



INSTITUTE FOR INTERNATIONAL LAW & HUMAN RIGHTS

Iraq's High Commission for Human Rights: Bylaws, Regulations and Legal Framework

June 2012

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Iraq's High Commission for Human Rights: Bylaws, Regulations, and Legal Framework
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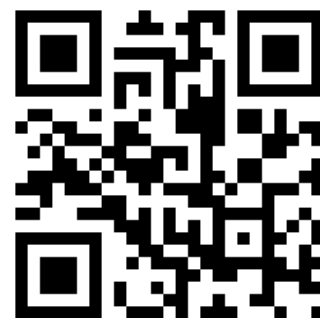


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EXECUTIVE SUMMARY

A. Overview

This manual seeks to assist the Board of Commissioners (BoC) of the independent Iraqi High Commission for Human Rights (HCHR) to develop bylaws and procedures to regulate and support the work of the Commission. To this end, this manual addresses topics germane to the mandate of Commission—such as coordination with civil society and governmental institutions, financial policies, complaints handling, and staffing practices— and considers the importance of transparency, accountability, and legitimacy throughout the analysis.

The Board of Commissioners of the Iraqi High Commission for Human Rights will bear many responsibilities, particularly in the early phases of establishing the Commission. In addition to assessing capacity needs, setting up the headquarter's physical space, and determining the vision and mandate of the HCHR, the BoC must also develop the regulations, procedures, and protocols that will dictate the functioning of the Commission into the future. It is the outcomes of this latter duty that will play the most crucial role in the Commission's sustainability, and in establishing the Commission as an institution founded on principles of independence, transparency, accountability, and efficiency.

Among National Human Rights Institutions (NHRIs) throughout the world, there is no single “best model,” and the BoC must decide what issues demand attention by the Board and what procedures should be left to the appropriate directorates to design. Law No. 53 of 2008 and the Paris Principles are primary guides, but where the Law is silent, the BoC should base decisions on the particular human rights needs of Iraq and the manner in which the Commission could best work to protect and promote human rights. These ideas are foundational to the analysis and recommendations in this report, but ultimate decision-making rests with the Commissioners and the experience, expertise, and vision they will bring to bear.

B. Legal Foundations

Article 102 of the Iraqi Constitution of 2005 mandates that the functions of the High Commission for Human Rights shall be regulated by law. In December 2008, the Iraqi Council of Representatives enacted Law No. 53, setting out the legal foundations for the establishment of the independent Iraqi High Commission for Human Rights (HCHR).

Law 53 prescribes procedures for the nomination and approval of the Board of Commissioners, defines the functions and duties of the Commission, identifies financial resources and requirements, and lays out the rights of Commissioners and terms for their termination.

Under Law 53, the High Commission for Human Rights is mandated to:

Ensure the protection and promotion of respect for Human Rights in Iraq; Protect the rights and freedoms stipulated in the Constitution, international laws, treaties and conventions ratified by Iraq; [and to] strengthen, promote and develop human rights principles and culture.

In 2011, the Council of Representatives reinstated the Committee of Experts, which was charged under the Law with nominating candidates for membership on the HCHR's Board of Commissioners. After many months of evaluation, discussion and interviews, in April 2012, the Committee of Experts presented a slate of 11 Commissioners plus three reserve members to the Council of Representatives, which officially endorsed the group. Under Law 53 of 2008, the Board of Commissioners consists of eleven original (voting) members and three reserve members. Women's representation on the Board of Commissioners shall be no less than one-third of members, which IILHR interprets to mean a minimum of four original members. Minorities shall be no less than one original member and one reserve. The first Board of Commissioners, as endorsed, consists of two women as original members and two as reserves, with one minority original member and one reserve.

The Commissioner selection process began with a public call for applications, wherein the Committee of Experts received over 3,000 applications and supporting documentation. After eliminating candidates for sufficiency under the requirements of Law 53 (including restrictions on age, Iraqi residency, and level of education), the Committee of Experts developed a standardized point system with cross-checks to evaluate the remaining applicants on human rights experience, research, and other skills. An appeals process was offered and background checks were conducted with the Commission on Public Integrity, the De-Ba'athification Commission, and the Ministry of Interior. The point system was used to identify approximately 50 highly qualified candidates for interviews. Interviews utilized interview questions and evaluation criteria developed with the assistance of international technical experts. Starting with the highest-scoring candidates, the Committee of Experts then considered the overall composition of the Board of Commissioners to ensure a diverse and representative board. Experts therefore considered skill and experience, governorate representation, component representation, and religious representation to identify the final slate of 11 plus three candidates.

Having been endorsed by the Council of Representatives, the Board of Commissioners is obligated under Law 53 to:

- Supervise and follow-up on Commission activities;
- Define the divisions, functions and composition of the organizational structure of the HCHR through bylaws;
- Issue service and recruitment rules for HCHR employees, and determine remuneration and conditions of service;

- Appoint executive directors to regional and governorate offices and accept their resignation or discharge in accordance with the Law;
- Develop and submit annual reports on Commission activities to the Council of Representatives; and
- Develop and propose the HCHR's annual budget to the Council of Representatives.

In addition to these specific tasks, **the BoC should also consider developing regulations, handbooks, or protocols that would standardize particularly complex or important tasks, such as receiving and handling complaints.** Other regulations could be delegated to directors or the Secretariat to develop.

Further, under Law 53, the High Commission for Human Rights is mandated to perform the following functions and duties, which the Board of Commissioners must oversee:

- Receiving, investigating, and following up on complaints of human rights violations;
- Initiating lawsuits related to violations of human rights;
- Conducting visits to and assessments of prisons, social rehabilitation centers, and detention centers;
- Promoting a culture of human rights throughout Iraq;
- Establishing the Office of Inspector General;
- Establishing HCHR Offices in the Regions and Governorates not organized in a region;
- Developing annual and special reports on the human rights situation in Iraq;
- Coordinating and cooperating with Civil Society Organizations and Governmental institutions;
- Evaluating and submitting recommendations on legislation in force; and
- Maintaining financial accounts.

To achieve these duties and the goals of the Commission, one of the Board of Commissioners' main obligations is to develop bylaws and regulations laying out the divisions, functions and composition of the organizational structure of the HCHR. Additionally, regulations governing staff recruitment, remuneration, and terms of service must be developed within one month of the establishment of the Board of Commissioners. This report seeks to support these goals.

C. Methodology

In developing the analysis and recommendations herein, IILHR examined Iraqi Law No. 53 of 2008, the Paris Principles relating to the Status of National Institutions, and the establishment laws, national constitutions, bylaws, and regulations relating to the national human rights institutions (NHRIs) of over 30 countries. IILHR accorded due attention to NHRIs operating within the Middle East and North African region, NHRIs established in post-conflict states, and NHRIs accredited with "A" and "B" status by the Sub-Committee on Accreditation of the International Coordinating Committee of

National Institutions for the Promotion and Protection of Human Rights. The report also utilizes research and reports developed by the United Nations, and evaluations of NHRIs developed by the Sub-Committee on Accreditation.

National Human Rights Institutions examined for this report include those in **Egypt, Afghanistan, South Africa, Thailand, Kenya, Tunisia, Algeria, Morocco, India, Indonesia, Palestine, Jordan, Northern Ireland, Ireland, England, Canada, Bosnia and Herzegovina, Cameroon, Ghana, Malawi, Mali, Namibia, Senegal, Tanzania, Australia, Uganda, New Zealand, France, Greece, Spain, and Qatar.**

Relying on the functions established in Law 53 of 2008 as a baseline for issues and activities requiring regulation, IILHR also considered how bylaws and regulations could serve to better align Commission practices with the standards established under the Paris Principles, which stress independence, transparency, pluralism, accountability, and efficiency. The six standards outlined in the Paris Principles include:

- **Autonomy** from government;
- **A broad and clearly defined mandate** based on universal human rights standards;
- **Independence**;
- **Pluralism** among Commissioners and staff;
- **Adequate resources**; and
- **Adequate powers of investigation.**

Where Law 53 does not definitively outline the scope of a particular HCHR authority, or leaves broad decision-making powers to the Board of Commissioners, the standards of transparency, independence, pluralism, efficiency, and accountability emphasized in the Paris Principles guide recommendations.

D. Recommendations

This report identifies six key areas requiring the development of regulations and procedures to assist the regularized and efficient functioning of the HCHR. For each key area, the report addresses the legal foundations for HCHR activities, examines reasons supporting the development of regulations for each area, proposes recommendations and, where appropriate, draft regulations and procedures.

1. **Composition of the HCHR.** Defining the composition of the HCHR within bylaws is of particular importance since it can help protect the independence and pluralism of the Commission. Policies and regulations relating to the composition of the HCHR should include:
 - The appointment and authority of special offices, such as the Chair and Deputy Chair Commissioners, the Executive Secretary, and the Office of Inspector General;

- The establishment and authority of the Board of Commissioners, Sub-Committees, Working Groups, and Supporting Units;
 - An organogram detailing the organizational structure of the HCHR; and
 - A system for establishing, monitoring, and coordinating with HCHR Offices in the regions and governorates.
2. ***The Work of the HCHR.*** To perform its mandated functions, the HCHR must coordinate with governmental and non-governmental organizations in Iraq and the international community, the media, and other stakeholders. It must also maintain records, perform monitoring and investigation functions, and engage in regular reporting. These activities require the development of procedures to ensure smooth coordination and standardized record-keeping and reporting. Specifically, the HCHR must:
- Engage in educational activities, including supporting training efforts for judges, lawyers, security forces, social workers, the media, teachers, and community leaders among others;
 - Raise public awareness through media campaigns and civil society networks;
 - Analyze and provide recommendations on legislation in force and, where appropriate, draft legislation;
 - Investigate, monitor, report, and advise on the human rights situation in Iraq;
 - Analyze and provide recommendations on the ratification and implementation of international human rights instruments; and
 - Engage in conciliation and/or mediation for parties to human rights complaints violations.
3. ***Receiving and Handling Complaints.*** Handling complaints of human rights violations is potentially one of the most important, time consuming, and complex activities the HCHR will perform. Other NHRIs, such as the Palestinian Commission, have found that complaints handling is among the most time-consuming of all NHRI activities. Given that the HCHR will open regional and governorate offices and can expect to receive complaints or initiate investigations throughout the country, the HCHR must adopt standardized practices and protocols for everything from filing requirements, to confidentiality standards, to record-keeping, follow-up, remediation, and external referral. Such practices and protocols should be adhered to by all individuals and organs with the HCHR involved with the complaints handling process, and should facilitate coordination both within and without the HCHR. Complaints handling considerations that should be established by the BoC include:
- Filing Procedures and Information Requirements;
 - Jurisdictional Screening Protocol and Intervention in *Sub Judice* cases;
 - External Referrals;
 - Internal Dispensation Protocols;

- Case Tracking Systems;
 - Confidentiality Protocols;
 - Client's Rights Charter;
 - Remedial Competencies and Enforcement Mechanisms; and
 - Staff Roles.
4. ***Relationships to Stakeholders and other Institutions.*** To achieve the aims of the Commission, Law 53 requires the HCHR to coordinate, in various capacities, with Iraq's Ministries, bodies not associated with Ministries, other independent commissions, civil society organizations, international independent and nongovernmental institutions, and the United Nations. To fulfill the mandate to monitor and investigate prison conditions, for example, the HCHR must coordinate with the Ministry of Justice, among other institutions. To promote a culture of human rights and ensure that public servants respect those rights, the HCHR must coordinate with the Ministry of Human Rights. To follow-up on complaints and intervene in the judicial process where necessary, the HCHR must coordinate with the Higher Judicial Council, the Federal Supreme Court, and other judicial bodies. To this end, the HCHR must develop mechanisms for coordination that may include, among other options:
- Developing Memoranda of Understanding with governmental and non-governmental organizations to establish ground rules and working methods;
 - Establishing a sub-committee or working group dedicated to maintaining external relationships;
 - Developing protocols for inviting representatives from other institutions to attend BoC meetings as non-voting observers or presenters;
 - Facilitating regularly scheduled meetings and the consistent exchange of information.
5. ***Administration of HCHR Operations.*** The efficiency and effectiveness of the HCHR's administrative operations is crucial to the successful functioning of the Commission. As such, regulations and procedures must be developed to guide practices such as voting, quorum and record-keeping for BoC meetings; public access to Commission materials; financial record-keeping, accounting, and reporting practices; staff hiring, termination, and terms of service; Commissioner terms of service; and other issues. Specifically, regulations and procedures must be developed to address:
- Working Methods and Rules of Procedure;
 - Public Access to BoC activities and documentation;
 - Record-Keeping;
 - Personnel Policies including Staff Recruitment, Remuneration, Benefits, Assessment, and Termination;
 - Commissioner Terms of Service including Term Limits, Leave Policies, and Codes of Conduct;

- Financial Policies, Budgeting, and Procurement;
- Donor management; and
- Accounting Practices.

6. ***Codes of Conduct and Ethics.*** Though HCHR Commissioners must swear an oath upon taking office, many NHRIs also develop codes of conduct and ethics to delineate ethical and professional behavior, address potential conflicts of interest, and enhance accountability among both Commissioners and staff. Codes of Conduct and Codes of Ethics manifest common demands for accountability and augments employees' awareness of expected ethical behavior and practices. For Commissioners, the signing of and adherence to Codes of Conduct and Ethics can serve as a powerful signal to the public of the high moral and ethical standards they intend to bring to the office. The development of Codes of Conduct and Codes of Ethics should include consideration of:

- Conflicts of Interest Disclosure and Regulations, including pecuniary and other interests;
- Confidentiality Certification;
- Guidelines for recusal from decision-making and procedural protocols;

E. Conclusions

This manual assesses the legal parameters of Law 53 of 2008, as well as international standards set out in the Paris Principles, and common practices among other national human rights institutions. The goal behind the research is to assist the Board of Commissioners to fulfill its responsibilities in setting up the High Commission for Human Rights, and to facilitate the effective, legitimate, and independent functioning of the Commission into the future.

The analysis identifies Human Rights Commission practices and activities that the BoC should consider regulating, and provides examples of alternative practices and procedures utilized by various NHRIs throughout the world. However, this manual recognizes that there is no "best model" and the Commission's organization, and its functions will be geared toward meeting the particular needs of Iraq. Where appropriate, this report lays out sample procedures and regulations for the Board of Commissioners to consider, but the ultimate decisions lie with the Commissioners.

IILHR continues to support the ongoing development and functions of the High Commission for Human Rights, and is available to answer questions or provide further information about the information in this manual, and other issues that may arise.

ACRONYMS

ADR	Alternative Dispute Resolution
BoC	Board of Commissioners
CoE	Committee of Experts
CSO	Civil Society Organization
OIG	Office of Inspector General
CoR	Council of Representatives
HCHR	Iraqi High Commission for Human Rights
IHEC	Independent High Electoral Commission
IILHR	Institute for International Law and Human Rights
Law 53	Iraqi Law No. 53 of 2008
MOU	Memorandum of Understanding
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OHCHR	Office of the High Commission for Human Rights (United Nations)
UN	United Nations

ABOUT THE REPORT

This report considers the internal regulatory needs of the Iraqi High Commission for Human Rights, including organizational infrastructure, the development of internal procedures and protocols for the performance of daily work, mechanisms for coordinating with other institutions and organizations, financial management, administration and record-keeping, and human resources policies. Law 53 of 2008 establishing the High Commission for Human Rights serves as the foundation for analysis and recommendations. The report also utilizes the Paris Principles and international best practices where applicable.

This report and its recommendations do not strive to present a “Western” viewpoint for Iraq’s independent human rights commission, nor does it purport to suggest a single “best” vision for the Commission’s functioning. Rather, the report considers the positive and negative experiences of over 30 national human rights institutions from a variety of nations throughout the world, with an eye to the particular situation of Iraq and the legal framework underpinning the institution.

For the purposes of this report, the jurisdiction and authorities of the High Commission for Human Rights are construed in the broadest possible sense within the scope of Law 53 of 2008 and the principles of transparency, independence, and efficiency laid out in the Paris Principles. While Law 53 may imbue the Human Rights Commission with certain authorities, the mechanics guiding the implementation of these authorities requires due consideration.

In some areas, Law 53 mandates goals for the Commission which imply functions that are not specifically delineated within the legislation. As such, in order to fully implement the promise of Law 53 and clarify legislative inconsistencies, particular authorities and duties are implicit, and form part of the mechanics of fulfilling the Commission’s mandate.

For example, under the complaints and investigations duties mandated under Law 53, it is implicit that the Commission should engage in reconciliation, mediation, and other forms of alternative dispute resolution for complaints that do not rise to the level of judicial intervention. Similarly, Law 53 also implies that the HCHR should participate as *amicus curiae* in *sub judice* cases with leave of the Court. Of course, the ultimate authority to interpret the Law lies with the Board of Commissioners, the Council of Representatives, the Federal Supreme Court, and other authoritative institutions.

