

**IILHR COMMENTS: FEDERAL SUPREME COURT  
DRAFT LAW AUGUST 2008**

After studying the current draft law on the Federal Supreme Court, IILHR has compiled comments on this paper for your review. In summary, the main areas of concern and comment include the following: the delineation of too much power to one individual (Article 2(3) & Art. 14); and the need to clarify and further explain the process and mechanics of the Court. On a final note, financial analysis and implications should be included in every draft law, review and suggestion of financial implementation into the annual or future budget needs to be addressed in a separate article. Further review and suggestions are set out in this paper. Please do contact IILHR for further discussion, information and clarification

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The following articles of the Constitution should be added to the preamble of this law:

- Article 73(3) – referencing the presidential power to ratify/issue laws; and
- Article 93 – referencing the jurisdiction of the court

We have questions about article 183 and are not sure what article is meant to be referred to as there is no article 183 of the current Constitution.

Article 1 – NO COMMENT

Article 2 – discusses the composition of the court

- Third:
  - COMMENT: Why are the two reserve members chosen solely by the Chief Justice? Gives too much power to one person
  - SUGGESTION: Create a committee of more than 2 people to chose the alternates or they should be chosen by entire court
  - COMMENT: (A) sets out how the reserve members are chosen, but no process is set out ins (B) as to how the reserve Islamic experts are chosen
  - SUGGESTION: same as above, create a committee to chose or allow the entire court to decide the reserve Islamic experts
- Fourth
  - COMMENT: (A) Circular logic with HJC law. HJC law says HJC pres is FSC Chief Justice, but if there is no FSC when HJC is created, who is the President of the HJC and who will nominate the chief Justice of the FSC?
  - SUGGESTION: President of HJC & Chief Justice of FSC should be different people. Give nomination of Chief Justice power elsewhere  
COMMENT: What if something happens to the president of the HJC? Who will nominate, etc?
  - SUGGESTION: needs to be a committee or have some alternative procedure in place. Possibility: members of FSC should elect the Chief Justice and Deputy CJ by secret ballot within X days of Courts appointment
  - COMMENT: (B)(1) Why is the Higher Education and Scientific Research Ministry nominating legal experts?
  - SUGGESTION: Iraqi jurists should be nominating legal scholars-- members of the Court, other judges, legal professionals, law schools,

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JTI should have the power to nominate legal experts as they should be the most familiar with them.

- COMMENT: (B) since the parliament is approving the experts, why not also have them approve the justices?
- COMMENT: Need to have a nomination and appointment process in place that involves more than one person.
- SUGGESTION: Possibilities: elections within the judiciary and signed by presidential decree; nominations made by the HJC as a whole (not just HJC president) and signed off by president

## Article 3 – Length of terms of justices

- COMMENT: Are the terms renewable or can justices and chief justice only sit for one term? If renewable is there a limit of terms that one justice may sit consecutively or otherwise? There should be a timeframe for FSC members mandate
  - SUGGESTION: Add language to clarify in this article. Possibility: [Members of the Federal Supreme Court are appointed for an X year term and can or cannot be extended or renewed for another mandate]

## Article 4 – Other work of Justices

- COMMENT: This contradicts allowing the chief justice to also be the president of the HJC.
- SUGGESTION: The president of the HJC cannot be the same person who sits as the chief justice of the FSC

## Article 5 – Conditions to be on the FSC

- Third
  - COMMENT: What does it mean to be an “equivalent in Islamic jurisprudence” and is this really enough to equal a law degree and become a judge?
  - SUGGESTION: delete (or an equivalent in Islamic Jurisprudence) – this should be a requirement for the Islamic experts on the court but not a substitution for a legal degree
- Fourth
  - COMMENT: same as above - -working for Islamic jurisprudence should not equal experience serving in the judiciary.
  - SUGGESTION: delete (and/or worked for the same period as an Islamic jurisprudence)—again, this should be a qualification for the Islamic experts and not a substitute for judiciary service.

