

# **IILHR LEGISLATIVE REVIEW OF THE DRAFT LAW ON RIGHTS OF THE INNOCENTS**

## **INTRODUCTION**

The Draft Law on Rights of the Innocents, as reviewed, could duplicate legislation and Constitutional provisions that already exist in Iraqi law. Specifically, this draft legislation may replicate elements of Articles 15, 17, 19, 20 and 37 of the Iraqi Constitution and may imply that failure to enforce Article 3 of the Amnesty Law [Law nr. 19/2008] might constitute unlawful detention resulting in a right to sue.

The Iraqi Constitution is a strong, well-written, and viable document. The liberties and protections it offers to the citizens of a democratic Iraq incorporate the protections this draft law seeks to espouse. The Amnesty Law was developed through the legitimate legislative process outlined in the Constitution and is a legitimate and operational Iraqi law. Creating a piece of legislation that replicates elements of protections already guaranteed may actually undermine the perceived legitimacy and power of existing laws and the Constitutional order.

Specifically, the current draft law seeks to protect Innocents by offering the right to legal recourse for individuals who have been:

- unlawfully arrested or detained; harassed, slandered or threatened by officials or
- those who have been brought to court on false charges.

Protections the above events may be found in Section Two of the Constitution. Article 15 guarantees the “right to enjoy life, security and liberty”<sup>1</sup> and prohibits

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<sup>1</sup> Iraq Constitution, Section Two, Art 15.

the deprivation of these rights except in accordance with a legitimate law. Article 17 guarantees the right to personal privacy and protects the sanctity of the home. Article 19 (Second) guarantees that there may be no crime or punishment except by law and that punishment shall be reserved for acts the law considers a crime when perpetrated. Article 19 (Third) guarantees the right to litigate for all Iraqis. The Fourth and Fifth parts assure the right to a defense, a fair trial, and the presumption of innocence. Article 19 Twelfth prohibits unlawful detention and imprisonment in places not designed for that purpose. Article 37 of Chapter Two reiterates this protection by guaranteeing the protection of the liberty and dignity of man; forbidding unlawful detention or investigation; and prohibiting physical and psychological torture, coercion, and threats. Article 37 also guarantees the right to seek compensation for material or moral damages incurred.

**As every Iraqi, male and female, enjoys constitutional protection from the above violations as well as a constitutional right to seek compensation under the law, the Draft Law on the Rights of the Innocents may be redundant.**

Under the Iraqi Amnesty Law [Law no. 19/2008] Article 3 requires the immediate cessation of all legal proceedings against individuals accused of crimes not listed in paragraph II of Article 2. Article 5 establishes a committee to review amnesty applications and assess whether a given individual should receive amnesty and be released. Under Article 3(B), the committee is required to release individuals subject to arrest who had been detained more than six months without presentation to the magistrate, or who had been detained for over a year and not brought to a competent court.<sup>2</sup>

It may be that the Draft Law on Rights of the Innocents is intended to bolster Article 3 of the Amnesty Law or the rights established in the Constitution (see above). However, the establishment of a law to protect rights already protected under the Constitution may actually undermine the legitimacy and authority of the Constitution as the Supreme Law of the Land.

If the guarantee of a right and its protection under the Constitution needs to be reiterated in subsequent legislation, then public perception of the Constitution as the ultimate source of rights protection may be weakened. Furthermore, the Draft Law on Rights of the Innocents aims protecting expressly individuals who have been discharged by the decision of a competent court or has committed an act not considered criminal under the law or who has been found not-guilty by a

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<sup>2</sup> Iraqi Amnesty Law, Law (19), 2007, Article 3, 5.

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court or who has been found guilty and served his or her sentence, or who has been unlawfully arrested or detained (Please see Article 3 and Comments below).

By defining the “Innocent” as one who has successfully traversed the judicial system or has had his or her liberties unlawfully violated, **the current draft law risks abridging the protections guaranteed in the Constitution by offering protections to a specific group rather than to all Iraqis.** It may be possible that one seeking to sue under Article 4 of this law may have his or her case turned away if circumstances put him or her outside the narrow definition of “Innocent.”

Despite this analysis, however, IILHR recognizes that the Council of Representatives desires legal commentary on the draft law presented to us. We have respectfully included our article by article analysis of the Rights of the Innocents draft law below for your consideration.

ANALYSIS  
OF THE  
DRAFT LAW ON PROTECTING THE RIGHTS OF THE INNOCENTS

I.