As such, this report seeks to raise issues the BoC should consider when developing the infrastructure and internal regulations for the High Commission for Human Rights. IILHR’s recommendations seek to assist the BoC in these tasks, to meet the particular needs of Iraq, and adhere to the HCHR’s legal framework. In so doing, the first task of this report was to assess Law 53 of 2008 and the obligations it sets out for the Board of Commissioners. IILHR then considered the functions and duties delineated to the

Commission and the procedures and protocols necessary to ensure the efficient fulfillment of these tasks.

Significant effort went toward ensuring that the comparative NHRIs cited in the report represent the most relevant examples to meet the needs of the High Commission for Human Rights. However, it must be noted that it is challenging to locate, research, and translate the internal working rules of many NHRIs, particularly in states grappling with security, technology, and political challenges. In order to mitigate potential confusion, the full text of cited regulations is reproduced in footnotes where appropriate and full citations are provided.

Erin Houlihan, Legal Advisor for the Institute for International Law and Human Rights, served as Project Coordinator for this report, conducting research and analysis, and managing the writing, editing, and compilation of this report. Countless hours of research, analysis, and writing was also provided by law students in the University of Virginia School of Law's Human Rights Program and Duke University School of Law's Human Rights Advocacy Clinic. IILHR is grateful for the invaluable contributions of Shafat Ahmad, Aongus Cheevers, Jacy Gaige, and Caitlin Swain of Duke University, and Amelia Dungen, Antonios Antonopoulos, Chen Song, and Joel Sanderson of the University of Virginia. IILHR is also grateful to Professor Deena Hurwitz for her leadership and contribution, and to Alec Knight and Lauren Petrosky for their research, analysis, and writing. We are also grateful to Kathryn McDonnell who provided cover design and other graphics assistance. IILHR Executive Director William Spencer supervised the drafting and editing of this report and provided invaluable contributions to the analysis.

THE WAY FORWARD

This manual only represents a start. While it can help to lay the groundwork for an effective, legitimate, and transparent human rights protection mechanism for Iraq, **this analysis cannot be genuinely useful without an overarching vision of how an Iraqi High Commission for Human Rights will do its work.** Regulations and a legal framework for the future are necessary – but not sufficient – to build an institution that can successfully defend the human rights of Iraqi citizens.

A vision of the future must also include a common strategy, institutional values, and a mission. All of these components are prerequisites to building a strong institutional framework that can serve the Iraqi people for generations to come.

The process of developing standards and regulations for a new human rights commission should involve not just Commissioners and staff, but all of the new institution's strategic partners in civil society, the Iraqi government, and in the international community. The process of consultation should be woven into all activities, beginning with initial drafts and ending with enactment of bylaws and regulations.

A broad and inclusive human rights commission must also be built on a foundation of lessons learned, best practices, and buy-in from all potential partners inside and outside the Commission. This includes learning from other institutions and international human rights leaders, and collaborating with international organizations and donors.

As this document shows, there are many approaches to building a strong system of internal procedures to guide the efficient and effective work of the High Commission for Human Rights, and to ensure accountability at all levels within the organization. The nature and scope of issues that the Board of Commissioners must address through bylaws and regulation are complex and varied, but the quality of procedures developed, and the level of adherence required among staff and officers, will impact the legitimacy and effectiveness of the Commission into the future.

The High Commission for Human Rights faces a long and challenging road toward becoming a fully functioning and effective institution capable of responding to rights violations, improving the culture of respect for human rights, documenting and reporting on the situation of human rights, improving the *de jure* and *de facto* protection of rights, and holding the State accountable for the treatment of its citizens. Establishing a robust regulatory framework to guide the work of the Commission in its early stages is one of the most significant steps down this road.

Internal regulations and policies are only one ingredient for the functioning of a viable human rights commission, and through reaching out to partners – and taking the time to develop both a human rights and institutional strategy, with vision, values, and a clear mission -- Commissioners and staff will build the legitimacy and effectiveness of

Commission and its operational standards, and successfully engage with citizens and the State to promote and protect human rights in Iraq. IILHR stands ready to support this process however it can.

ABOUT IILHR

The Institute for International Law and Human Rights (known as IILHR) is a 501(c)(3) non-profit charity registered in Washington, D.C., and Brussels, Belgium. IILHR helps states in the early stages of democracy develop the capacity to strengthen the rule of law and build respect for human rights. With a staff of diplomats, parliamentarians, human rights activists and attorneys, IILHR has a strong track record of implementing successful programs that help local partners strengthen support for human rights and the rule of law. Members of IILHR's staff have participated in legal, legislative and civil society capacity-building programs in the Middle East, South Asia, Africa, and Central and Eastern Europe.

IILHR has been a strong, supportive presence in Iraq since July 2005. It collaboratively engages with leaders of both Iraqi government and civil society to strengthen approaches to human rights issues by a) supporting the development of draft legislation and policies; b) working to enact legislation and policies; c) helping local partners in and out of government to develop the capacity to advocate about specific issues as well as to assess, develop and draft legislation; and d) building consensus on priorities, tactics and strategies for achieving stronger systems of law and human rights protection.

Examples of IILHR's work include extensive participation in drafting more than 70 different legal memoranda that analyze discrete legislative and constitutional issues. IILHR has also provided commentary on draft legislation related to Women's Care, the establishment of the Human Rights Commission, Social Services development, Freedom of Information, Minority Rights, NGO registration, enabling legislation for the Higher Judicial Council and Federal Supreme Court, as well as other topics.

Currently, IILHR actively supports human rights in Iraq through several ongoing government and civil society initiatives. This work includes gender and minority projects, as well as collaboration on a draft law on domestic violence, a draft law on anti-discrimination, and publication of two books assessing Iraq's legal framework from a gender and a minority perspective: *Women and the Law in Iraq* and *Minorities and the Law in Iraq*. IILHR is also undertaking rule of law and justice projects, including a program on safeguarding and protecting judicial archives and records throughout Iraq.

IILHR has also worked since 2007 to advise and mentor the development of the Iraqi Human Rights Commission as an institution that will protect and support the human rights of Iraqi citizens. This work includes supporting the Committee of Experts and the Commissioner selection process by providing research and advice on international best practices, as well as supporting the capacity, resources, and work of the Commission now that it has been established.

SECTION 1: BUILDING A LEGAL AND REGULATORY FRAMEWORK: THE PARIS PRINCIPLES AND LAW 53

The Paris Principles Relating to the Status of National Institutions (The Paris Principles) were adopted by the United Nations General Assembly in 1993. The Paris Principles establish the minimum criteria national human rights institutions (NHRIs) must meet in order to operate effectively and be considered credible under international standards. Specifically, the Paris Principles identify six criteria for functional and effective NHRIs. These include:

- (1) A **clearly-defined and broad-based mandate** based on universal human rights standards;
- (2) **Autonomy** from government;
- (3) **Independence** guaranteed by enabling legislation or the state's constitution;
- (4) **Pluralism** in membership, meaning a broad reflection of society;
- (5) **Adequate resources**; and
- (6) **Adequate powers of investigation.**¹

These guidelines were identified through the coordinated efforts of representatives of national human rights institutions from around the world to define the fundamental elements that all human rights institutions should possess in order to operate effectively and legitimately.

(1) A Clearly-Defined and Broad-Based Mandate

Article 2 of the Paris Principles states that “a national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.”²

A broad mandate should thus involve the ability to provide opinions and recommendations on:

- Provisions relating to legislative, administrative, or judicial functioning;
- The general situation of human rights in the country; and
- Violations of human rights in any part of the country.

A broad mandate would also include the power to:

- Encourage the alignment of national legislation and practice with international human rights standards;

¹ Principles relating to the Status of National Institutions (the Paris Principles), G.A. Res. 134, UN GAOR, 48th Sess., 85th mtg., U.N. Doc A/RES/48/134 (1993); [hereinafter Paris Principles]; See also, Asia Pacific Forum, Paris Principles, <http://www.asiapacificforum.net/members/international-standards>.

² *Id.* at art. 2.

- Recommend on the ratification and implementation of international human rights instruments;
- Contribute to the country's human rights reports;
- Cooperate with international human rights bodies and other national institutions;
- Develop human rights-based educational curriculum; and
- Promote a culture of human rights and non-discrimination.

To this end, the Iraqi High Commission for Human Rights is strongly aligned with the Paris Principles. Article 102 of the Iraqi Constitution provides for an independent human rights commission and Law 53 of 2008 establishes the High Commission for Human Rights with a broad mandate and wide range of responsibilities including the power to:

- Conduct studies and research, and submit recommendations to promote human rights;³
- Examine legislation in force for compliance with the Constitution and submit recommendations to the Council of Representatives;⁴
- Submit proposals regarding Iraq's accession to international human rights treaties and conventions;⁵
- Coordinate with civil society, international and national organizations, and other relevant bodies to promote human rights and educate the public;⁶
- Develop human rights-based educational curricula and host conferences, symposiums and other events designed to spread a culture of human rights;⁷
- Submit recommendations regarding reports for the United Nations;⁸
- Submit reports to the Council of Representatives regarding the human rights situation in Iraq;⁹
- Conduct investigations of prisons and detention centers and report on the human rights situation therein;¹⁰ and
- Receive and investigate complaints of human rights violations and initiate lawsuits where appropriate.¹¹

(2) Autonomy from Government

The concept of autonomy from Government is strongly linked with the concept of independence. Though an NHRI is created by a state act and is accountable to the state through the issuance of annual or other reports, **the Paris Principles require that an**

³ *Iraqi Law No. 53 (2008)*, art. 4(2).

⁴ *Id.* at art. 4(3).

⁵ *Id.* at art. 4(4).

⁶ *Id.* at art. 4(5).

⁷ *Id.* at art. 4(6).

⁸ *Id.* at art. 4(7).

⁹ *Id.* at art. 4(8).

¹⁰ *Id.* at art. 5(5).

¹¹ *Id.* at art. 5.

NHRI cannot be subject to interference by the state, either through the inappropriate use of funding as a bargaining chip, or through the exertion of political pressure on senior or other officials. The Paris Principles recommend that links between an NHRI and the state should be through the Parliament rather than the Executive. Furthermore, the protection of an NHRI's autonomy can best be achieved through a series of structural and procedural factors that may be delineated in enacting legislation or put in place by the NHRI itself.¹²

Structural and procedural factors that protect the principle of autonomy include:

- A broad mandate to promote and protect human rights set out in legislation;
- Appointment of members effected by official act and of specific duration (preferably longer than two years);
- Appointment process designed to protect pluralism and mitigate political influence;
- Conditions for dismissal delineated in legislation;
- Government participation limited to advisory role;
- Reporting directly to Parliament rather than Government;
- Funding not subject to control that might affect independence;
- Budget drawn up by the NHRI and separate from any Government Department's budget;
- Public dissemination of NHRI reports and proceedings;
- Regular meetings; and
- Regional or local offices.¹³

Again, Law 53 of 2008 establishes strong structural and procedural protections of autonomy, but the BoC must strengthen autonomy and independence through the development of bylaws, codes of conduct, organizational structure, and reporting and publication procedures. Law 53 requires the Government to provide adequate funding, mandates that the HCHR reports to the Council of Representatives rather than the Government; prohibits political affiliation among Board members, and puts the HCHR in charge of its own budget. Additionally, Commissioners are given four (4) year tenures and criteria for dismissal are clearly established under the Law. However, Law 53 does not lay out the organizational structure of the HCHR, nor procedures for publication of reports or recommendations. These issues should be addressed in HCHR bylaws and regulations.

(3) Independence Guaranteed by Enabling Legislation or the State Constitution

¹² UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions, (December 2010), <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>, [hereinafter UNDP-OHCHR NHRI Toolkit]

¹³ *Id.*

The independence of an NHRI is tied to its enacting legislation and the “sphere of competence” delineated therein. The Paris Principles require an NHRI’s jurisdiction to be established in the Constitution or enacting legislation because (a) it enhances the commission’s permanence as an institution since its mandate cannot be altered or withdrawn by a simple executive order; and (b) it enhances the commission’s independence since it removes fear that the mandate may be altered or withdrawn.¹⁴

In practice, an NHRI is independent where it is able to operate its day-to-day functions without outside influence—political, financial, or otherwise. Under the Paris Principles, financial independence means funding is sufficient to allow the NHRI to have its own staff and premises. Independence can also be achieved by clarifying, under legislation, the appointment and dismissal processes for Commissioners based on specific criteria. These processes should include the importance of pluralism, input from civil society, methods of appointment, dismissal processes, and term duration.

Under Law 53, independence is protected in several important ways, but threats to independence exist and must be addressed in bylaws and regulations. For example, Law 53 requires funding allocations for the HCHR out of the state budget, but does not require that funding be “adequate” for the effective operations of the Commission. Additionally, though the appointment process includes an Expert Committee with Civil Society and international representation, the particular methods of appointment leave room for inappropriate political influence in the Commissioner Selection Process. Finally, though term limits and dismissal procedures are established under Law 53, the Law is silent as to the number of terms a Commissioner may serve. The BoC is well advised to develop bylaws and regulations that address these issues and establish standard procedures that would mitigate outside influence, protect financial security, and specify Commissioner term limits.

(4) Pluralism in Membership

Pluralism in membership means a broad reflection of society. The Paris Principles require that the composition of an NHRI and the appointment of its members should be established according to procedures that “ensure the pluralist representation of the social forces within civilian society involved in the protection and promotion of human rights.”¹⁵ **The purpose of pluralism is to enhance the effective collaboration between the NHRI and civil society, as well as government bodies.** Additionally, pluralism can enhance independence, credibility, and effectiveness. Though each sector in a highly diverse society may not be represented in an NHRI, the overall structure should ensure access and interaction with all aspects of society and particularly with vulnerable

¹⁴ *Id.*

¹⁵ The Paris Principles, *supra* note 1.

groups.¹⁶ Furthermore, pluralism should be reflected not only in the Board of Commissioners, but also in the NHRI's work and the human rights issues on which it chooses to focus.

Under Law 53, pluralism is ensured in several ways. First, Law 53 establishes a quota requirement on the Board of Commissioners for women and minority members. Article 8 requires that the BoC consist of at least one-third females (meaning at least four original members), and minority representation of not less than one original member and one reserve. Second, the Committee of Experts selected to nominate candidates for Commissioner include civil society representatives. Third, the HCHR is required to coordinate with civil society organizations working on human rights in Iraq, international organizations, the Council of Representatives, and the Government in order to obtain information and design mechanisms to protect and promote human rights.

These protections will serve to protect pluralism within the HCHR, but the BoC will need to implement bylaws and regulations that go further. For example, Law 53 does not explicitly require considerations of plurality and diversity in staffing decisions. As the BoC develops staffing regulations, mechanisms to enhance the representation of qualified women, minorities, and other vulnerable groups within the HCHR staff should be established.

(5) Adequate Resources

An NHRI's financial autonomy is critical to its independence and autonomy. Without adequate and secure resources, an NHRI's ability to investigate and report on human rights violations will be crippled. A system wherein the NHRI prepares its own budget and submits it to Parliament for defense and approval is preferable to placing budgetary control and decision-making under a ministry. Additionally, an NHRI's funding should be secure in that it cannot be arbitrarily diminished during the period for which it is approved. This standard is critical to ensuring that an NHRI will not be punished financially for taking a critical stance against the government.¹⁷

Specifically, for an NHRI to have adequate resources, the following criteria should be met:

- Financial resources provided by the state should be sufficient to ensure an NHRI has its own independent staff and premises;
- The budget should be drawn up by the NHRI itself and submitted to Parliament rather than the Government;
- The budget should be separate from any Governmental Department's budget;
- The budget should not be subject to control which might affect independence; and

¹⁶ UNDP-OHCHR Toolkit for Collaboration with National Human Rights Institutions, (December 2010), <http://www.ohchr.org/Documents/Countries/NHRI/1950-UNDP-UHCHR-Toolkit-LR.pdf>.

¹⁷ *Id.*

- The budget should not be subject to arbitrary reduction in the year for which it is approved or from one year to the next.¹⁸

Law 53 provides some protections for the financial autonomy of the HCHR, but the BoC will need to ensure it secures and maintains outside financial resources, and engages in financial management practices that protect the institution's independence. For example, though Article 14 ensures that HCHR funding will consist of allocations in the state budget, it does not require that funding will be "adequate" for the effective functioning of the Commission. The Law also does not prohibit the arbitrary reduction of the budget within a fiscal year or from year to year.

The BoC may wish to develop a Memorandum of Understanding or other agreement with the Parliament to protect against these risks. However, Law 53 does allow the HCHR to seek outside funding. This allows the Commission to supplement funding from the State with support from international donors and other groups, with CoR approval. Engagement with international donors will require the establishment of a directorate or sub-committee within the Commission to coordinate monitoring and evaluation requirements and donor relations.

(6) Adequate Powers of Investigation

Finally, the Paris Principles provide that, within the framework of its operations, an NHRI can freely consider any question falling within its competence whether submitted to it or taken up by it without reference to a higher authority. Additionally, NHRI's should be able to "hear any person and obtain any information and obtain any documents necessary for assessing situations falling within its competence."¹⁹ This suggests an NHRI should be able to hear from victims of human rights violations, their representatives, and from third parties, and that it can carry out its own investigations and inquiries. Additionally, an NHRI should be able to utilize information obtained through these investigations in forming opinions, recommendations, and reports on the human rights situation in its country, assuming appropriate measures have been taken to protect the privacy of individuals involved.