## Article 6 – Female membership

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- COMMENT: What does this mean? Maybe a translation error, HJC “could” nominate one or more female members. COULD? Or SHOULD? Or is this a requirement? A quota? Is this just for nomination or there is a quota for female membership?
- SUGGESTION: Support of woman in the process and in the judiciary should be apparent as in the entire constitution- need to clarify language –possibly: (one of the every three nominations made for a position on the court must contain a woman)

## Article 7 – Swearing in

- COMMENT: should the FSC members be sworn in by the president? Or maybe an institution...possibly by the CoR

## Article 8 – Jurisdiction of the court –

- COMMENT: Language should match that set out in the Constitution. Also need to break out into what is original jurisdiction and what is appellate (Original – 1,2,6,7, 9)
- Tenth
  - COMMENT: Giving the FSC jurisdiction over whatever any other law decides is in their jurisdiction is unconstitutional as the jurisdiction of the FSC is well defined in Article 93 of the constitution. Not sure what the intent is behind this.
  - SUGGESTION: Delete section as non-constitutional

## Article 9 – Responsibilities of Chief Justice

- COMMENT: Responsibilities of the Chief Justice should be included in the FSC bylaws and approved by all the members of the court.
- COMMENT: Court’s employees should be considered civil servants and subject to the civil service law, not subject to the Chief justice’s rules.

## Article 10 – Dismissal of Judges

- COMMENT: Need to define these specific crimes. Why limited to indictment for specific crimes, should be for any crime. Also, who is sentencing—would most likely be a conflict of interest here...
- SUGGESTION: Define specific crimes or better yet expand the wording to include indictment for any crime.
- COMMENT: What about resignation or expiring mandate?

## Article 11 – Salaries

- COMMENT: Is this the right place to discuss judicial salaries?

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- SUGGESTION: maybe this is better suited for the judicial organization law or for the HJC to determine as they manage the affairs of the judicial system.
- COMMENT: (D) Court employees should be civil servants and salaries, etc set out and determined by the civil service law.
- SUGGESTION: remove court employee salaries from law and simply have an article that states that the employees of the court are civil servants.

## Article 12 - Vacation

- COMMENT: same as above, is this the right place to discuss the vacation policy of judges?
- SUGGESTION: better suited for judicial organization law or HJC to determine
- COMMENT: What happens if/when the laws referred to here change or become invalid?
- SUGGESTION: clarify

## Article 13 – Consultants

- COMMENT: By “consultants” do they mean the advisory panel discussed in Article 2 (2)?

## Article 14 – Meetings

- COMMENT: Should provide for other means to call meetings besides just by the Chief Justice- gives one person too much power.
- SUGGESTION: add in clause that a meeting may be called by a certain number or percentage of members requesting a meeting. Whomever calls the meeting should provide agenda and provide enough advance notice to members
- COMMENT: Only mentions a quorum requirement for decisions involving conflicts between the federal, provincial, and local governments. No mention of quorum needed for a decision – is it a simple majority?
- SUGGESTION: add in the requirement of a quorum for all decisions

## Article 15 –Decisions of the Court

- First
  - COMMENT: Why are only some decisions published?
  - SUGGESTION: all decisions should be published and made public in the official Gazette
- Second

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- COMMENT: Why does the court need to notify anyone in order to execute decisions? This impedes with the court's independence
- SUGGESTION: Delete section. The FSC should not need to inform anyone in order to execute their decisions

Article 16: NO COMMENT

Article 17 – Judicial Fees

- COMMENT: Why are there any fees and what are they?

Article 18: NO COMMENT

Article 19: We do not understand this article

Article 20: NO COMMENT

Article 21: By laws

- COMMENT: Court should approve its bylaws within X amount of days of the Court's appointment by a majority vote of its members.

Article 22 –

- COMMENT: Does this mean that the Chief Justice and Justices of the current Supreme Court continue once this law is passed (counting from 2005? i.e. Chief justice would continue 8 years from 2005, so 2013 and Justices 6 years from 2005, so 2011?? This also seems to contradict Article 23 below.

Article 23: NO COMMENT

Article 24: NO COMMENT

Article 25: NO COMMENT