*Article 1: Name of the law (Law on protecting the right of innocents)*

**No Comments**

II.

*Article 2: The innocent is a person who is discharged from all the charges assigned to him.*

**COMMENT:**

Articles 2 and 3 both appear to define the term “innocent.” Two definitional articles, neither of which clearly states its authority to define the term, may lead to interpretation difficulties. One may interpret Article 2 as the definitive definition of an “Innocent,” while others may rely on Article 3. This ambiguity may result in some individuals the legislature intended to protect, falling outside the scope of the law.

**SUGGESTION:**

Combine Articles 2 and 3 to form a single “Definitions” article wherein the terms defined are clearly delineated. (Please see Comments and Suggestions on Article 3 below)

III.

*Article 3: For the purpose of applying this law, considers innocent:*

*First: The person who discharged by a decision of the competent court.*

*Second: The person who committed an act, but does not criminalized under law, and based on that he was detained and arrested.*

*Third: The person, who a decision has been made against him, by the competent court, abolishing the charge and releasing him ultimately.*

*Fourth: The person who a decision has been made against him, closing the case definitively.*

*Fifth: The person who perceived his non-responsibility for the criminal act attributed to him.*

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*Sixth: Who has been detained or arrested by an official side that does not have the legal authority to do so or subjected to harassment, physical or psychological abuse by these authorities.*

## **COMMENT:**

As described above, Articles 2 and 3 both give definitions of “innocent,” though the language in Article 3 is more specific. This organization may lead to confusion or allow for variable interpretation of terms. It should also be noted that the terms “discharge,” “competent court,” or “official” are it is not expressly defined in either article; definitions should be included in any draft legislation. This situation may present a loophole that allows individuals who have been acquitted, had charges against them dismissed, or have been arrested and held but not charged with a crime, to fall outside the protection this law seeks to grant.

## **SUGGESTION:**

It may be clearer if Articles 2 and 3 are combined into a single “Definitions” article that clearly explains the characteristics of an “innocent” and the ways in which a person may be deemed innocent.

## **For example:**

*Article 2: Definitions*

*(1) Innocent: a person who*

- a. under the laws of Iraq, has had criminal charges against him or her dismissed by a competent court;*
- b. has been unlawfully detained or arrested for an act that does not constitute a crime under Iraqi law;*
- c. has been found guilty by a competent court or adjudicative body and has fulfilled his or her sentence;*
- d. was charged with and convicted of a crime but who did not, in fact, commit the crime;*
- e. was detained or arrested by an official or an official organization that does not possess the legal authority to do so;*
- f. has been subjected to harassment, humiliation, threats, physical, or psychological abuse by officials;*  
*or*
- g. has been granted amnesty under Iraq Amnesty Law(19) of 2007.*

- (2) *Competent Court: a court which, under legislation pursuant to Article 96 of the Constitution of Iraq, has been granted jurisdiction to settle the dispute in question;*
- (3) *Official: a civil servant working as part of an Official organization. Officials include but are not limited to: police officers, members of the military, or other civil servants;*
- (4) *Official Organization: a body or entity regulated by the government and performing public duties. Official organizations include but are not limited to: police departments, branches of the national military, government bodies, etc.*

IV.

*Article 4: In accordance with the provisions of this law, the innocent person can file a suit before the court of first instance against the plaintiff if the criminal action set in motion according to his request, or against the official side that set the criminal action in motion or against the side that arrested or detained (the innocent).*

**COMMENT:**

**Article 4 grants to innocents the right to seek justice a court in the form of compensation for false accusations, arrests, or detentions. The language of this article, however, risks limiting the right to sue because it does not clearly express which violations of the rights of the innocent lead to a right to sue, nor does the article indicate whether the suit shall be brought in a civil or criminal court. If an Innocent sues for compensation, then charges shall be brought in a civil court. *This begs the question, however as to whether individuals or officials who subject an Innocent are subject to criminal charges.* An additional concern is that Article 15 of the Constitution guarantees the right to enjoy life, security and liberty. Therefore, any official, civil individual or official institution that unlawfully arrests or detains and Innocent is in violation of the Constitution and should already be subject to suit. This fact is further enshrined in the Constitution under Article 19, which prohibits arrest and detention for acts that are not crimes under the law, prohibits physical and psychological threats and torture, and guarantees the right to litigation for all Iraqis. *Article 4 of the draft legislation may replicate elements of Article 19 of the Constitution and, by***