Law 53 of 2008 provides for strong powers of investigation for the HCHR, and requires government institutions to provide necessary documentation and information upon request. Article 4(2) empowers the HCHR to conduct studies and researches, and to submit recommendations and express opinions on issues related to the promotion and development of human rights. This is a broad scope of authority.

Article 5 expressly grants the HCHR the power to receive and investigate complaints from individuals, groups and civil society for human rights violations committed before and

¹⁸ *Id.*

¹⁹ The Paris Principles, *supra* note 1, Methods of Operation.

after the enactment of the Law. This information may be used to initiate lawsuits or refer cases to the Public Prosecutor. It remains unclear to what extent the HCHR may use the information collected through investigation to participate in *sub judice* cases, but the authority to intervene is implied in the broad mandate granted the institution under Law 53.

Finally, Law 53 states that “ministries, bodies not associated with ministries and all independent commissions must provide documents, data, statistics and information related to the work and functions of the HCHR on a specified date.” Where institutions do not comply with request, the HCHR shall inform the Council of Representatives. This requirement helps to protect the HCHR’s access to information held by the Government, but does not delineate specific enforcement mechanisms, such as penalties for non-compliance. It is unclear what authority the CoR has to compel compliance by ministries, other than calling for an investigation under authorities granted in the Constitution. The BoC is advised to develop mechanisms to facilitate information sharing with the various ministries, and perhaps seek a Memorandum of Understanding with the Council of Ministers, or develop a coordinating committee within the Council of Ministers, to facilitate relations.

SECTION 2: THE COMPOSITION OF THE HCHR

2.1 Overview

- As a foundational issue, the Board of Commissioners must determine which HCHR policies and procedures should be developed by the BoC itself, and which regulations should be left to directorates or committees to develop.
- The HCHR may consider establishing approximately six functional directorates to facilitate the work of the Commission, as well as "thematic" directorates focused on supporting specific human rights issues.
- The Office of Inspector General, as required under Law 53, should be semi-autonomous within the HCHR, serve beside the Board of Commissioners, and imbued with the authority to audit all HCHR institutions, including the BoC.
- Establishing governorate and regional offices is crucial to ensuring the protection of ethnic and religious diversity within Iraq, and is required under Law 53.

Defining the composition of an NHRI is of key importance primarily because its organizational infrastructure can help assure its independence and pluralism.²⁰

Without a standardized and documented system of regulations on composition and organization, the HCHR's independence can be compromised through increased executive control²¹ or the politicization of Commissioners. Additionally, documented regulations lend transparency to an otherwise complicated system, thus assisting to increase the legitimacy of the institution as well as enhance public trust and understanding.

Clear regulations governing the composition of the Iraqi High Commission for Human Rights should include:

- Policies regarding the appointment and authority of special offices, such as Chair and Deputy Chair Commissioners, the Executive Secretary, and the Office of Inspector General;
- Rules governing the establishment and authority of the Board of Commissioners, Sub-Commissions or Committees, and Working Groups;
- An organogram delineating organizational infrastructure; and

²⁰ Centre for Human Rights, NATIONAL HUMAN RIGHTS INSTITUTIONS: A HANDBOOK ON THE ESTABLISHMENT AND STRENGTHENING OF NATIONAL HUMAN RIGHTS INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS [hereinafter Center for Human Rights UN HANDBOOK], UN Training Series No. 4, at para. 82 (1995).

²¹ Anne Smith, *The Unique Position of National Human Rights Institutions: A Mixed Blessing?* 28 Hum. Rts. Q. 904, 924-25 (2006).

- A system for establishing, monitoring, and coordinating with Regional and Governorate Offices.

As such, appointment and dismissal processes must be transparent and politically neutral.²² Additionally, **institutional infrastructure should reflect considerations such as capacity, efficiency, effectiveness, and access.** The Paris Principles state that an NHRI should establish organizational infrastructure “suited to the smooth conduct of its activities....” An important element of this organizational infrastructure is the establishment of working groups and regional and governorate offices “to assist [the NHRI] in discharging its functions.”²³

While the Executive branch of government should not be involved in developing regulations on composition and infrastructure, increased transparency and neutrality can be garnered through the involvement of civil society and other stakeholders, and input from these groups should be encouraged.²⁴

This section will consider the composition of the Iraqi High Commission for Human Rights based on the requirements of Law 53 and the needs of an effective NHRI within Iraq. Specifically, it will examine the establishment and jurisdiction of special offices, as well as the organizational infrastructure of the Commission, including functional bodies and regional and governorate offices. A model structural organogram is provided.

2.2 Key Recommendations

(A) The Board of Commissioners and Offices

Under Law 53, the Board of Commissioners, which includes the Chairperson and Deputy Chairperson, has a broad scope of authority. **As a foundational issue, the Board of Commissioners must determine which HCHR policies and procedures should be developed by the BoC itself, and which regulations should be left to directorates or committees to develop.**

Topics that should, at a minimum, be addressed directly by the BoC include:

- BoC Rules of Procedure;
- Complaints Handling Procedures;
- Budget Management and Reporting Regulations;
- Chairperson and Deputy Chairperson Terms of Service and Duration of Appointment;
- Duties and powers of the Executive Secretary and the Secretariat;

²² *Id.* at 923.

²³ *Id.*

²⁴ *Id.*

- The structure and scope of Directorates, Committees, Working Groups, and Supporting Units;
- Staffing Regulations, including recruitment, remuneration, and terms of service;
- Duties, functions, and authorities of the Office of Inspector General; and
- Establishing Regional and Governorate Offices, including scope of authority, functions, duties, and reporting mechanisms.

Topics that may be regulated by Committees, Directorates, or other internal HCHR bodies include:

- Media Relations Policies;
- External Relations Policies with CSOs and governmental organizations;
- Rules of Procedure for the Office of Inspector General;
- Rules of Procedure for individual Directorates, Committees, and Working Groups; and
- Accounting and Financial Policies.

(B) Organizational Infrastructure

- In alignment with common practice in Iraqi institutions and to facilitate the work of the Commission, the HCHR may consider establishing approximately six (6) directorates to facilitate the work of the Commission:
 - Directorate of Research, Education & Documentation;
 - Directorate of Monitoring & Inspections;
 - Directorate of Legal Affairs & Legislative Development;
 - Directorate of Complaints & Investigations;
 - Directorate of Regional and Governorate Services; and
 - Directorate of Finance & Administration.
- The HCHR may also consider establishing thematic units under the Directorates to support the Commission in protecting and promoting particular human rights, and to uphold the protections enumerated in the Constitution and international instruments to which Iraq is a party. For example, under the Directorate of Monitoring & Inspections, the HCHR may establish:
 - a Minority Rights Unit;
 - a Rights of Women and Children Unit;
 - a Rights of the Disabled Unit;
 - a Detention Centers Unit;
 - a Right to Health Unit; and
 - a Rights of the Elderly Unit.
- The Directorate of Regional and Governorate Services may be tasked with overseeing and coordinating with Regional and Governorate Offices, and reporting to the Secretariat and the Board of Commissioners.

- The Human Resources Unit may logically fall under the auspices of the Finance and Administration Directorate.
- Under the Secretariat, additional working units could be developed to facilitate the operational side of the HCHR. These may include, for example:
 - a Resource Center;
 - a Public Affairs and External Relations Unit;
 - a Procurement Unit, and
 - an Information Technology Unit.
- To facilitate oversight and efficient operations, the Secretariat and Office of the Registrar may answer directly to the Board of Directors and oversee the workings of all Directorates.
- Ad Hoc Committees, Special Working Groups, and Special Units may also fall directly under the purview of the Board of Commissioners.
- The Office of Inspector General, as dictated under Law 53, should be semi-autonomous within the HCHR, serve beside the Board of Commissioners, and be imbued with the authority to audit all HCHR institutions, including the BoC.

2 (A) The Board of Commissioners and Offices

i. Overview

Law 53 establishes a governing body for the HCHR composed of 11 Commissioners nominated by the Committee of Experts and approval by the Council of Representatives. The Board of Commissioners, during its first session, is required through secret ballot and by the majority of its members, to elect a Chairperson and Deputy Chairperson from among its members.

As the governing body of the HCHR, the BoC is obligated to fulfill a number of specific managerial functions under the Law with the aim of advancing the Commission's mandate, and ensuring its effective and efficient functioning. However, beyond the obligations enumerated in Article 12 of Law 53 (see below), and the authority of the Chairperson to act as the legal representative of the HCHR and a tiebreaker during BoC voting, Law 53 leaves many of the authorities and duties of the BoC undefined.

The BoC must therefore consider and clarify the relative roles of the Chair, Deputy Chair, and rest of the BoC members, including the scope and limits of authority, terms of service, and whether particular authorities are delegable.

2(A)(i) Board of Commissioners

i. Overview

Members of the Board of Commissioners not holding the position of Chairperson or Deputy Chairperson constitute the Plenary Assembly of the Commission. The positions of Chairperson and Deputy Chairperson are special offices. Together, the 11 Commissioners form the Board of Commissioners.

Though Law 53 prescribes many of the duties the BoC must perform and requires the establishment of regulations, several issues not addressed in the Law should be considered by the BoC for regulation. **Some policies, such as those governing complaints procedures and budgets, as well as the establishment of sub-committees, should be established by the BoC itself due to the sensitive and complex nature of the procedures.**

Other topics, such as external relations or media policies, may be developed by directorates, sub-committees or other internal bodies and submitted to the BoC for approval. Questions of what topics rise to the level of direct BoC development, and what may be drafted by other bodies within the HCHR should be discussed by members of the BoC.

Topics that should be addressed by the BoC in addition to requirements under Law 53 may include:

- 1. Incorporating a “catchall provision” within the Bylaws allowing for future consideration of unanticipated issues;**
- 2. Establishing deadlines for the development of annual reports and budgets;**
- 3. Adopting written and comprehensive Complaints Procedures;**
- 4. Creating mechanisms for establishing Regional Offices;**
- 5. Developing procedures for establishing Sub-Committees and Ad Hoc Committees; and**
- 6. Developing a Code of Conduct or Code of Ethics to be signed and adhered to by all Commissioners and HCHR staff.**

By considering and documenting procedures to govern the above issues, the BoC would assist the functioning of the HCHR and improve its transparency and efficacy.

ii. Law 53 Parameters

The BoC established and defined in Article 8 of Law 53 creates two leadership positions, with the remaining Commissioners constituting a Plenary Assembly. The BoC consists of eleven Commissioners initially selected by the Committee of Experts and approved by the Council of Representatives. From among these eleven Commissioners, a Chair and a Deputy Chair must be elected by majority vote in a secret ballot during the first session of

the BoC.²⁵ The remaining nine Commissioners then constitute the Plenary Assembly, which retain duties and responsibilities outlined under Law 53, as well as any additional responsibilities established by the BoC within its bylaws, rules, and regulations.

iii. Comparative Models

A board of commissioners is usually charged with:

- Writing and adopting the NHRI's annual work plan;
- Conceiving, debating and approving the annual report to the Parliament or Government;
- Modifying bylaws;
- Drafting the annual budget;
- Proposing modifications to the establishing law; and
- Approving meeting minutes.²⁶

Day to day activities and work on particular human rights topics are often carried out by directorates, sub-committees (or sub-commissions) or working groups rather than the board of commissioners itself.

Though many NHRI establishment laws, including that of Iraq, articulate specific duties of the board of commissioners, novel issues often arise that the board must consider and address. **Algeria**, for example, has a catchall provision that allows its board to consider any matter of competence not addressed in the rules. The Algerian BoC may debate, these matters and pass them in the same manner as the rules.²⁷ **India** has a similar provision which allows its board to lay down its own procedures through regulations.²⁸

The duties specifically allocated to the Iraqi BoC in Law 53 include:

- Establishing bylaws approved by a two-thirds majority which define the divisions, functions and compositions of the organizational structure of the HCHR;²⁹
- Establishing the Office of Inspector General;³⁰

²⁵ *Iraqi Law No. 53 (2008)*, art. 8(3).

²⁶ See e.g., *Republic of Indonesia Legislation No. 39 (1999)*, art. 79(3) ("The Plenary Council determines the Rules and Regulations, Work Program and Work Mechanism of the National Commission on Human Rights.") [hereinafter *Indonesia Law No. 39*]; *Annexe au Décret Présidentiel n.02-47 du 16 janvier 2002, Règlement intérieur de la Commission nationale consultative de promotion et de protection des droits de l'Homme [Annex to Presidential Decree n. 02-47: Internal Regulations of the National Human Rights Commission]*, JOURNAL OFFICIEL DE LA RÉPUBLIQUE ALGÉRIENNE [OFFICIAL GAZETTE OF ALGERIA], art. 11, [hereinafter *Algeria Regulations*].

²⁷ *Algeria Regulations*, supra note 26, art. 48 ("Toute question entrant dans la compétence de l'assemblée plénière de la Commission non expressément réglée par une disposition du présent règlement intérieur fera l'objet d'une délibération de ladite assemblée plénière.").

²⁸ *The Protection of Human Rights Act (India) 1993*, art. 10.2 ("Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down by regulations its own procedure."), [hereinafter *India Human Rights Act*].

²⁹ *Iraqi Law No. 53 (2008)*, art. 11(1).

- Establishing regulations governing the special service and recruitment of HCHR employees (both staff and executive directors; in Baghdad and the regions and governorates), including conditions for remuneration and discharge;³¹
- Supervising and monitoring all HCHR activities;³²
- Making necessary decisions and recommendations on programs, laws, and policies aimed at preventing human rights abuses and Constitutional violations;³³
- Researching and reporting on human rights conditions within Iraq,³⁴ including annual reports to the CoR as well as special reports as necessary;³⁵
- Proposing and submitting the HCHR's budget.³⁶

2(A)ii Chairperson and Deputy Chairperson

i. Overview

The offices of Chairperson and Deputy Chair serve important leadership positions within the Board of Commissioners and the HCHR as a whole. The two leaders will be ultimately responsible for the work of the HCHR and for guiding the decision-making processes within the BoC. While Law 53 provides a strong foundation in identifying specific areas of authority for these two offices, as well as terms and procedures for discharge, the Law is silent on several important issues that must be clarified.

Therefore, the BoC should, within its bylaws, define and clarify the powers and duties of the Chairperson and Deputy Chair. These powers may include, for example:

- Representing the HCHR to national and international bodies;
- Monitoring adherence to the HCHR's bylaws and ensuring that activities undertaken by the HCHR are consistent with its goals and missions;
- Monitoring progress on the HCHR work plan;
- Opening and closing plenary meetings, ruling on motions, and maintaining order;
- Authenticating orders and decisions of the HCHR with the official seal or delegating that power to the Deputy Chair, Executive Secretary or other Officer;
- Coordinating administrative work with the help of the Executive Secretary;
- Serving as the legal representative of the HCHR or delegating such power as appropriate; and
- Bringing law suits as necessary on behalf of the HCHR.

³⁰ *Id.* at art. 11(2).

³¹ *Id.* at art. 12(6) & (7); Art. 13(1).

³² *Id.* at art. 12(1).

³³ *Id.* at art. 12(3).

³⁴ *Id.* at art. 12(2).

³⁵ *Id.* at art. 12(4).

³⁶ *Id.* at art. 12(5).

The BoC should also determine and clarify which authorities of the Chair and Deputy are delegable (such as the serving as legal representative), and how they are altered in emergencies or absences.

Additionally, the BoC may wish to clarify the duration of the term for each Office and, if such term is less than the four year term for a Commissioner, whether a particular individual can serve more than one term.

Finally, the BoC may want to consider entrenching gender, ethnic and religious diversity in the Commission's leadership roles.

ii. Law 53 Parameters

Article 8(3) of Law No. 53 states that, "during its first session, the BoC shall, through secret ballot and by the majority of its members, elect the chairperson and his deputy from among its members." As such, the law establishes the special offices of Chairperson and Deputy Chair within the BoC, and dictates appointment procedures for both offices.

Article 8(7) notes that the Chairperson is the legal representative of the HCHR, but does not clarify whether the power to represent the HCHR in official capacities may be delegated.

Article 8(6) states that the term of a BoC member is four years, but does not clarify whether second terms may be sought through election or appointment. Article 15(3) specifies that the Chairperson and members of the BoC may be discharged from his or her position through a majority decision taken by the Council of Representatives for several listed reasons,³⁷ However, this article does not specify term duration or term limits for the Chairperson or Deputy Chairperson.

iii. Comparative Models

Given Law 53's silence as to the duration of the term for both the Chairperson and Deputy Chair, and the number of terms an individual may serve, consideration of comparative examples may prove useful. In **Kenya**, for example, the NHRI establishment law states that "unless the appointment of the chairperson or a commissioner is earlier terminated under this Act, a person appointed as the chairperson or as a commissioner shall hold office for a term of five years from the date of appointment and shall be eligible for re-appointment for one further term of a period not exceeding five years."³⁸

³⁷ *Iraqi Law No. 53 (2008)*, art. 15(3) (The Chairperson shall be discharged from his position through a decision taken by the Council of Representatives by absolute majority upon the request of the BoC for one of the reasons mentioned in Article 15/First of this Law.").

