would also be helpful to include provisions ensuring that actors such as non-governmental organizations and others working in the field of human rights have an opportunity to nominate individuals to be considered as candidates for selection. Additionally, it is unclear what is intended by the statement that "the Chairperson should be designated as a Ministerial position" and specifically what impact this would have on the independence and autonomy of the HHRC.

**Article 5(Second)(B)** – In terms of the required expertise of the members, the following language is suggested to expand upon the concept of "relevant professional expertise":

**... citizens having knowledge, background, and a prior demonstrable commitment to human rights protection and promotion ...**

Although (B) addresses some factors which would disqualify a person from membership in the HHRC, it does not address the need to avoid potential conflicts of interest and the means through which that may be achieved. For example, it is not uncommon for establishment legislation to require individuals serving in the government or judiciary to resign their posts or at a minimum take a leave of absence upon being appointed to the NHRI, in order to avoid compromising the independence of the NHRI.

Article 5(Second)(B) also contains important provisions relating to the duration of service of HHRC members, but the language relating to term limits is currently a little ambiguous. As drafted, "four years with one extension" sounds as though the members *must* serve for two consecutive four year terms. It is presumed that the intention of this language is to instead establish a two-term term limit, so that members could serve a maximum of two four year terms. For increased clarity the language could instead read:

**Members, including the chairman or chairwoman, are to serve for a term of four years and may not serve more than two terms ...**

**Article (6)**

**The board of commissioners is responsible for the following tasks:**

**First: Representing the commission before the three governing bodies: (The Executive, the legislative, and the judiciary) and also with its interaction with others through the chairperson or its delegated commissioner.**

**Second: Overseeing and monitoring progress related to members of the board and their appointed staff.**

**Third: Submit an annual report to the Council of Representatives.**

**Fourth: Drawing and developing its own budget and presenting it directly to the Council of Representatives.**

**Fifth: Appointing administrative managers to head branches and national offices through voting process with simple majority. Those appointees must offer experience and related qualifications. The board of commissioners has the right accepting their resignations and or asks them to retire according to the law.**

**COMMENTS**

**Article 6(First)** – It is unclear in what capacity the HHRC would need to be represented before these various governing bodies. It may be helpful to more explicitly delineate the contexts in which such representation would occur, or broaden the provision to indicate that the Commissioners have the authority to represent the HHRC without highlighting any specific contexts. For example, the language could instead read:

**First: Representing the Commission through the chairperson or other delegated Commissioner(s).**

**Article 6(Second)** – No comment.

**Article 6(Third)** – This seems repetitive, given that the requirement to file an annual report is already referenced in Article 2. (See comments above for suggestions on how the reporting requirements could be elaborated.)

**Article 6(Fourth)** – This provision, addressing the HHRC’s development of its budget, is particularly important for the preservation of independence and autonomy of the HHRC.

**Article 6(Fifth)** – This provision addresses the staffing of the HHRC. Typically, such provisions address a range of issues, such as: (i) procedures for appointment of staff, including an executive secretary and officers; (ii) qualifications of staff; and (iii) diversity of staff. It may be helpful to elaborate this provision by expanding upon these issues in more depth. (See Reference Tool Section IV(B) for illustrations of relevant legislation.) Given that related concepts have already been placed in Article 13, it may be best in Article 6 to include language cross-referencing Article 13, and then expanding upon the issues in Article 13. Alternative language for Article 6(Fifth) could read as follows:

**Fifth: Oversight of the Secretariat and Executive Director, in accordance with the provisions of Article 13.** [Note, the article number may have to be changed if that article is moved up in the text in accordance with the suggestions provided for Article 13.]

**Article (7)**

**Establish an advisory council which consists of nine members, representing the following specialties providing advisory to the Board of Commissioners.**

**First: Two representatives for legislative authority (Human Rights Committee).**

**Second: Two representatives with executive authorities appointed by the prime minister.**

**Third: Two representatives with judiciary authority. (One judge and one general prosecutor).**

**Fourth: Two representatives of civil society (elected).**

**Fifth: One representative for the minorities.**

**COMMENTS**

The purpose of these provisions is unclear. It is standard practice for a Commission to have the power to establish sub-committees for the facilitation of its work. (See Reference Tool section IV(D) for illustrations.) However, it is not common to establish an advisory council with the type of composition envisioned here. If such a body is to be established, its role must be clarified and provisions included ensuring that its operation in no way negates the independence and autonomy of the HHRC. If the purpose of this article is to ensure that the HHRC maintains contact with representatives from different groups in Iraqi society, this issue may be better addressed in Article 3.