*enumerating who qualifies as “innocent,” may actually limit the freedoms protected under Article 15 of the Constitution.*

**SUGGESTION:**

**Putting aside the Constitutional implications of Article 4, several changes may be made to add clarity. Article 4 may be rewritten to include greater detail and provide stronger links between the rights that shall not be violated and the right to sue for compensation or bring criminal charges.**

**For example:**

*Article 4*

*First: In accordance with the provisions of this law, an innocent may bring a civil suit for monetary compensation for physical or psychological harm against an individual, either civilian or official, or an official institution for:*

- (1) Bringing a false criminal action;*
- (2) Unlawful arrest or detention;*
- (3) Unlawfully subjecting an innocent to harassment, humiliation, threats, physical, or psychological abuse;*
- (4) Fails to order the release of or continues to the detain, in violation of Article (3) of the Iraqi Amnesty Law (19) of 2007, an individual who has been granted Amnesty under Iraqi Law (19) of 2007*

*Second: Any individual, official or civil, or official institution, who subjects an Innocent to (1) through (4) of this article, may be charged with a criminal violation under this law.*

**V.**

*Article 5: Decisions of first instance courts, in this regard, subject to challenge, appeal and cassation.*

**COMMENT:**

**Article 96 of the Constitution states that “[t]he law shall regulate the establishment of courts, their types, levels, and jurisdiction...”<sup>3</sup> If Iraq law regulating the judicial system has established a right to appeal in civil and criminal cases, then Article 5 may be unnecessary. However, if Iraq law**

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<sup>3</sup> Iraqi Constitution, Article 96.

does not grant the above rights, then Article 5 is necessary but may be clarified.

**SUGGESTION:**

**Article 5 may be clarified to state:**

*Article 5: Decisions rendered by competent courts regarding violations of the Rights of the Innocents under this law are subject to challenge, appeal and cassation.*

**VI.**

*Article 6: If the Court decided for compensation, it subjects to the general provisions on compensation in the civil law and other relevant laws.*

**COMMENT:**

Similarly, the language of Article 6 may be altered for clarification.

**SUGGESTION:**

**Redraft Article as follows:**

*Article 6: Where a court has awarded an Innocent compensation for damages incurred by events in violation of this law, such an award is subject to the General Provisions on Compensation in the Civil Law and other relevant laws.*

**VII.**

*Article 7: If the defendant was an official side and the decision was made against him and became a peremptory rule, the compensation amounts mentioned in the decision will be obtained through the enforcement in one lump sum.*

**COMMENT:**

**IILHR shall assume, from examination of the Arabic and English versions of Article 7 that the article intends to guarantee that:**

- (1) where a official (such as a police officer, member of the government, or other civil servant)**
- (2) has violated the Rights of the Innocent under this law and**
- (3) has been sued for monetary compensation in a competent court;**
- (4) final rulings against the official (i.e. those that have traversed the entire appeals process and been declared final);**
- (5) shall be paid to the Innocent (plaintiff);**



- (6) In one lump sum/ single payment (i.e. as opposed to being paid in smaller amounts over a period of time).

**SUGGESTION:**

**Based on the interpretation of Article 7 in comments above we suggest the following:**

**First, the section of Article 7 stating “if the defendant was an official side” is not necessarily clear. Language should be inserted to indicate that the “defendant” is the defendant in a case brought by an Innocent for violation of his or her rights under Article 4 of this law.**

**Second, the section “and the decision was made against him and became a preemptory rule” reads, at least in English, as implying a final judicial ruling wherein all opportunities for appeal have been exhausted. If this is the case, the phrase “final decision” might suffice depending on the language of the Iraqi Rules of Procedure. Generally speaking, “final decisions” are those issued only at the last possible stage of the judicial process. If this is not clear from the Rules of Procedure, however, a reference to the completion of the appeals process may be helpful.**

**Finally, it may also add clarity to add language indicated that the enforcement of the ruling granting compensation to the Innocent cannot be paid in increments.**

**For example:**

*Article 7: Where an official has been sued under Article 4 of the present Law and an Innocent has obtained a final ruling for compensation in his or her favor, the defendant official must pay the Innocent in a single sum. Incremental payments over time are prohibited.*

Or

*Article 7: If under Article 4 of this law, an Innocent has brought suit against an official and has obtained a final ruling against the official, any court-ordered award for monetary compensation shall be paid to the plaintiff Innocent in a single sum. Incremental payments over time are prohibited.*