³⁸ *Kenya National Commission on Human Rights Act of 2002*, (No.9/2002) (Kenya), art. 9, [hereinafter *Kenya Act*].

Under Law 53 in Iraq, membership to the Board of Commissioners is limited to a term of four years.³⁹ Regulation regarding duration of appointment for the Chair and Deputy Chair could establish a single term of four years, or a term of two years with the possibility of reelection to a second term of two years. **Terms of two-year intervals with the possibility of reelection to a second term may provide more flexibility in leadership and an opportunity to make adjustments, whereas a single term of four years could provide consistency and afford the Chair and Deputy greater ability shape and manage the work of the HCHR.**

Regarding duties of the Chair and Deputy Chair, in most NHRIs the Chairperson is tasked with leading the work of the Board of Commissioners and the Secretariat,⁴⁰ while the Deputy Chair assists the Chairperson and substitutes for the Chairperson in his or her absence. The types of tasks typically delegated to the Chairperson include:

- Representing the NHRI to national and international bodies;⁴¹
- Monitoring adherence to the NHRI's bylaws⁴² and ensuring that activities undertaken by the NHRI are consistent with its goals and missions.⁴³
- Monitoring progress on the NHRI work plan;⁴⁴
- Opening and closing plenary meetings, ruling on motions, and maintaining order;⁴⁵

³⁹ *Iraqi Law No. 53 (2008)*, art. 8(6)

⁴⁰ See e.g., *Algeria Regulations*, *supra* note 26, art. 21.1 ("Le président de la Commission a pour attributions de . . . diriger les travaux de l'assemblée plénière et du bureau de la Commission"); *Morocco Dahir No. 1.00.350 of 10 April 200*, (Morocco), art. 3 ("The Council shall be made up of the Chairman and, at the most, forty-four members habilitated to speak and vote.") [hereinafter *Morocco Act*]; Décret Présidentiel n° 2004-657 of 2 Juin 2004 [Sénégal], art. 6 ("Le Haut Commissariat est dirigé par un Haut Commissaire nommé par décret.") [hereinafter *Sénégal Decree*].

⁴¹ See e.g., *Algeria Regulations*, *supra* note 26, Art. 21. 7 ("Le président de la Commission a pour attributions de . . . représenter la Commission auprès des autorités et institutions nationales et internationales"); *Règlement Intérieur du Conseil Consultatif des Droits de l'Homme n° 5204 du 15 avril 2004* [Internal Regulations of the National Human Rights Council], LE BULLETIN OFFICIEL DE LA REPUBLIQUE MAROCAINE [OFFICIAL BULLETIN OF MOROCCO], art 12 ("Le Président représente le Conseil vis-à-vis des autorités et organismes nationaux et internationaux ; il est l'interlocuteur et le porte-parole officiel du Conseil.") [hereinafter *Morocco Regulations*].

⁴² See e.g., *Algeria Regulations*, *supra* note 26, Art. 21. 7 ("le président de la Commission a pour attributions de . . . veiller . . . au respect de l'application du règlement intérieur").

⁴³ *New Zealand Human Rights Act No. 82 of 1993*, (New Zealand), Art. 15(1)(b), (" . . . to ensure that activities undertaken in the performance of the Commission's functions are consistent with the strategic direction and other determinations of the Commission under section 7"), [hereinafter *New Zealand Act*].

⁴⁴ See e.g., *Algeria Regulations*, *supra* note 26, Art. 21.2 ("Le président de la Commission a pour attributions de . . . veiller à l'exécution du programme d'action . . ."); *Décret n° 2009-1767 du 9 juin 2009, relatif à l'approbation des règles d'organisation du comité supérieur des droits de l'Homme et des libertés fondamentales et des modalités de son fonctionnement et gestion, et de son règlement intérieur* (Tunisia) [Decree n. 2009 – 1767 of June 9 2009 related to the Organization rules of the National Committee of Human Rights (Tunisia)], art. 2 ("Le président du comité supérieur des droits de l'Homme et des libertés fondamentales est chargé de veiller à la mise en oeuvre des missions du comité.") [hereinafter *Tunisia Regulations*]

⁴⁵ See e.g., *Algeria Regulations*, *supra* note 26, Art. 21.1 ("Le président de la Commission a pour attributions

- Authenticating orders and decisions of the NHRI⁴⁶ with the official seal⁴⁷ (In some Commissions, authentication may also be accomplished by the Executive Secretary and any member authorized to do so by the Chairperson);⁴⁸
- Coordinating administrative work with the help of the Executive Secretary;⁴⁹
- Serving as the legal representative of the NHRI;⁵⁰ and
- Bringing law suits as necessary on behalf of the NHRI.⁵¹

Within Iraq, the **Independent High Electoral Commission (IHEC)** provides additional insight into potential responsibilities of the Chairperson. Under Section 7 of the IHEC Bylaws, the duties of the Chair and Deputy Chair include:

- Being the legal representative of the Commission (Law 53 also makes the HCHR Chairperson the legal representative);
- Managing the administration and organization of the BoC by arranging and chairing meetings;
- Acting with the authority of a minister regarding official letters with other ministries and official institutions;

de . . . diriger les travaux de l'assemblée plénière et du bureau de la Commission; il prononce l'ouverture et la clôture de chaque session de l'assemblée plénière. Il statue sur les motions d'ordre et propose l'ajournement ou la clôture du débat ainsi que la suspension ou la levée d'une séance. Les débats portent uniquement sur les questions inscrites à l'ordre du jour. Le président peut rappeler à l'ordre un membre dont les remarques n'ont pas trait au sujet en discussion.”).

⁴⁶ See e.g., *Kenya Act, supra* note 38, art. 14(6) (“All orders and decisions of the Commission shall be authenticated by the Chairperson or the Secretary or any other commissioner authorized in writing by the chairperson in that behalf”).

⁴⁷ *Human Rights Commission Act* (Act No. 9/2000) (Ireland), art. 21.1 (“(1) The Commission shall, as soon as practicable after its establishment, provide itself with a seal which shall be authenticated by the signatures of the President, or some other member of the Commission authorised by it to act on its behalf, and of an officer of the Commission authorised by it to act in that behalf. (2) Judicial notice shall be taken of the seal of the Commission and any document purporting to be an instrument made by the Commission and to be sealed with the seal (purporting to be authenticated in accordance with subsection (1)) of the Commission shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.”) [hereinafter *Ireland Act*]; *Nepal Human Rights Commission Act of 1997* (Nepal), art. 3.6, (“The Commission shall have a separate seal of its own.”) [hereinafter *Nepal Act*]; *Kenya Act, supra* note 38, art. 14 .7 (“The common seal of the Commission shall be kept in such safe custody as the Commission may direct and shall not be used except on the order of the Commission.”)

⁴⁸ See e.g., *Kenya Act, supra* note 38, art. 14.6 (“All orders and decisions of the Commission shall be authenticated by the Chairperson or the Secretary or any other commissioner authorized in writing by the chairperson in that behalf”); *National Human Rights Commission (Procedure) Regulations, 1994* [India], (1 March 1994), art. 13.1, (“Orders and decisions of the Commission shall be authenticated by the Secretary-General or any officer of the Commission (authorised by the Chairperson) not below the rank of an Under Secretary.”) [hereinafter *India Regulations*].

⁴⁹ See e.g., *Algeria Regulations, supra* note 26, art. 21.4 (“Le président de la Commission a pour attributions de . . . orienter et coordonner les travaux des structures administratives avec l'assistance du secrétaire general”); *Ireland Act, supra* note 47, art. 13.1.

⁵⁰ See e.g. *Iraqi Law No. 53 (2008), art. 8(7)*.

⁵¹ *Algeria Regulations, supra* note 26, Art. 21.8 (“Le président de la Commission a pour attributions de : . . . ester en justice”).

- Informing the BoC of all of his or her activities with other ministries and official institutions in order to seek official certification for such activities;
- Circulating official letters and other official documentation among the Commissioners and the Secretariat; and
- Performing any other duties the Chairperson is asked to do.⁵²

To improve efficacy, some NHRIs, such as that in Morocco, grant the Chairperson broad authority to delegate his or her powers to members of the Commission when needed, allowing for greater flexibility.⁵³ Under Law 53, the Chairperson's ability to delegate tasks is not prohibited, so the Chair may wish to delegate specific powers and duties as necessary, with this power articulated through bylaws.

The duty of the Chairperson to represent an NHRI internally and externally generally includes spokesperson duties, though the spokesperson may have varying levels of independence. For example, in France, the Chairperson may speak on behalf of the NHRI in cases of emergency, and later send his or her opinion to the other members of the Board of Commissioners for approval and formulation of an official report.⁵⁴ In contrast, in Algeria, the Chairperson may only speak to the press on topics that have previously been discussed by the Board.⁵⁵ In both France and Algeria, the Chairperson may delegate his or her spokesperson duties to any other member of the Commission.⁵⁶

⁵² Iraqi Independent High Electoral Commission, *Rules of Procedure of the Board of Commissioners, No. 1 of the year 2007*, (2007), § 7.

⁵³ *Morocco Regulations*, *supra* note 41, art. 12 ("Le Président peut déléguer au Secrétaire Général le pouvoir de préparer le budget ou d'en être l'ordonnateur ; il peut également déléguer une partie de ses attributions à un ou plusieurs membres du Conseil, après avoir sollicité l'approbation de Sa Majesté le Roi à ce sujet.").

⁵⁴ Decree n°2007-1137 du 26 Juillet 2007 *Relatif à la Composition et au Fonctionnement de la Commission Nationale Consultative des Droits de l'Homme*, (France), art. 8(c), ("En cas d'urgence, liée à des situations d'actualité pressantes ou à des délais trop courts pour un examen à la prochaine assemblée plénière, le président, agissant de sa propre initiative ou sur proposition d'un ou des présidents des sous-commissions, est habilité à adresser à l'autorité concernée une lettre formulant des recommandations ou observations sur le sujet concerné, qu'il s'agisse d'un texte dont la Commission a été saisie ou d'un thème traité en auto saisine. Il consulte le Bureau ainsi que la sous-commission compétente, sauf en cas d'urgence où il ne sollicite que l'avis du président de celle-ci. Il rend compte ensuite à l'assemblée plénière des termes de la lettre émise et de la procédure suivie. Il peut demander à la plus prochaine assemblée plénière d'examiner ces recommandations et observations en vue de les transformer en un avis en forme de la Commission.") [hereinafter *France Regulations*].

⁵⁵ *Algeria Regulations*, *supra* note 26, art. 20 ("Le président de la Commission est le porte-parole de la Commission. A ce titre, il est chargé par l'assemblée plénière de communiquer à la presse nationale et internationale toute déclaration officielle sur un événement ou une situation, ayant fait préalablement l'objet d'une délibération de l'assemblée plénière.").

⁵⁶ *Id.* at art. 20; *see also France Regulations*, *supra* note 54, art. 8(a) ("Le président assure la représentation de la Commission, tant sur le plan national que sur le plan international. Lorsque le président ne peut assister à une manifestation extérieure, il désigne au sein du Bureau, ou parmi les membres, la personne habilitée à le représenter. Cette personne représente la Commission et ne peut, à ce titre, développer son point de vue personnel.").

Northern Ireland outlines specific procedures for when Commissioners who are not the Chairperson are contacted by the media in their private or public capacity:

*Commissioners require the express permission of the [Chairperson] to represent the Commission in dealings with outside individuals or bodies and must report back to the Commission on all such dealings... [and] all communications by Commissioners on behalf of the Commission with the media should be agreed with the [chairperson] or in her/his absence the Chief Executive.*⁵⁷

In many NHRIs, the Chairperson exercises some authority over staff, though this role is often split between the Chairperson and the Executive Secretary. In **Algeria**, the Chairperson exercises direct line authority over the entire staff.⁵⁸ Alternatively, in **South Africa**, the Chairperson may make regulations regarding salaries and terms of service only upon the recommendation of the Commission.⁵⁹ Under Law 53, the BoC is responsible for establishing staffing procedures, including appointment, discharge, and remuneration. The BoC should strongly consider the relevant distribution of responsibility for implementing, monitoring, and adjusting staffing policies among the Chair, the BoC, and the Executive Secretary.

In addition to administrative and leadership duties, the Chairperson and Deputy Chairperson hold important substantive and symbolic roles as well. In Kenya, the bylaws specify that the Deputy Chairperson must be of the opposite gender as the Chairperson.⁶⁰ This may be an important consideration for the entrenchment of gender, ethnic or religious diversity on Iraq's Commission.

⁵⁷ *Northern Ireland Human Rights Commission Code of Governance, Appendix I: Standing Orders for Commission Meetings 2005*, (Northern Ireland), §§ 31 - 33 ("31. Commissioners require the express permission of the Chief Commissioner to represent the Commission in dealings with outside individuals or bodies and must report back to the Commission on all such dealings. 32. When Commissioners are asked by the media to participate in a private capacity, they should ensure that the audience is clear that they are not commenting on behalf of the Commission and that the public comment cannot be seen as compromising their ability to carry out their role within the Commission in an unbiased and apolitical manner. This applies equally where Commissioners are invited in a personal capacity to participate in a conference, seminar, meeting or other external event. 33. The Chief Commissioner is the main media spokesperson for the Commission. In the absence of the Chief Commissioner, her/his designate is authorised to act as spokesperson for the Commission within agreed policy positions. All communications by Commissioners on behalf of the Commission with the media should be agreed with the Chief Commissioner or in her/his absence the Chief Executive or Head of Information, Education and Development. The Head of Information, Education and Development will normally be the main contact for managing media enquiries. S/he will have the main responsibility for managing and evaluating the media") [hereinafter *Northern Ireland Standing Orders*].

⁵⁸ *Algeria Regulations*, *supra* note 26, art. 21.4 ("Le président de la Commission a pour attributions de : . . . (4) exercer le pouvoir hiérarchique sur l'ensemble du personnel").

⁵⁹ *South Africa Human Rights Commission Act No. 54 of 1994*, art. 19, [hereinafter *South Africa Act*].

⁶⁰ *Kenya Act*, *supra* note 38, art. 14.6 5.9 ("The Attorney-General shall, within fifteen days of the appointment of the commissioners, convene the first meeting of the Commission at which the

Finally, bylaws generally include alternate procedures in case of incapacity or absence of the Chairperson and Deputy. In **Tunisia** and **Algeria**, the eldest serving member assumes the duties of the Chair.⁶¹ In **Nepal**, the most senior person replaces the Chairperson.⁶²

2(A)(iii) Executive Secretary and the Secretariat

i. Overview

The BoC should define an Executive Secretary role and establish selection procedures and removal or termination procedures – as well as accountability mechanisms such as annual reporting to the Board of Commissioners and the Office of Inspector General. Important duties and powers to clarify include budget and staff management authority – especially *vis a vis* the Chairperson – as well as the scope of administrative duties.

The Commission may also want to set out the structure and organization of the Secretariat led by the Executive Secretary along the model of Afghanistan, Tunisia, and South Africa through the division of support units that have discreet tasks and accountability. Alternatively the BoC may allow the Executive Secretary to design the Secretariat, pending approval by the BoC.

ii. Law 53 parameters

Law 53 does not require the appointment of an Executive Secretary, but the authority to create such a role is found in the BoC's power to define the structures of the Commission in the bylaws.⁶³ Almost every NHRI examined has some form of an Executive Secretary accountable for administration of the Commission. The BoC is strongly advised to create such an office and establish policies to govern its authorities, responsibilities, and oversight mechanisms.

iii. Comparative Models

commissioners shall elect from amongst their number (a) a chairperson; and (b) a vice-chairperson, who shall be of opposite gender.”).

⁶¹ See e.g., *Algeria Regulations*, Art. 26 (“En cas d'empêchement temporaire subit du président de la Commission, l'intérim sera assuré par le plus âgé des membres du bureau.”); *Tunisia Regulations*, *supra* note 44, art. 2 (“Au cas où le président du comité supérieur est empêché d'assurer ses fonctions il est remplacé par le plus âgé des membres du comité supérieur qui ont le droit de vote.”).

⁶² *Nepal Act*, *supra* note 47, art. 20 (“In the event of leaves or vacancy of the Chairperson, the senior Member of the Commission will conduct as an acting Chairperson for the time of leave or until not to appoint the Chairperson. The remuneration and facilities of the acting chairperson shall be equal of the chairperson for the time of acting period.”).

⁶³ *Iraq Law No. 53* (2008), art. 11(1).