On the other hand, if an advisory council has been included in the draft legislation in order to enhance the accountability of the HHRC, it would be preferable to find an alternative mechanism for these individuals to contribute to the accountability of the HHRC. In order to ensure the accountability of an NHRI without compromising its independence, it is typical for the NHRI to be accountable to an elected representative body that is itself ultimately accountable to the people, e.g. a parliament. Such accountability is already envisioned in the draft legislation (Article 2) through the inclusion of provisions requiring the HHRC to issue regular reports to the Council of Representatives. In light of this existing accountability mechanism, draft Article 7 creates ambiguities, by creating an additional body that is itself accountable to no-one and that is mandated to “provide advice” to the HHRC. Such a mechanism is likely to create confusion, compromise the independence of the HHRC, and be open to abuse by individuals seeking to exert influence on the HHRC.

If it is felt that the individuals listed in Article 7 must in some way be included in holding the HHRC accountable for its actions, it would be preferable to incorporate them into the existing parliamentary mechanism. For example, the Council of Representatives could create a sub-committee whose mandate would be to receive the HHRC’s reports and make recommendations on them to the larger Council of Representatives. If this suggested approach were adopted, Article 7 would be deleted and the sub-committee would be addressed in Article 2. Given that exceptional reports could be submitted by the HHRC at any time, and that such reports might require prompt action by the Council of Representatives, the suggested language envisions that the sub-committee would only examine annual reports. Suggested replacement language for Article 2 is provided here: [NOTE: if we take this approach in the commentary we will need to slightly amend our comments for Article 2 to reflect the impact of deleting Article 7...]

## COMMENTS

### Article (2)

First: The Commission should be independent in its work, and should submit a yearly public report to the Council of Representatives, defining its activities and the status of the human rights and freedom in Iraq. The first report is due 12 months after its creation. The Commission shall submit its annual reports within x months of the ending of each financial year. The Commission may provide exceptional reports, as it deems necessary.

Second: The Council of Representatives shall establish a thematic sub-committee to assist it in the review of annual reports submitted by the Commission. The sub-committee shall review the report in a timely manner and provide comments and/or recommendations on the report to the full Council of Representatives to be taken into consideration by the Council in its review of the report. The recommendations and comments of the sub-committee shall not be binding upon the Council of Representatives. The sub-committee shall be chaired by a member of the Council of Representatives and shall consist of individuals chosen for their proven knowledge, background, and prior demonstrable commitment to human rights protection and promotion, and shall reflect both gender balance and ethnic diversity. The individuals will have equal standing on the sub-committee, and shall be selected by the Council of Representatives from the following groups:

A- Two representatives from the Human Rights Committee;

B- Two representatives from the executive branch;

C- Two representatives from the judiciary branch (one judge and one general prosecutor); and

D- Two representatives of civil society;

**Article (8)**

**The financial resources of the commission consist of:**

**First: The annual governmental allocations assigned per budget.**

**Second: Grants and donations offered inside Iraq to the commission and are accepted by two third members voting majority.**

**Third: Foreign grants and donations accepted only after receiving Council of Representatives approval.**

**Fourth: Donations or grants given by the United Nations which is specified for the Commission's work.**

**Fifth: The establishing of a bank account for the Commission in one of the banks allowing financial monitoring. Surplus amounts from the present financial year to be transferred to the commission's budget for the following year.**

**Sixth: HHRC has the right to invest received donations given tax free status authorized by the local taxing authorities.**

**Seventh: The Accounts of the Commission shall be monitored by the Bureau of Auditing.**

**COMMENTS**

The purpose of this article is to ensure that the HHRC is provided with adequate funds to carry out their mandate and to maintain the professional staffing of their offices. As noted in the Paris Principles (B)(2), it is essential that NHRIs be adequately resourced in order to fulfill their mandates. Moreover, the NHRI should not be subjected to financial control that would negate the independence and autonomy of the NHRI. In this regard the requirement that approval be required from the Council of Representative before foreign funding may be received, may be unduly restrictive and not consistent with practice.