*NOTE: The term “final ruling” is that court decision which is issued after all opportunities for appeal under the law have been exhausted.*

**VIII.**

*Article 8: Not to deal with any text that is inconsistent with the provisions of this law.*

**COMMENT:**

**Article 8 may intend to preempt the passage of future laws which are inconsistent with or conflict with the current Draft Law on the Rights of the Innocent. If this is the intention of Article 8, the language could be strengthened.**

**SUGGESTION:**

**Redraft Article as follows:**

*Article 8: No law shall be passed that is inconsistent with the provisions herein.*

**IX.**

*Article 9: The Council of Ministers should enforce this law.*

**COMMENTS:**

**As the Council of Ministers is granted the authority to enforce this law, would be more efficient to name a government body authorized to construct regulations in the name of this law [for example Ministry of Justice]. This article could be clarified to grant specific regulation and enforcement powers to the Council of Ministers, or another judicial body.**

**SUGGESTION:**

**Redraft article as follows:**

*Article 9: Enforcement*

*First: The Council of Ministers (or other body) shall develop procedures and ensure that complaints filed under this law are dealt with in a manner that prevents inconsistency in the application of this law.*

*Second: No later than \_\_\_\_\_ (months/ year/...) after the enactment of this law, the Council of Ministers (or other body) shall issue regulations in an accessible format to carry out this law in accordance with \_\_\_\_\_ law and the Constitution of Iraq.*

**X.**

*Article 10:*

*This law shall be implemented from the date of its publication in the Official Gazette.*

**COMMENT:**

**For Article 10, it may be helpful to include a statement that the law shall be published no later than a certain date. Without such an**

addition, the law risks being backlogged or remaining unpublished. By conditioning implementation on publication rather than on passage in the legislature, the legislature abandons control of the law's implementation. This potential problem may be mitigated by stating a date in Article 10 for either publication or implementation.

## XI.

### *Reasons for this law*

*Citizen may be subjected to detention due to personal reasons that cause material and moral damage to him, as a false story from a person pushed by malice and hatred motives might lead to entrapped an innocent citizen, and then will be detained for an indefinite period, which needs to think about him, especially with regard to how to return him to the social life as a normal person as others, and his right to restore his moral and material rights in order to build his presence within the community. The need to compensate the innocents is fair and consistent with the rules of justice, Islamic law, human rights principles proclaimed in the Universal Declaration and its annexes, and the second section of Iraqi Constitution, which is the fixed section in the above mentioned Constitution, and it suit with the spirit and principles of the legality of the crime, the sentence and the fact that the accused is innocent until proven guilty. But if his innocence was proved, so how can we compensate him for losing the material interests, reputation and social standing; there will be no way for this unless with material or moral compensation, or with both of them.*

*Based on these reasons, this law initiated.*

### COMMENT:

The references in the first sentence of the “Reasons for this Law” section deals with issues of slander and libel rather than with harassment, threats, unlawful detention, or other issues addressed in this law. Laws regarding slander and libel are often separate and do not necessarily relate to detention, arrest, or past judicial proceedings specifically. The inclusion of the above-underlined phrases as reasons for this law does not clearly connect to the substance of the law itself. Including them, risks creating confusion in implementation. The phrases might be interpreted as creating separate rights to sue for slander where no provision in this law expressly provides such a right.

Further, discussions of reintegrating individuals who have been detained back into society are also inconsistent with the scope of

**this law. Nowhere in the substance of the Draft Law on Rights of the Innocents is there a granting of assistance to individuals who are attempting to reintegrate into the social fabric of their families and communities after long periods of detention. Challenges these individuals may face, such as the risk that people will tell false stories out of malice or hate, is libel or slander, and not clearly “threats” or “harassment” under this law.**

**If the Council of Representatives seeks to protect individuals against acts of slander or libel, then a different law is needed as such protections are not encompassed here. Additionally, protections against libel and slander should be broad and not limited to issues related to possible criminal acts as this law addresses.**

**The purpose of this law may be to protect individuals granted amnesty under the Amnesty Law (19) of 2007. If the fear is that such individuals will be unlawfully detained or arrested because of their past legal status, then this law is narrowly tailored (though its necessity should be reevaluated in light of the Constitutional protections discussed in the Introduction above). If the fear, however, is that these individuals will be subjected to malicious gossip, commentary, or humiliation, then slander and libel laws may be more appropriate.**