In most NHRIs, the Executive Secretary is tasked with administrative powers and carrying out the functions delegated him or her by the Board of Commissioners.⁶⁴ Usually, the Executive Secretary is a civil servant and not a member of the Commission,⁶⁵ but appointment procedures vary greatly across NHRIs. For example, in **Nepal**, the government, upon the recommendation of the NHRI, appoints the Executive Secretary.⁶⁶ In **Kenya** however, the Commission itself appoints the Secretary.⁶⁷

Similarly, the scope of the Executive Secretary's service varies by institution. **Duties of the Executive Secretary generally include:**

- **Management of staff and administration of the commission;**
- **Preparing the agendas and minutes for meetings;**
- **Authenticating the orders and decisions of the commission;⁶⁸ and**
- **Assuring the publication, archiving, and management of documents.⁶⁹**

Ireland's NHRI has a Chief Executive with a strong financial oversight role rather than a traditional Executive Secretary.⁷⁰ In **Nepal**, the tasks and terms of service of the NHRI Secretary are equal to those of the Secretary of the Government of Nepal.⁷¹ In **Kenya**, the Executive Secretary is responsible for any functions assigned by the Board of Commissioners.⁷²

⁶⁴ See e.g., *Kenya Act*, *supra* note 38, art. 7.1 ("There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions of service as the Commission may determine and shall enjoy a status not less than that of a Permanent Secretary."); *Ireland Act*, *supra* note 47, art. 13.1 ("The chief executive shall manage and control generally the staff, administration and business of the Commission, and shall perform such other functions as may be conferred on him or her by or under this Act or by the Commission.").

⁶⁵ For example, see *Indonesia Law No. 39*, *supra* note 26, art. 81.3. ("The position of Secretary General is held by a Civil Servant who is not a Member of the National Commission on Human Rights."); see also *The Commission for Human Rights and Good Governance Act*, 2001 (Tanzania), art. 11-(1) ("There shall be the Executive Secretary of the Commission who shall be appointed by the President after consultation with the Commission from among persons holding or who have held senior position in the service of the Government.") [hereinafter *Tanzania Act*].

⁶⁶ *Nepal Act*, *supra* note 47, art. 17.2. ("The Secretary shall be appointed by Government of Nepal on the recommendation of the Commission.").

⁶⁷ *Kenya Act*, *supra* note 38, art. 7.1 ("There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions of service as the Commission may determine and shall enjoy a status not less than that of a Permanent Secretary.").

⁶⁸ *India Regulations*, *supra* note 48, art. 14.1 ("Orders and decisions of the Commission shall be authenticated by the Secretary-General or any officer of the Commission (authorised by the Chairperson) not below the rank of an Under Secretary.").

⁶⁹ See *Algeria Regulations*, *supra* note 26, art. 41; *India Regulations*, *supra* note 48, art. 17 ("The Secretariat of the Commission shall be responsible for the printing of the Annual Report and Special Reports with utmost expedition and in any case, not later than one month of finalisation of the same.").

⁷⁰ See *Ireland Act*, *supra* note 47, art. 13.

⁷¹ *Nepal Act*, *supra* note 47, art. 17.2 ("The terms of office, service, conditions and other facilities of the Secretary shall be equal to that of the Secretary of the Government of Nepal.").

⁷² *Kenya Act*, *supra* note 38, art. 7.1 ("There shall be a Secretary to the Commission who shall be appointed by the Commission upon such terms and conditions of service as the Commission may determine and shall enjoy a status not less than that of a Permanent Secretary.").

In **Morocco**, the Executive Secretary plays a broad supportive role and is explicitly tasked with procuring any necessary services and expertise for the work of the Sub-commissions.⁷³

In several NHRIs, the Executive Secretary may attend all meetings but has no voting rights.⁷⁴ In **India**, the Executive Secretary is required to attend all meetings.⁷⁵ Like the Chairperson, the Executive Secretary may delegate his or her functions.⁷⁶

Generally, the Executive Secretary is accountable to the Board of Commissioners in some way. Often the Secretary can be removed for inability, incompetence, or misconduct.⁷⁷ In **Ireland**, the Executive Secretary shall, at the request in writing of a Sub-Committee, give account for the general administration of the Commission. The Executive Secretary shall also be responsible to the Commission for the performance of his or her functions and the implementation of the Commission's policies.⁷⁸

Many NHRIs' bylaws do not specify the structure and staffing of the Secretariat headed by the Executive Secretary, but rather leave its development up to the Executive Secretary after his or her appointment. **Algeria, Afghanistan, and South Africa** provide examples of countries that do elaborate on the structure of the Secretariat.

⁷³ *Morocco Regulations*, *supra* note 41, art. 34 ("Le Secrétaire général procure les services et l'expertise nécessaires aux travaux des commissions.").

⁷⁴ *Kenya Act*, *supra* note 38, art. 7.3. ("The Secretary shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote on any matter falling to be decided by the Commission at any such meeting.").

⁷⁵ *India Regulations*, *supra* note 28, art. 67 ("The Secretary-General, along with such other officers of the Commission as may be directed by the Chairperson, or considered necessary, shall attend the meetings of the Commission.").

⁷⁶ *Ireland Act*, *supra* note 47, art. 13.4-13.5 ("The chief executive may, from time to time, with the consent of the Commission, authorise one or more members of staff of the Commission to perform a specified function of the chief executive and such a member or members who is or are so authorised may perform that function accordingly... (5) The functions of the chief executive may be performed during his or her absence or when the position of the chief executive is vacant by such member of the staff of the Commission as may, from time to time, be designated for that purpose by the Commission.). *See also*, *Morocco Regulations*, *supra* note 41, art. 12 ("Le Président peut déléguer au Secrétaire Général le pouvoir de préparer le budget ou d'en être l'ordonnateur; il peut également déléguer une partie de ses attributions à un ou plusieurs membres du Conseil, après avoir sollicité l'approbation de Sa Majesté le Roi à ce sujet.").

⁷⁷ *See e.g.*, *Kenya Act*, *supra* note 38, art. 7.4-7.5 ("The Secretary may be removed by the Commission only for - (a) inability to perform the functions of his office arising out of physical or mental incapacity; or (b) misbehavior or misconduct; or (c) incompetence...(5) Before the Secretary is removed under subsection (5), he shall be informed of the case against him and shall be given an opportunity to defend himself against any allegations against him.").

⁷⁸ *Ireland Act*, *supra* note 47, art. 5.2 ("Subject to subsection (3), the chief executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Commission. (2) The chief executive shall be responsible to the Commission for the performance of his or her functions and the implementation of the Commission's policies.").

Algeria's bylaws specify that Director of Research, Research staff, an Under Secretary of General Administration, a Chief Archivist, and Attaches of the Cabinet assist the Executive Secretary.⁷⁹ In **Afghanistan**, the Secretariat comprises six different "Supporting Units;" (1) Administration and Finance, (2) Special investigation, (3) Monitoring, Evaluation, and Reporting, (4) IMS; Research, (5) Media and Publications Resource Center, and (6) Translation.⁸⁰

In **South Africa**, the Commission has permanent administrative departments that perform the mandatory functions of the NHRI. These permanent administrative departments include Legal Services, Research and Documentation, Advocacy, Finance and Administration, and the Training and Education Department.⁸¹

2 (A)(iv) Office of Inspector General

i. Overview

Law No. 53 specifically establishes the position of Inspector General within the HCHR, but does not prescribe the particular duties or authorities of the Inspector General, or address issues of internal organization or staffing.⁸² **Based on the prevailing practice in similar offices, the BoC may wish to consider establishing an Office of Inspector General (OIG) as a department within the HCHR tasked with internal investigations. The Inspector General would serve as chief of the department and be provided appropriate staff and resources to conduct his or her duties.**

Like the OIG in the US Department of Justice (DOJ) and the Parliamentary Ombudsmen in Sweden, **the Office of Inspector General in the HCHR should have a broad investigative authority and operate independently from other departments within the HCHR.**

In order to achieve the highest level of effectiveness to combat potential fraud, abuse, and inefficiency within the HCHR, the BoC may wish to grant the OIG the mandate to:

- Receive and investigate complaints from Commissioners, Executive Officers and Staff within the Commission regarding potential abuse, corruption, fraud, violations of the HCHR mandate or Code of Ethics, or other breaches of duty;

⁷⁹ *Algeria Regulations*, *supra* note 26, art. 42 ("Le secrétaire général est assisté dans ses missions par; des directeurs d'études et de recherche; des chargés d'études et de recherche; un sous-directeur de l'administration générale; un chef de centre de recherche et de documentation; des attachés de cabinet.").

⁸⁰ *Afghanistan Independent Human Rights Commission* website, last visited July 2011, available at: <http://aihrc.org.af/en>.

⁸¹ See Section 14 *Manual for the South African Human Rights Commission (SAHRC)*, (developed in terms of Section 14 of the *Promotion of Access to Information Act, 2000* (Act No. 2 of 2000)), 2, [hereinafter *South African Human Rights Commission Section 14 Manual*].

⁸² *Iraq Law No. 53* (2008), art. 11(2).

- Receive and investigate complaints from individuals interacting with the HCHR, either as a complainant or stakeholder, regarding the internal workings of HCHR activities;
- Initiate its own investigations of HCHR activities or the activities of any HCHR department if potential abuses or illegality is suspected;
- Conduct regular inspections of all departments within the HCHR, including administrative and programmatic bodies, and evaluate the efficacy of policies and work practices, financial policies, and other issues as necessary;
- Produce regular reports for the BoC regarding its investigations and inspections;
- Make recommendations to the BoC regarding its investigations and inspections.

ii. Law 53 parameters

Law 53 calls for the establishment of an Office of the Inspector General (OIG)⁸³ for the purposes of internal auditing. The NHRIs studied herein did not have a strongly analogous institution, but the BoC may look to non-NHRI structures such as police, justice departments, or other Iraqi national bodies, as well as international examples, for best practice models of the structures and functions of the OIG.

iii. Comparative Models

The duties and powers of the OIG vary across institutions. The OIG of the **United States Department of Justice (DOJ)**, for example, is tasked with conducting “**independent investigations, audits, inspections, and special reviews of personnel and programs to detect and deter waste, fraud, abuse, and misconduct, and to promote integrity, economy, efficiency, and effectiveness of operations.**”⁸⁴ This OIG, as well as others researched, have developed potentially anonymous means through which employees and clients can report suspected fraud and abuse within the organization – either online, by phone, or in person.⁸⁵

To this end, the Inspector General of the HCHR may be charged with the authority to request reports from any organ within the Commission; investigate any complaint, issue, or problem within the Commission; report and make recommendations to the Board of Commissioners on a regular basis; and make annual and special reports as necessary.

The OIG of the U.S. DOJ is structured as follows:

Audit Division: “conducts, reports on and tracks the resolution of financial and performance audits of organizations, programs and functions within the

⁸³ *Iraqi Law 53* (2008), art. 11 (2) (“An office for the Inspector General shall be established in the HCHR.”).

⁸⁴ Department of Justice Office of the Inspector General (United States), available at: <http://www.justice.gov/oig/>, [hereinafter *U.S. DOJ Office of the Inspector General*],

⁸⁵ *Id.*; UNHCR OIG website, available at: <http://www.unhcr.org/pages/49fo619f6.html>.

Department. Financial audits examine financial statements and financially related activities. Performance audits review economy, efficiency and programmatic issues. The Audit Division also monitors expenditures made under DOJ contracts, grants and other agreements.”

Investigations Division: “investigates alleged violations of fraud, abuse and integrity laws that govern DOJ employees, operations, grantees and contractors. Investigations Division Special Agents develop cases for criminal prosecution and civil or administrative action.”

Evaluation and Inspections Division: “provides the Inspector General with an alternative mechanism to traditional audit and investigative disciplines to assess Department of Justice (Department) programs and activities. Much of the work results in recommendations to decision-makers to streamline operations, reduce unnecessary regulations, improve customer service, and minimize inefficient and ineffective procedures. In addition to assessing Department programs, the Division conducts special reviews requested by the Inspector General or senior Department management that arise suddenly and need immediate attention.”

Oversight and Review Division: “investigates sensitive allegations involving Department employees, often at the request of the Attorney General, senior Department managers, or Congress. Oversight and Review Division also conducts systemic reviews of Department programs.”

Management and Planning Division: “provides the Inspector General with advice on administrative and fiscal policy and assists OIG components by providing services in the areas of planning, budget, finance, quality assurance, personnel, training, procurement, automated data processing, computer network communications and general support.”⁸⁶

In **Sweden**, the Parliamentary Ombudsman fulfils a similar internal investigations role, ensuring that local government agencies and the courts follow Swedish law. Like the US DOJ Office of Inspector General, the Swedish Parliamentary Ombudsman also receives complaints, initiates its own investigations, conducts regular inspections of departments, and submits reports and offers opinions regarding the subject of inquiries.⁸⁷

The Swedish Parliamentary Ombudsman office consists of four Ombudsmen, each of whom is responsible for supervising a number of government departments. The Chief Parliamentary Ombudsmen (equivalent to the Inspector General), also serves as the administrative head of the office and guides general activities. Each of the four Ombudsmen has the assistance of executive officers and staff members. Each section

⁸⁶ *US DOJ Office of the Inspector General*, *supra* note 84.

⁸⁷ Riksdagens Ombudsman (The Parliamentary Ombudsman) (Sweden), General Information, *available at*: <http://www.jo.se/Page.aspx?Language=en>, [hereinafter *Sweden Parliamentary Ombudsman*].

addresses complaints, initiates investigations, conducts inspections, and submits reports and recommendations for issues arising from within the organizations they oversee.⁸⁸

2(B) Organizational Infrastructure

i. Overview

Perhaps the most important task facing the BoC in the early days of the Commission is developing the divisions, functions and compositions of the organization of the HCHR. This responsibility is enumerated in Law 53 and must be defined through bylaws ratified by a two-third majority of the BoC.

The organizational infrastructure will define the work of the HCHR and facilitate or hinder the implementation of its mandate, the independence of operations, and accountability and transparency within the system. The development of specialized directorates and departments, and clear procedures for intra-HCHR communications, must take into account:

- **The functions of the HCHR** prescribed under Law 53, such as:
 - Complaints Handling;
 - Research and Education;
 - Legal Analysis and Recommendations;
 - Reporting;
 - Monitoring and Investigation of detention centers;
 - Monitoring and Recommending on the implementation of international human rights conventions and treaties; and
 - other tasks;
- Necessary **administrative departments**, such as a Secretariat, Registrar, Technical Support unit, and other services;
- Necessary **external relationships** the various HCHR departments will need to develop to fulfill their functions;
- **Regional and Governorate Offices**;
- Internal auditing;
- Budget development and monitoring; and
- other considerations.

2(B)(i) Directorates, Supporting Units, and Working Groups

i. Overview

⁸⁸ Id., Organization, available at:
http://www.jo.se/Page.aspx?MenuId=12&ObjectClass=DynamX_Documents&Language=en.

To facilitate the efficient delegation of work and to concentrate skills and expertise in particular areas, the HCHR bylaws should establish directorates, supporting units, and/or working groups based on the BoC's mandated objectives and identified priorities. The BoC should also consider the potential need for *ad hoc* committees. The identification and development of directorates should take into account the tasks assigned the Secretariat. For example, NHRIs that delegate more tasks to the Secretariat, such as complaints processing and reporting, have greater flexibility in establishing thematic directorates to focus on specific human rights issues like women's rights or the rights of the disabled.

Alternatively, functionally divided directorates may mean more investment in tasks such as education and reporting on legislation, but less publicity and advocacy for particular human rights issues. Similarly, the BoC should consider the relationship between directorates at Regional and Governorate offices.

Regardless of the structure chosen, the bylaws should specify the name, duties and powers of each directorate (including budgetary withdrawals), as well as composition, leadership roles, selection procedures and term limits. Bylaws may delegate the development of internal directorate bylaws to each directorate, but should set a deadline. Bylaws should also address the possibility of creating *ad hoc* committees or working groups, as well as defining the role, authorities, and functions of supporting units or departments. Finally, bylaws should define procedures for inter-Commission coordination.

ii. Law 53 Parameters

Law 53 does not prescribe the structural framework of the HCHR, nor identify any particular directorates, sub-commissions, or other departments within the HCHR. However, Article 11(1) requires the BoC to define the divisions, functions and organizational structure of the HCHR through bylaws. This provides the BoC the flexibility to organize the internal structures of the HCHR as necessary to achieve its goals and focus on identified human rights priorities.

The terms "sub-commission" and "sub-committee" refer to permanent bodies within an NHRI, but may be understood as larger authoritative bodies, such as directorates, which are already commonly found within Iraqi organizations. Other common NHRI organs include supporting units or departments, *ad hoc* committees established by necessity or as temporary entities, and working groups that focus on particular issues within directorates, supporting units, or committees or across these bodies as necessary. The form and function of these directorates, units, and committees vary greatly across NHRIs.

The directorates may be divided thematically, functionally or even geographically depending on the priorities of the NHRI and the relationship established between the directorates and regional and governorate offices. The units (or departments) may be

attached as sub-parts of the directorates and serve specific functions, or may be organized to serve administrative and managerial purposes. Most Commissions may also establish specialized or *ad-hoc* working groups as necessary⁸⁹ to tackle particular issues or challenges as they arise.