**Article 8(Seventh)** – This provision establishes that the Bureau of Auditing will be responsible for monitoring the accounts of the HHRC, and this is an important component of transparent fiscal accountability. In this regard it may be helpful to establish (either in the legislation or in practice) a regular and periodic system of financial reporting, in order to satisfy the need for accountability without unduly interfering in the independent functioning of the HHRC.

**Article (9)**

**The Commission with two third members' majority shall establish its internal procedures and determine its structure, including departments and offices needed to implement its activities promoting and protecting human rights issues including the establishment of its budget.**

**COMMENTS**

The purpose of this article is to provide a framework for the Commission to develop procedures, administrative structure and budget planning. It is standard practice for NHRIs to have the power to establish their own procedures and this is important for the maintenance of independence. It is also important for an NHRI to have the flexibility to determine its own structure in order facilitate the implementation of its work plan. For illustrations of more detailed provisions see the Reference Tool section IV(C).

**Article (10)**

**First: The board of commissioners shall organize the benefits of its employees working the administrative and financial departments without restriction to government regulation allowing them exemptions from government civil service laws.**

**Second: The board of commissioners has the authority to publish its laws and regulations to help structure and direct the conducts of its employees.**

**COMMENTS**

**Article 10(First)** – No comment.

**Article 10(Second)** – This provision appears to reinforce the autonomy of the HHRC over its employees, and in this regard promotes the independence of the HHRC. The publication of relevant “laws and regulations” is also in keeping with the need for transparency. However, as drafted, the current text appears to confer upon the HHRC the authority only to “publish its laws and regulations ...” but does not confer upon the HHRC the authority to draft and adopt relevant “laws and regulations.” Such authority could perhaps be implied, but it would be better to clarify the parameters of the HHRC’s rule-making power in this regard.

<u>Article (11)</u>	<b>COMMENTS</b>
<p><b>Membership to the Commission shall be suspended in the following circumstances:</b></p> <p style="padding-left: 40px;"><b>Death, resignation, retirement, removal through legal judgment and or removal by the commission.</b></p> <p><b><u>Article (12)</u></b></p> <p><b>Members of the Commission can be removed for any of the following reasons:</b></p> <p style="padding-left: 40px;"><b>First: Lack of competency</b></p> <p style="padding-left: 40px;"><b>Second: Violating the confidentiality of the Commission</b></p> <p style="padding-left: 40px;"><b>Third: Violating the provision of the law</b></p> <p style="padding-left: 40px;"><b>Fourth: An indictment with undisputed legal judgment</b></p> <p><b>Removal of a member as such is based on clear and proven evidence and in compliance with the recommendation submitted by two third of the total members of the HHRC and approved by the chairperson.</b></p>	<p>Given that Articles 11 and 12 cover closely related issues, both articles are addressed together.</p> <p>It is typical for establishment legislation to address circumstances in which an NHRI member may be removed, suspended or released from office. In this regard Article 11 may be drafted too narrowly, as it only references the circumstances in which membership may be “suspended.” Given that suspension implies a temporary period of time following which reinstatement might be possible, the current language may not adequately cover circumstances such as the death of a member (a circumstance typically necessitating ‘release’ of a member).</p> <p>The language of both Articles 11 and 12 could also be strengthened in a number of other regards. For example, in other establishment legislation, situations warranting removal may identify specific types of improper conduct, such as: (i) commission of criminal act; (ii) abuse of office; and (iii) bankruptcy declaration. Similarly, situations warranting release from office typically include: (i) incapacity due to health reasons; (ii) declaration of incapacity; (iii) death; and (iv) election of the member to another office which is in conflict with the NHRI post. Given that the current list of foreseen circumstances is rather brief, it may be helpful to expand upon the list and differentiate between situations where removal (or suspension) is preferred, versus situations where a member should or could be released from service.</p> <p>It should be noted that removal must be done in a transparent way that is not subject to abuse, preferably involving in some capacity the representatives of the body tasked with receiving reports on the activities of the NHRI. Such provisions help to ensure that the removal is for cause and warranted, and that the public is aware of the action taken. In this regard the provisions “removal through legal judgment and or removal by the commission” in Article 11 are somewhat vague, as are the reasons listed for removal in Article 12. It is also unclear precisely what procedures should be utilized with respect to the processing of suspension, removal or release of HHRC members, and how vacancies will be expeditiously filled. Section III(G) of the Reference Tool provides illustrations of legislation addressing these concerns, which may be of assistance in further elaborating the provisions of Articles 11 and 12. It may even be preferable to combine these articles to facilitate a more coherent drafting approach to these issues. Suggested language combining and elaborating on Articles 11 and 12 is provided here:</p>