The structural framework of any NHRI should reflect the particular human rights issues, resources, and context of the country in which it operates. **In Iraq, the form and function of directorates and other departments within the HCHR should consider the particular human rights challenges the country faces, the best potential mechanisms to address those issues, the resources of the HCHR, and the role that stakeholders and other organizations may play in the Commission's work.**

iii. Comparative Models

Each directorate may be charged with writing its own work-plan and periodically evaluating its progress.⁹⁰ In **Morocco**, each directorate writes its own operating procedures.⁹¹ Directorates also often prepare their own annual report as well as contribute to the Plenary Assembly's annual report.⁹²

In **Algeria**, each directorate may establish working groups as necessary and may call on any expert to provide information, but when funds are required, must get the prior approval of the Secretariat.⁹³ In **Greece**, the directorates may deliberate and develop decisions and opinions, but any decision must go to the Board of Commissioners for approval. The Board of Commissioners can decide whether to make such decisions public or not.⁹⁴

Below are some examples of sub-commission structures that include directorates, units, working groups, *ad hoc* groups, and other organs as suited to the particular NHRIs studied. The form of these structures depends on the powers and priorities of the NHRI,

⁸⁹ See e.g., *Morocco Regulations*, *supra* note 41, art. 32 ("Le Conseil peut constituer des commissions spécialisées chargées d'étudier des questions spécifiques et de formuler des recommandations conformément aux dispositions de l'article 10, alinéa 2, du Dahir du 15 moharrem 1422 (10 avril 2001).").

⁹⁰ *Algeria Regulations*, *supra* note 26, art. 25 ("... Chaque sous-commission permanente est chargée d'élaborer son programme de travail, de veiller à son exécution et d'en évaluer périodiquement la mise en oeuvre. A cet effet, elle met en place autant de groupes de travail que nécessaire.").

⁹¹ *Morocco Regulations*, *supra* note 41, art. 29.

⁹² *Algeria Regulations*, *supra* note 26, art 25 ("Chaque sous-commission permanente élabore son rapport annuel et contribue à l'élaboration du rapport annuel de la Commission.").

⁹³ *Id.*, at art. 25("... En outre, chaque sous-commission permanente peut faire appel à toute personne ou expert susceptible de l'éclairer sur une question donnée. Dans ce cadre et au cas où cette consultation comporte une incidence financière, la sous commission permanente devra solliciter l'accord préalable du bureau de la Commission. Chaque sous-commission permanente élabore son rapport annuel et contribue à l'élaboration du rapport annuel de la Commission.").

⁹⁴ *Regulation of the National Commission of Human Rights* (Greece), art. 5.8 ("The decisions of the departments shall be presented to the plenary, which shall make the final decision. The Plenary shall decide the publication of any decision, if it deems it necessary.") [hereinafter *Greece Regulations*].

as well as the structures developed in the administrative division, the number of commissioners in the Board of Commissioners, and the organization and functioning of regional and governorate offices.

In **Morocco**, for example, the human rights commission is divided into permanent working groups, *ad hoc* committees, and administrative departments. It is also required, under its regulations, to maintain an inter-working group coordination committee composed of the plenary Chairperson, the Executive Secretary, and the Chairpersons of each group.⁹⁵ **Morocco's Working Groups include:**

- External Relations
- Protection of Human Rights
- Studies of Legislation and Public Policies
- Human Rights and the Evolution of Society; and
- Promotion of Human Rights.⁹⁶

In addition to these groups, Morocco's NHRI has also developed *ad hoc* committees on Gender and Migration, which were established in accordance with its official rules.⁹⁷

Tunisia's NHRI is similarly empowered to establish *ad hoc*, or specialized committees, to tackle particular human rights topics as necessary.⁹⁸

In addition to the working groups and *ad hoc* committees, **Morocco's** NHRI maintains a set of comprehensive "administrative departments," which overlap to a degree with what Afghanistan labels "programmatic units." **In Morocco, these administrative departments include:**

- Protection and Assistance for Victims
- Collective Rights and Regional Affairs
- Human and Financial Resources and Computers
- Information and Communications; and
- Cooperation and Foreign Affairs.⁹⁹

In Greece, sub-commissions or directorates are divided thematically and functionally. They include:

- Civil and Political Rights;
- Social, Economic Rights;

⁹⁵ *Morocco Regulations*, *supra* note 41, art. 31 ("Une Commission de coordination chargée de coordonner les activités des groupes de travail est constituée par le Conseil. Elle est composée, outre le Président et le Secrétaire général, des présidents et rapporteurs des groupes de travail.").

⁹⁶ *Id.*, art. 30.

⁹⁷ *Id.* at art. 32.

⁹⁸ *Tunisia Regulations*, *supra* note 44, art. 4 ("Les membres du comité supérieur peuvent, aussi pour traiter les questions soumises au comité supérieur, être réunis en commissions ou en groupes de travail, permanents ou spéciaux, constitués par le président du comité supérieur après avis de l'assemblée générale ordinaire.").

⁹⁹ National Human Rights Council (Morocco), Administrative Departments, *available at*: <http://www.ccdh.org.ma/spip.php?article783>.

- Promotion of Human Rights (media, public opinion, education, etc.);
- Implementation of Human Rights for Aliens; and
- International Communication and Co-operation (international reporting obligations, information exchange with International Organizations, Non-Government Organizations etc.).¹⁰⁰

Members of the Plenary Assembly in **Greece** may freely decide which directorates they will participate in, but they are limited to two.¹⁰¹ In some countries, however, all members may participate in all committees and working groups.¹⁰² In others, members may, with the permission of the Chairperson, attend to sub-commissions they are not on with no right to vote or debate.

In **South Africa**, the commission consists of five permanent departments (directorates) that support the work of the Commission, and may establish substantive sub-committees as necessary to address particular human rights issues.¹⁰³ The permanent departments include:

- Legal Services,
- Research and Documentation,
- Advocacy,
- Finance and Administration, and

¹⁰⁰ *Greece Regulations*, *supra* note 94, art. 5.1 ("In the framework of the work of the Commission the following departments shall be constituted: a) Civil and Political Rights b) Social, economic and cultural rights c) Implementation of human rights for aliens d) Promotion of human rights (sensitization of the public opinion, mass media, education and other media) e) International communication and co-operation (monitoring reports in implementation of conventional obligations of Greece, exchange of information and communication with international organization, agencies, etc.).").

¹⁰¹ *Id.*, at art. 5.3. ("Regular and alternate members shall participate in the departments, based on their preferences, taking into consideration the need to balance the participation in departments. Each Member may participate in maximum two departments. The quorum shall be met when at least half the members plus one are present.").

¹⁰² *Tunisia Regulations*, *supra* note 44, art. 4 ("Tout membre du comité supérieur peut participer à toutes les commissions et à tous les groupes de travail.").

¹⁰³ *South Africa Act*, *supra* note 59, art 5 ("Committees of Commission.—(1) The Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for the period determined by it.

(2) The Commission may extend the period of an appointment made by it under subsection (1) or withdraw such appointment during the period referred to in that subsection.

(3) The Commission shall designate a chairperson for every committee and, if it deems it necessary, a vice-chairperson.

(4) A committee shall, subject to the directions of the Commission, exercise such powers and perform such duties and functions of the Commission as the Commission may confer on or assign to it and follow such procedure during such exercising of powers and performance of duties and functions as the Commission may direct.

(5) On completion of the duties and functions assigned to it in terms of subsection (4), a committee shall submit a report thereon to the Commission.

(6) The Commission may at any time dissolve any committee.").

- Training and Education.¹⁰⁴

In Algeria, the sub-committees are largely functional. They include:

- Judicial Affairs;
- Protection;
- Education and Communication;
- Mediation; and
- External Relations and Coordination.

Regarding the internal structure of sub-commissions or directorates, **Algeria** requires the Chairperson of the Commission, based on the expressed interests and experiences of the NHRI commissioners, to submit the division of members to sub-commissions to the Board of Commissioners for approval.¹⁰⁵ Each sub-commission is composed of a Chairperson, a Secretary, and Members.¹⁰⁶ The Chairperson appoints Chairpersons and Secretaries of the sub-commissions to two-year renewable terms.¹⁰⁷

In comparison, **Tunisia** has a purely functional division of internal bodies, with only two permanent sub-commissions—one on Complaints and one on Reports—with very strictly and specifically defined duties¹⁰⁸

In Afghanistan, the NHRI is divided into Programmatic Units and Support Units.

Programmatic Units include:

- Human Rights Education
- Women's Rights
- Child Rights
- Rights of Persons with Disabilities
- Transitional Justice

¹⁰⁴ See *South African Human Rights Commission Section 14 Manual*, *supra* note 81, organogram, page 2.

¹⁰⁵ *Algeria Regulations*, *supra* note 26, art. 31 (“Sur la base des vœux exprimés par chaque membre, le président de la Commission soumet à l’approbation de l’assemblée plénière la répartition des membres de la Commission au sein des sous-commissions permanentes en fonction de leur profil et/ou de leur expérience en rapport avec les attributions de chaque sous-commission.”).

¹⁰⁶ *Id.*, at art 32 (“Chaque sous-commission permanente se compose de sept (7) à onze (11) membres répartis comme suit ; le président; le rapporteur; les membres.”).

¹⁰⁷ *Id.*, at art. 33 (“Le président de la Commission désigne les présidents et les rapporteurs des sous-commissions permanentes pour une durée de deux (2) ans renouvelable, parmi les membres désignés au titre des institutions publiques, des organisations nationales, professionnelles et de la société civile. Le président de la Commission soumet la désignation, pour approbation, aux membres de la sous-commission permanente concernée.”).

¹⁰⁸ *Tunisia Regulations*, *supra* note 44, art. 4 (“La commission permanente des requêtes et des plaintes est chargée notamment d’examiner la recevabilité des requêtes et des plaintes et de proposer le traitement qu’il convient de leur réserver. La commission permanente des rapports généraux est notamment chargée de préparer le projet du rapport sur les activités du comité supérieur, et le projet du rapport national sur l’état des droits de l’Homme et des libertés fondamentales en Tunisie, et ce, à travers la collecte des données, leur analyse et la formulation des observations, des recommandations et des propositions à leur sujet.”).

- Monitoring and Investigation

Each Programmatic Unit focuses on a set of strategic objectives identified under a Four-Year Strategic Plan. The Women's Rights Unit, for example, works to advance women's leadership, education, empowerment, advocacy, and monitoring and investigation. Each Programmatic Unit cooperates with other Programmatic and Supporting Units to accomplish these goals.¹⁰⁹

Afghanistan's Supporting Units include, among others:

- Administration and Finance (including Human Resources, Finance, Technology, Security, Logistics, Liaison, and Transportation)
- Special Investigation Team
- Research
- Media and Publications
- Resource Center
- Translation

In **Egypt**, the NHRI is divided into permanent thematic committees and administrative departments. Thematic committees include:

- International Relations;
- Social and Economic Rights;
- Cultural Rights;
- Civil and Political Rights;
- Legislative Affairs; and
- Complaints.¹¹⁰

These permanent committees operate directly under the NHRI Council. In addition to these committees, the Council may also develop *ad hoc* committees and units as necessary. Current units focus on: national planning, NGOs, Universal Periodic Review, Documentation, a "think tank," citizenship, and education support.¹¹¹

The Secretariat in the Egyptian NHRI, under the Secretary General, maintains a follow-up unit and a project unit, as well as specific administrative departments including:

- Research
- Financial and Administrative Affairs;
- Press and Public Relations; and
- Executive Secretariat.¹¹²

¹⁰⁹ Afghanistan Independent Human Rights Commission, Women's Rights Unit, *available at*: http://www.aihrc.org.af/2010_eng/Eng_pages/Units/wr.aspx, last visited September 9, 2011.

¹¹⁰ Egyptian National Council for Human Rights, Secretariat (organogram), *available at*: http://www.nchregypt.org/en/index.php?option=com_content&view=category&layout=blog&id=6&Itemid=8.

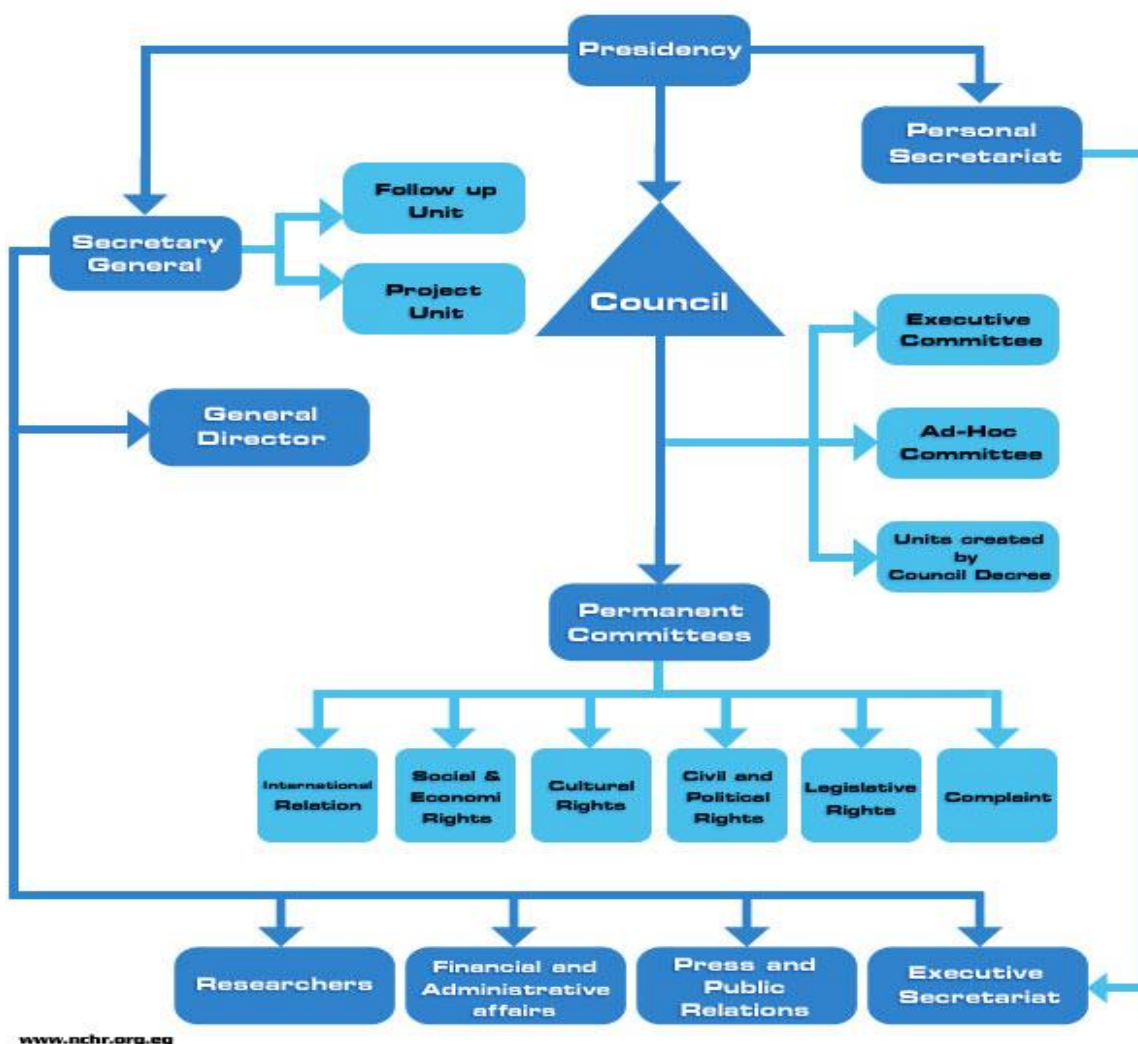
¹¹¹ *Id.*

¹¹² *Id.*

Additionally, the Egyptian NHRI utilizes *ad hoc* support units and other bodies when the need arises. In order to support the Egyptian elections in 2011, for example, the **Egyptian National Council for Human Rights** established the Election Support Unit, which performs a monitoring and reporting role for the Egyptian public. The Election Support Unit publishes reports on the Commission website regarding election propaganda and investigated human rights violations committed by candidates or their supporters prior to the election, and issued a final report on the elections of November/ December 2011.¹¹³

¹¹³ Egyptian National Council for Human Rights, Press Release No. 2, Election Support Unit, accessed 28 Dec. 2011, available at: <http://www.nchregypt.org/en/>.

Figure I
Egypt: National Council for Human Rights Organogram



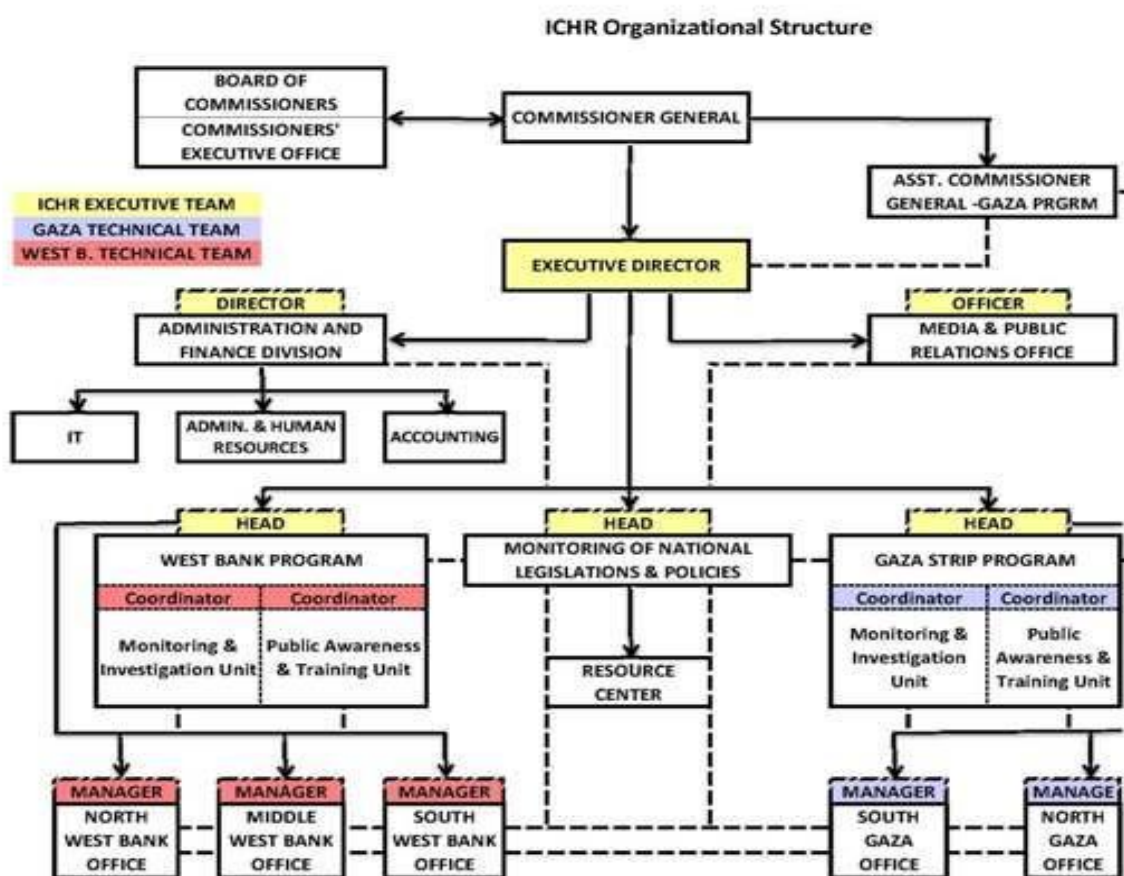
Source: Egypt National Council for Human Rights,
http://www.nchregypt.org/en/index.php?option=com_content&view=category&layout=blog&id=6&Itemid=8.

Alternatively, in England and Palestine, NHRI structure is largely organized geographically. In **England**, the NHRI is required to set up Scotland and Wales committees that advise on the exercise of the Commission's functions as they affect those regions. The Commission is required to consult the committees before exercising any function that "is likely" to affect the region.¹¹⁴

¹¹⁴ *The Equality Act of 2006* (England), Schedule 1 Part 2 § 11, 19, 20, 27, and 28, [hereinafter England Act].

In **Palestine**, the geographical division between the West Bank and Gaza requires the maintenance of two parallel programs managed under a Board of Commissioners. The NHRI has five permanent units, three of which are centralized, and two of which operate in parallel in both the West Bank and Gaza. The centralized units include Directorates of Finance and Administration, Media and Public Relations, and Monitoring of National Legislation and Policy. Within the West Bank and Gaza programs, the NHRI maintains parallel Monitoring and Investigations Units and Public Awareness and Training Units, as well as smaller regional offices.

Figure II
Palestine: Independent Commission for Human Rights Organogram



Source: Palestinian Independent Commission for Human Rights, <http://home.ichr.ps/en/2/2/254/Structure-Structure.htm>.

The division of tasks and directorates at the central and regional levels is an important consideration for the Iraqi HCHR Board of Commissioners. **The BoC may wish to evaluate which programs and administrative functions should remain centralized**

in Baghdad, and which would be more effective in parallel programs at the regional or local level.

2(B)(ii) Regional and Governorate Offices

i. Overview

The establishment of governorate and regional offices is crucial to ensuring the protection of ethnic and religious diversity within Iraq, and is required under Law 53 of 2008. **The bylaws established by the BoC should clarify the manner in which regional and governorate offices are established, and ensure adequate resources (including financial support, training, and assistance), accessibility for citizens, standardized operating protocols, and strong oversight mechanisms.**

The importance of governorate and regional offices cannot be overstated. Such offices will increase access to the HCHR for all components,¹¹⁵ improve the efficacy of its human rights monitoring activities, and afford targeted human rights development programs reflective of Iraq's unique cultural, linguistic, historic and demographic needs.

In establishing regional and governorate offices, the BoC must consider the scope of authority and jurisdiction such offices will have in performing the functions of the HCHR at those levels. Specifically, the BoC should consider whether the work of the regional and governorate offices will parallel that of the head office—meaning that regional and governorate offices could:

- Receive complaints;
- Investigate and follow-up on complaints or perform *suo moto* investigations;
- Monitor, inspect and document human rights issues;
- Maintain specialized units for vulnerable peoples as necessary within the region;
- Visit detention centers;
- Coordinate with local governmental and civil institutions, and
- Other tasks as necessary.

Under such a model, regularized communication procedures must provide for adequate oversight and accountability by the head office and the Inspector General. The **Palestinian** Independent Commission for Human Rights is a useful model for such a decentralized approach.

Alternatively, the regional and governorate offices could serve as branches of the headquarters office in Baghdad, receiving complaints and performing monitoring and

¹¹⁵ International Council on Human Rights Policy, Office of the United Nations High Commissioner for Human Rights, *Assessing the Effectiveness of National Human Rights Institutions* (2005), p. 16, available at: <http://www.ohchr.org/Documents/Publications/NHRIen.pdf>.

inspection duties, but then referring matters to the headquarters for decision-making and follow-up by the directorates.

Given the complex nature of the human rights situation within Iraq, and the distribution of vulnerable populations and human rights issues throughout the country, decentralized regional and governorate offices with standard operating procedures and documented mechanisms for oversight and accountability may be advisable. Operating procedures should include criteria detailing when matters should be referred to the head office for decision-making and when the regional and governorate offices have the authority to act and subsequently report to headquarters on decisions taken.

Criteria for referral to the head office may include complaints or revelations that:

- Raise issues of national concern,
- Are politically sensitive,
- That link significantly to a topic of primary concern to the BoC, or
- Which present potential conflicts of interest at the regional or governorate level.

ii. Law 53 Parameters

Law 53 mandates the establishment of offices in the regions and governorates¹¹⁶ and the appointment of experienced and competent executive directors to the regional and governorate offices.¹¹⁷ The heads of the regional offices should coordinate directly and systematically with the Directorate of Regional and Governorate Services and with the Inspector General as necessary. Regular reporting to the Board of Commissioners and the Secretary General should be established.

The Board of Commissioners may wish to determine circumstances wherein complaints or issues raised at the regional and governorate level should be referred to headquarters in whole or in part, and when the regional or governorate office should retain jurisdiction and authority. The Inspector General may play a key role in making this determination and should consider issues such as conflicts of interest and capacity, among other considerations, as determined by the Board of Commissioners.

iii. Comparative Models

There is great variance on the breadth of competency delegated to regional and governorate offices, as well as appointment procedures and management.

¹¹⁶ *Iraqi Law No. 53* (2008), art. 2 (2) (“The HCHR must open offices and branches in the regions and governorates not organized in a region.”).

¹¹⁷ *Id.*, at art. 12 (6) (“Appoint experienced and competent executive directors to the HCHR offices in the regions and governorates, and accept their resignations or discharge them in accordance with the law.”).

In **Ghana**, the regional offices receive complaints and conduct investigations. In this capacity, they act as smaller versions of the head office, paralleling the organization and work of headquarters.¹¹⁸ In **Morocco** the regional offices are organized under the Secretariat rather than the Chairperson, and are tasked mainly with education and outreach functions rather than complaints intake, investigation, or monitoring and reporting.¹¹⁹ In **England**, the regional offices serve advisory roles for Commission functions affecting the regions.¹²⁰

In **Palestine**, the NHRI's regional offices are the basic service deliverers for the Commission. Regional offices perform four core functions including:

- Complaint handling;
- Visiting places of detention, including prisons, detention centers and social welfare institutions;
- Raising public awareness; and
- Training.¹²¹

Though the Palestine human rights commission is divided into two programs (West Bank and Gaza), each program has its own regional offices. Each regional office has a regional manager, field researchers, and administrative staff. Protocols (i.e. regulations) followed in all regional offices address issues of jurisdiction and provide criteria for issues that need to be forwarded to headquarters for decision-making, such as complaints that address sensitive political issues, have national and international implications, which require systematic attention, or that involve potential conflicts of interest at the local level.¹²²

Due to the geographical diversity of Iraq, and the diverse human rights issues affecting each part of the country, the regional and governorate offices could be designed to allow the flexibility and authority to service the regions in a specialized and targeted capacity, with only certain issues (meeting a predetermined threshold) requiring direct

¹¹⁸ *The Commission on Human Rights and Administrative Justice Act of 1994* (Ghana), Part II, 10.1-11.1 ("there shall be established in each Region and District of Ghana Regional and District branches respectively of the Commission. (2): There shall be appointed by the Commission an officer who shall be the head of a Regional or District branch of the Commission. (3) the Commission may create such other lower structures as would facilitate its operations." "11-(1): Describes functions of regional and district representative of Commission including: (a) receive complaints; (b) make on-the-spot investigation as may be necessary; and (c) discharge any other duties relating to the functions of the Commission that may be assigned to him by the Commissioner.") [hereinafter *Ghana Act*].

¹¹⁹ *Morocco Regulations*, *supra* note 41, art. 8 ("Regional offices are under the supervision of the Permanent Secretariat. They are charged principally with education and advisory roles.").

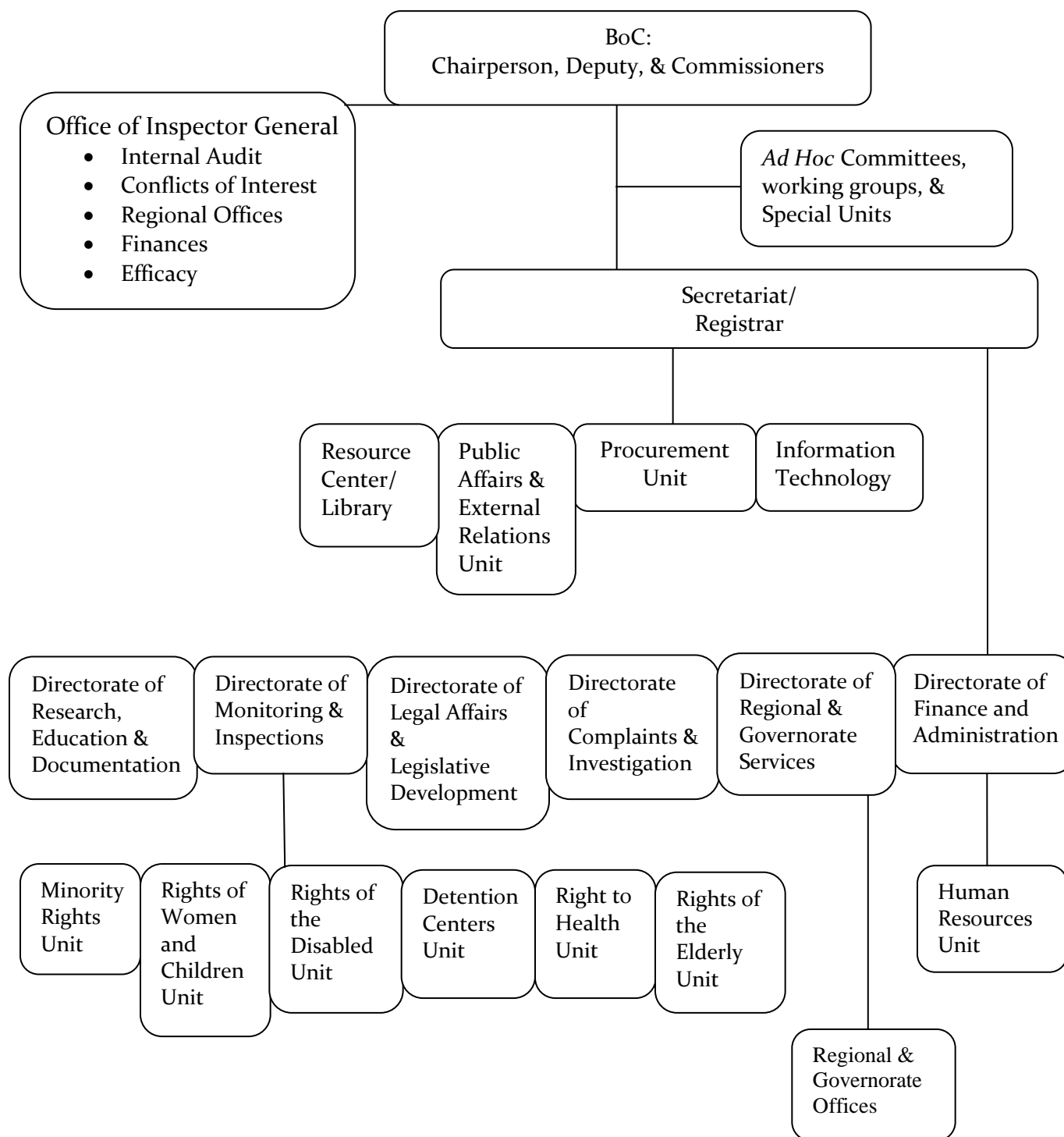
¹²⁰ *England Act*, *supra* note 114, Schedule 1 Part 2 § 11, 19, 20, 27, and 28.

¹²¹ Chris Sidoti, Hassan Jabreen & Rania Jaber, *Evaluation of the Palestine Independent Commission for Human Rights*, 18 (Sept. 2, 2010), available at: <http://www.ichr.ps/pdfs/isu123.pdf>.

¹²² Development of such criteria outlined in The Palestinian Independent Commission for Citizen's Rights, *Strategic Document 2008-2010* (April 2008), available at: <http://www.ichr.ps/pdfs/StrategicPlan2008-2010%20EngFinal.pdf>.

intervention by headquarters. Regular and effective communication mechanisms are necessary in such a system.

Appendix I: Potential HCHR Organogram



The above Potential Organogram for the Iraqi High Commission for Human Rights was developed based on IILHR's assessment of the human rights needs of Iraq through conversations with Iraqi NGOs, Members of Parliament, Ministers, Judges, Lawyers, civil society leaders, and international actors. References also include the following sources:

- United Nations Office of the High Commission for Human Rights (OHCHR) National Human Rights Institutions Organogram
- Egyptian National Council for Human Rights Organogram
- Afghanistan Independent Human Rights Commission Programmatic and Supporting Units Structure
- Palestinian Independent Commission for Human Rights Organogram

The goals of the Potential Organogram for the Iraqi High Commission for Human Rights include:

- Operational accountability within the Commission to the Board of Commissioners, the Chairperson, the Secretary General, the Inspector General, and the public
- Development of Commissioners' abilities to become subject matter experts in their particular area and coordinate, as necessary, with external bodies and groups
- A balancing of authority and jurisdiction between the Board of Commissioners, the Chairperson, the Secretary General, and the Inspector General to ensure accountability, communication, and transparency

SECTION 3: THE WORK OF THE HCHR

3.1 Overview

- The HCHR should aggressively work to collect, design, and distribute information to promote respect for human rights in Iraq and advance the work of the HCHR. This can be achieved through media outreach and partnerships with civil society organizations, the United Nations, the government, and others.
- To fulfill its duty to review national legislation for compliance with national and international human rights standards, and to advise on Iraq's ratification and compliance with international human rights instruments, the HCHR should develop Memoranda of Understanding with the Parliament, Shura Council, Council of Ministers, and other stakeholders.
- To facilitate the HCHR's mandate to receive and investigate complaints, initiate *suo moto* investigations, and visit and monitor detention centers, the Commission should develop Memoranda of Understanding with key Ministries, as well as with the Judiciary, to allow for ease of inspection, investigation, and reporting.
- The development and dissemination of annual and special reports on the results of monitoring and investigative functions should be regulated by internal protocols delineating decision-making authority, timelines, and publication outlets.
- The HCHR should consider conciliation and mediation work as a complement or alternative to judicial intervention in cases of human rights violations.

The Paris Principles state that NHRIs shall have the responsibility to promote awareness and educate the public about human rights;¹²³ advise government bodies on human rights issues¹²⁴; monitor the human rights situation in the country in which they are based¹²⁵; and investigate and hear allegations of human rights violations.¹²⁶ This list, while incomplete, comprises the core work of an NHRI. **The means and methods the HCHR**

¹²³ *The Paris Principles*, *supra* note 1, (NHRIs shall "assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles" and "publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.").