## COMMENTS

### Article 11bis

**First: The Council of Representatives shall release a Commissioner from his or her office in the event of:**

- F- Death or a court declaration to the effect that he or she is deemed deceased;**
- G- Incapacity or inability to exercise powers for reasons of ill health or other excusable reason;**
- H- Retirement;**
- I- Resignation of their own free will; or**
- J- Appointment or election to another post or office in conflict with his or her duties as a Commissioner.**

**Second: The Council of Representatives shall suspend and/or dismiss a Commissioner from his or her office in the event of improper conduct such as:**

- E- Conviction of a criminal offense;**
- F- Abuse of office;**
- G- Declaration of bankruptcy; or**
- H- He or she has without reasonable excuse failed to discharge his or her duties as ascribed by this Act.**

The Council of Representatives shall suspend with pay the Commissioner in question upon receipt of notification that the Commissioner has engaged in any of the improper conduct outlined above. The Commissioner shall be promptly informed of the reason for their suspension and a public inquiry shall be conducted by the Council of Representatives into the alleged conduct. During the public inquiry the Commissioner in question shall be accorded due process, shall have the right to defend themselves, and shall have access to any evidence necessary for their defense. At the end of the inquiry the Council of Representatives shall decide whether the Commissioner in question should be returned to office and released from suspension, or whether their conduct warrants dismissal. Where a Commissioner has been accused of a crime, their suspension with pay shall remain in effect until the competent legal authorities have found them guilty or not guilty. If found not guilty of a crime of which they have been accused, the Commissioner in question shall be released from suspension and promptly returned to office. If found guilty of a crime, the Commissioner in question shall be dismissed from office upon conviction of the crime.

**Third: All vacancies on the Board of Commissioners shall be**

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**expeditiously filled by the Council of Representatives in accordance with the provisions of Article 5.**

**Article (13)**

**The Commission shall have a secretariat to perform its administrative tasks, supervised by an Executive Director.**

**COMMENTS**

Provisions such as in Article 13 are of great importance, as competent staff (who should themselves be grounded in human rights) are essential to the full functioning of an NHRI. However, in terms of placement, this article appears to be removed from other articles referencing the administrators, staff and employees of the HHRC. Repositioning of the article within the legislation may therefore be warranted.

As drafted, Article 13 notes that the HHRC “shall have” a secretariat and Executive director, but it does not indicate what role the Commission will play in the selection of these individuals. In order to maintain the independence and autonomy of the HHRC it will be important to clarify that the HHRC has the authority to select these individuals. It will also be important to indicate the need for staff to have knowledge and experience in human rights. It would also seem important to include provisions ensuring that the staff is representative of the diversity in Iraqi society, with specific attention to gender balance and representation of people with disabilities and minorities.

With regard to the roles and functions to be performed by the staff, Article 13 currently only references “administrative tasks.” This term may be too limiting given that the necessary activities may encompass research, investigations, and many other activities beyond merely administrative activities.

Section IV(B) and (C) of the Reference Tool provide a number of illustrations that may be of assistance in further elaborating the provisions of Article 13.

**First: The Commission shall have a secretariat to support its work, supervised by an Executive Director.**

**Second: The Executive Director shall be appointed by the Commission and shall be an individual chosen for their proven knowledge, background, and prior demonstrable commitment to human rights protection and promotion.**

**Third: Subject to the control and oversight of the Commission in accordance with Article 6(Fifth), the Executive Director shall:**

**D- be responsible for the carrying out of the policy decisions of the Commission and the day to day administration of the affairs of the Commission and the hiring and management of the other staff of the Commission;**

**E- be responsible for the selection and management of any**

## COMMENTS

- H- any consultants, experts and advisers in accordance with Article 13(Eighth);
- I- be entitled to attend all meetings of the Commission, unless otherwise directed in writing by the Commission, but shall have no vote on any matter to be decided by the Commission at any such meeting; and
- J- performing any other function assigned to him or her by the Commission in implementation of the mandate of the Commission

**Fifth: The Executive Director may be removed by the Commission only for:**

- E- Conviction of a criminal offense;
- F- Abuse of office;
- G- Declaration of bankruptcy; or
- H- He or she has without reasonable excuse failed to discharge his or her duties as ascribed by this Act.

**If the Commission finds that the Executive Director has engaged in any of the conducted listed here, the Commission may remove the Executive Director upon a vote of the Commission.**

**Sixth: Before the Executive Director is removed by the Commission in accordance with Article 13(Fifth), he or she shall be promptly informed of the case against him or her and be given adequate opportunity to defend himself or herself against any allegations made against him or her.**

**Seventh: In the hiring of staff to be employed in the secretariat of the Commission in accordance with Article 13(Third, A), individuals should be chosen for their proven knowledge, background, and prior demonstrable commitment to human rights protection and promotion. The secretariat staff should also reflect gender balance and ethnic diversity.**

**Eighth: The Commission may engage the services of such consultants, experts and advisers as it deems necessary to assist it in the implementation of its mandate, and may pay them remuneration as may be determined by the Commission.**

**Ninth: The Executive Director and secretariat staff, as well as any consultants, experts and advisers working with the Commission pursuant to Article 13(Eighth), shall enjoy immunity from personal**

**COMMENTS**

**liability in accordance with Article 4(Second).**

**Article (14)**

**The Council of Representative shall nationally announce its intension to select HHRC commissioning members complying with the criteria and according to article 5 stated in this document.**

**The Council of Representative shall establish a committee of experts not to exceed 15 members comprising representatives of the Government, the Higher Judicial Council, the Council of Representatives, Non-governmental organizations, research centers and the United Nations (UNAMI / HRO), in order to review, interview and short list applicants.**

**The Council of Representatives will appoint candidates from the short list developed by the expert's committee.**

**COMMENTS**

Given that Article 14 addresses issues related to the selection of HHRC members, it may be more appropriately placed closer to Article 5 in the legislation.

As noted by the Paris Principles (B)(1), the procedures used to select NHRI members should ensure “the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights.” In this regard the provisions of Article 14 strive to contribute to the effective and transparent selection of members of the HHRC. In addition to the provisions included here, it may also be useful to expand upon the requirement that the Council of Representatives “nationally announce” its intension to select HHRC members, by indicating that such announcements be publicized in the public media and circulated to non-governmental organizations and research centers, in order to ensure that candidates are nominated from a wide a pool of people as possible.

**Article (15)**

**This law shall come into effect on the date of publication within the local official Gazettes.**

**COMMENTS**

No comment.

**The reason for issuing this law**

**In order to prepare national work plans coordinated with government agencies to support and protect Iraqi human rights and to identify the party responsible for receiving individuals complaints in order to evaluate such complaints. HHRC shall inform Iraqis' of their legitimate human rights while evaluating government compliance to endorsed human rights treaties as well as to coordinate with national and international agencies concerned with human rights issues. HHRC shall work side by side with independent ministries and agencies concerned with violations committed by the previous regime and monitor current violations while promoting national education programs to monitor and evaluate human rights issues in jails or other places. HHRC shall work proposing suitable solutions taking into consideration international regulations. This law was established allowing the establishment of the National High Human Rights Commission in Iraq.**

**COMMENTS**

As noted earlier regarding Article 3, it may be helpful to further define what is meant by "endorsed human rights treaties" and also "legitimate human rights." It would also be helpful to include language referencing the independent and autonomous nature of the HHRC, in order to reinforce this important point and avoid any ambiguity regarding the essential nature of the institution.