¹²⁴ *Id.* (NHRIs shall "submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.").

¹²⁵ *Id.* (NHRIs shall prepare "reports on the national situation with regard to human rights in general, and on more specific matters....").

¹²⁶ *Id.* (NHRIs shall "hear...without higher referral...[any] situation of violation of human rights which it decides to take up....").

develops to fulfill its mandate to protect and promote human rights under Law 53 should be informed by both the specific human rights situation of Iraq, and the successes and failure of other human rights commissions around the world.

The legal framework of rights protection in Iraq is strong, but enforcement mechanisms often lack resources or political will, and the culture of respect for human rights must be strengthened. The HCHR's work in this regard should be a multi-pronged approach that includes robust promotional, advisory, and monitoring functions.

3.2 Key Recommendations

(A) Promotional Functions

- The HCHR should consider establishing Memoranda of Understanding with civil society organizations, relevant government bodies, the United Nations, and other stakeholders to facilitate the collection, design, and dissemination of information aimed at promoting a culture of human rights throughout Iraq.
- The HCHR may also consider establishing regularized coordination mechanisms—such as regularly scheduled meetings and public forums—with other institutions and stakeholders to initiate public outreach, facilitate conferences, organize symposiums, provide training sessions and education materials, and initiate media campaigns to promote public awareness of rights and the work of the Commission.
- The use of national and minority languages, geographic and physical accessibility, literacy, and other considerations should guide the development of these coordination and outreach mechanisms.
- The HCHR may also consider developing regulations for official media commentary and media relations, including identifying authorities to speak on behalf of the Commission, issue approved press statements, and initiate coordinated promotional campaigns.
- A robust and easy to use website should also be developed to facilitate the sharing and collecting of information about human rights in Iraq, publish HCHR reports, facilitate public comments and questions, and provide links to relevant human rights materials, service providers, and other information.

(B) Advisory Functions

- In fulfilling its duty to review national legislation for compliance with national and international human rights standards, and to advise on Iraq's ratification and compliance with international human rights instruments, the HCHR may consider developing Memoranda of Understanding with the Speaker's Office in the Council of Representatives, the Council of Ministers, the Shura Council, and other stakeholders.

- The BoC may wish establish a Directorate of Legal Affairs and Legislative Development that coordinates with other internal HCHR institutions as well as outside organizations and stakeholders.
- The work of the Directorate of Legal Affairs and Legislative Development, and the development and dissemination of advisory reports and recommendations should be organized through regulations.

(C) Protection: Monitoring, Investigating and Reporting Functions

- To facilitate the HCHR's mandate to receive and investigate complaints, initiate investigations, and visit and monitor detention centers, the Commission should develop Memoranda of Understanding with the Ministries of Justice, Interior, and Labor and Social Affairs, as well as all relevant branches of the Judiciary, to allow for ease of inspection, investigation, and reporting.
- The HCHR may consider establishing a working unit or directorate dedicated to monitoring, investigating, and reporting on the human rights conditions in detention centers.
- The HCHR may wish to establish working units dedicated to different aspects of complaints handling and investigations falling under the Directorate of Complaints and Investigations.
- The Directorate of Legal Affairs and Legislative Development should work closely, according to developed regulations, with the units and/or directorates dedicated to complaints handling and detention centers to facilitate intervention in court cases where necessary.
- To facilitate the investigative work of the Commission under Law 53, the HCHR should develop regulations guiding *suo motu* investigations.
- The development and dissemination of annual and special reports on the results of monitoring and investigative functions should be regulated by internal protocols delineating decision-making authority, timelines, and publication.

(D) Quasi-Judicial Functions: Conciliation and Mediation

- Though Law 53 is silent as to the conciliation and mediation functions of the HCHR, the Commission's mandate to promote a culture of human rights and to receive and investigate complaints implies that conciliation and mediation work could serve as a complement or alternative to judicial intervention where necessary. Such work would enable the peaceful resolution of human rights complaints not rising to the level of intervention by the Courts, and complement and support the judicial process where circumstances necessitate.
- Should the Commission decide to engage in Alternative Dispute Resolution (Conciliation and Mediation), the processes, including scope of authority,

threshold criteria, staff training, confidentiality protocols, record-keeping, and other issues should be addressed through regulations.

3(A) Promotional Functions: Raising Awareness and Teaching

i. Overview

The HCHR's promotional mandate serves two interconnected goals. First, it requires the development of a preventive strategy uniquely afforded to and required of NHRIs under the Paris Principles.¹²⁷ Second, it ensures visibility for the HCHR as an effective resource available to the public and to the most vulnerable Iraqis. To this end, **regulations for human rights promotion and education activities should target both victims and perpetrators of human rights abuses.**¹²⁸ In addition, special efforts should be made to reach out to the most vulnerable members of society given that they are the most difficult to reach through traditional education campaigns.¹²⁹ Such efforts should include a variety of media networks and consider the geographic, cultural, religious, and economic diversity of Iraq.

The HCHRs should also focus on developing a culture of human rights in those professional groups that have a significant ability to affect human rights practice in the country.¹³⁰ In order to do this, the HCHR should consider engaging in and supporting human rights training efforts for judges, lawyers, security forces,¹³¹ social workers, the media, teachers, and community leaders,¹³² among others. Collaboration with the Ministry of Human Rights and other bodies may be useful.

Ideally, public reports, bulletins, brochures, and other informative materials should be made available in national and minority languages, and interpreters should be made available for public events.¹³³ Special guidelines to promote accessibility for people living with physical disabilities may also prove useful.¹³⁴

¹²⁷ *Id.* part (g) ("To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press.").

¹²⁸ Commonwealth Secretariat, *National Human Rights Institutions Best Practice* (2001), p. 23, available at http://www.asiapacificforum.net/members/international-standards/downloads/best-practice-for-nhris/nhri_best_practice.pdf, [hereinafter *Commonwealth Secretariat, NHRI Best Practice*].

¹²⁹ *Id.*

¹³⁰ Centre for Human Rights UN HANDBOOK, *supra* note 20, at para. 164.

¹³¹ Commonwealth Secretariat, *NHRI Best Practice*, *supra* note 128, at 23.

¹³² Centre for Human Rights UN HANDBOOK, *supra* note 2, at para. 164.

¹³³ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, § 6.4.1, (As part of their promotional function, NHRIs must explain "whether it makes publications or services available in several languages and it if makes interpretation available...."), available at:

Although plans to target specific geographic areas may more appropriately fall within the purview of a strategic plan than in regulations or bylaws, the BoC may wish to encourage efforts to secure diverse audiences for outreach programming by requiring evaluation of outreach tools that *inter alia* track participants by region or other categories. Other kinds of evaluations of impact of promotional efforts may also need to be pursued.

Secondly, the BoC may wish to consider adopting regulations for media commentary and media relations, particularly with regard to maintaining independence and legitimacy. The BoC should consider referring to the model provided by **Northern Ireland**. Regulations encouraging Memoranda of Understanding with civil society groups about cooperation in media efforts also could prove to be useful.

3(A)(i) Raising Awareness through Public Outreach

i. Overview

The importance of the HCHR's public outreach role cannot be overstated. For every NHRI examined in this report, some form of public outreach aimed at raising awareness about human rights constitutes a central pillar of its functional mandate.¹³⁵ In practice, however, **the form of outreach programming pursued by NHRIs varies depending upon the cultural and historical context of the country served, the strategic priorities of the NHRI, literacy rates among targeted constituencies, and the degree of constituent mobility.** The HCHR should consider the broad networks of civil society organizations that already exist within Iraq, and develop and organizational infrastructure and procedures which take advantage of existing systems, support the development of new and more robust systems, and encourage an ongoing and open dialogue with the public.

[http://www.nhri.net/2010/SCA%20REPORT%20-%20FINAL%20\(with%20annexes\).doc](http://www.nhri.net/2010/SCA%20REPORT%20-%20FINAL%20(with%20annexes).doc), [hereinafter *ICC Report on NHRI Accreditation*].

¹³⁴ See, e.g., *Australian Human Rights Commission Guidelines on the Application of Premises Standards*, available at:

[http://www.humanrights.gov.au/disability_rights/standards/Access_to_premises/Premises%20Standards%20Gu](http://www.humanrights.gov.au/disability_rights/standards/Access_to_premises/Premises%20Standards%20Guideline_Final_2.pdf)

[ideline_Final_2.pdf](http://www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2/pdf); See also, *Ontario Human Rights Commission Policy and Guidelines on Disability and the Duty to Accommodate*, available at: <http://www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2/pdf>.

¹³⁵ See, e.g., *Law No. 94 of 2003 Promulgating The National Council for Human Rights* (Egypt), art. 3. (Stating that the Commission must “[d]isseminate and raise public awareness on the culture of human rights through assistance of institutions and organs related to education, culture, media, and information.”), [hereinafter: *Egypt Law*]; *Tanzania Act*, *supra* note 65, Part II, 6-(1) (Stating that the Commission must “promote within the country the protection and the preservation of human rights and of duties to the society in accordance with the Constitution and the law of the land” and “conduct research into human rights, administrative justice and good governance issues and to educate the public about such issues.”), [hereinafter *Tanzania Act*]; *Ghana Act*, *supra* note 118, Part II, 7-(g) (Stating that the Commission must “educate the public as to human rights and freedoms by such means as the Commissioner may decide, including publications, lectures, and symposia.”).

ii. Law 53 Parameters

According to Article 3(1) of Law 53, the HCHR aims to “ensure the protection and promotion of respect for Human Rights in Iraq”.¹³⁶ Article 4(5) requires the HCHR to cooperate and coordinate with civil society organizations working in the human rights field, as well as international independent and non-governmental institutions to achieve HCHR objectives.

Article 4(6)(b) gives the Commission the power to promote a culture of human rights in Iraq, including the express capacity to organize conferences, symposiums and artistic and social events; to issue human rights publications; and to publicize “materials” in the media regarding human rights issues and developments.¹³⁷

iii. Comparative Models

In **South Africa**, the South African Human Rights Commission (SAHRC) provides human rights education for the general public through an Education and Training Programme Unit acting under a broad mandate.¹³⁸ Two examples of programs cited for their success in a 2009 institutional reflection report¹³⁹ provide insight into their undertakings. First, the “Roll Back Xenophobia Campaign” highlighted the rights of a vulnerable population of peoples at a moment that was timely due to regional events.¹⁴⁰ Second, the South African Older Persons Forum helped place the rights of elders as a national agenda item.¹⁴¹ In its strategic plan for 2010/11 – 2012/13, the SAHRC further anticipates facilitating radio broadcasts, social media and networking forums, and e-learning courses to increase public debate and dialogue on contemporary human right issues and also to increase public outreach to rural constituencies.¹⁴²

Most NHRIs have a broad promotional mandate similar to the one bestowed through Law 53,¹⁴³ albeit with distinctive additions. In **Senegal**, Presidential Order No. 5691 charges

¹³⁶ *Iraqi Law No. 53 (2008)*, art. 3 (1) (“Ensure the protection and promotion of respect for Human Rights in Iraq.”).

¹³⁷ *Id.*, at art. 4 (6) (“Work on spreading the human rights culture through the following: a) Inclusion of the human rights culture in the educational curricula. b) Organizing conferences, symposiums and artistic and social events, issue publications and prepare media materials on human rights related topics.”).

¹³⁸ South African Human Rights Commission, *Annual Report 2010*, § 3.4.2.

¹³⁹ Yvonne Erasmus, *Critically reflecting on an Institutional Journey: The South African Human Rights Commission, 2002-2009* (2009), [hereinafter “Erasmus South African Human Rights Commission paper”].

¹⁴⁰ *Id.* at 3.

¹⁴¹ *Id.*

¹⁴² South African Human Rights Commission, *SAHRC Strategic Business Plan 2010/11–2012/13*, § 4.4.2.2.

¹⁴³ See, e.g., *Nepal Act*, *supra* note 47, art 9(2)(i) (The Commission shall “[p]ublicize and propagate human rights education among the various sections of society through various seminars, symposia, conferences and also build consciousness and awareness about the guarantees bestowed by law for the protection of human rights.”); *India Human Rights Act*, *supra* note 28, art. 12(The Commission shall “undertake and

the NHRI's monitoring unit with a similar promotional mandate to that of the Iraqi HCHR.¹⁴⁴ However, the Order also mandates that the NHRI's monitoring unit maintain a documentation center and data bank containing national, regional, and international human rights resources.¹⁴⁵ **Maintaining a similar documentation center and databank may prove highly useful for the Iraqi HCHR.**

In **Algeria**, Presidential Order No. 02-47 charges the NHRI with “designing and implementing a communication program to inform the population about the nature and content of human rights and means and procedures available to ensure their defense and promotion.”¹⁴⁶ Finally, in **Egypt**, the National Council for Human Rights charges its Cultural Rights Committee with “[i]nstituting religious discourse that ensures basic human rights principles.”¹⁴⁷

3(A)(ii) Raising Awareness through Media Relations

i. Overview

Effective liaising with the media will help ensure the visibility of the HCHR's work and improve access to HCHR's materials and information.¹⁴⁸ Generally, when NHRIs have a

promote research in the field of human rights; (h) spread human rights literacy among various sections of society.”); *Act No. 19 of 1998 of Mauritius*, art. 4(1)(g) (The Commission shall “exercise such other functions as it may consider to be conducive to the promotion and protection of human rights.”), [hereinafter *Mauritius Act*]; *South Africa Act*, *supra* note 59, Part I, 7(1)(a) (“The commission shall: develop and conduct information programmes to foster public understanding of this Act, Chapter 3 of the Constitution and the role and activities of the Commission.”).

¹⁴⁴ *Compare Iraqi Law No. 53 (2008)*, art. 3 (1) (“Ensure the protection and promotion of respect for Human Rights in Iraq.”) with *Arrêté Présidentiel No. 5691 of 6 July 2004* (Senegal), art. 7 (“La Cellule de suivi du droit international humanitaire, de documentation, de promotion des droits de l'homme et du droit international humanitaire contribue au développement de l'enseignement des droits de l'homme, du droit humanitaire et de la culture de la paix.”), [hereinafter *Senegal Law 2004*],

¹⁴⁵ *Senegal Law 2004*, *supra* note 144, art. 6 (“La Cellule de suivi du droit international humanitaire, de documentation, de promotion des droits de l'homme et du droit international humanitaire assure la mise en place et le fonctionnement d'un centre de documentation et d'une banque de données regroupant les instruments juridiques nationaux, régionaux et internationaux en matière de droits de l'homme et de droit humanitaire, les rapports périodiques mis au point par le Sénégal en ces matières ainsi que les avis, observations et recommandations formulés par le Comité sénégalais des Droits de l'Homme et par les organes régionaux et internationaux de surveillance des droits de l'homme et du droits international humanitaire.”).

¹⁴⁶ *Algeria Regulations*, *supra* note 26, art. 28 (“La sous-commission permanente de l'éducation aux droits de l'Homme et de la communication a pour compétences:...de concevoir et de mettre en œuvre un programme de communication pour mieux informer l'opinion publique sur la nature et le contenu des droits de l'Homme ainsi que des moyens et procédures pouvant assurer leur défense et leur promotion.”).

¹⁴⁷ Egypt National Council for Human Rights, Committee Competencies, Cultural Rights Committee, art. 4, available at: http://www.nchregypt.org/en/index.php?option=com_content&view=article&id=72:the-culture-rights-committee&catid=32:the-cultural-rights-committee&Itemid=40.

¹⁴⁸ Centre for Human Rights UN HANDBOOK, *supra* note 20, at para. 158.

partnership with the media, they can better educate the people about their human rights, the duties owed by the state and to one another, and the tools in place to implement those rights and duties.¹⁴⁹ The media can help the HCHR inform the public about its existence, mission, and activities.¹⁵⁰ Working with the media can also help the HCHR to highlight national and international human rights issues.¹⁵¹ In addition, the HCHR can use the media to disseminate results of its investigations. Indeed, without the public awareness garnered through partnerships with the media, the HCHR cannot properly function.¹⁵² To this end, many NHRIs must make their annual and special Commission reports available to the public through the popular press.¹⁵³

ii. Law 53 Parameters

Article 4(6) of Law 53 requires the HCHR to spread a culture of human rights through the publication of documents and materials through the media. Article 4(8) requires that annual reports submitted to the Council of Representatives also be published through different media outlets.

iii. Comparative Models

For some NHRIs, specific media-related regulations have proven useful, particularly when there is regular contact between the Commission and press outlets. Regulations allow the NHRIs to control the flow of information, establish official media spokespersons, and manage information and feedback from the press.

For example, in **Northern Ireland**, the Code of Governance provides detailed instructions for managing media relationships. These regulations set out both the correct line of authority for who may act as a public representative of the Commission, and the process to follow should the official spokesperson be unavailable.¹⁵⁴ Furthermore, the

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at para. 159.

¹⁵³ *Egypt Law*, *supra* note 135, art. 3(13) (The Commission shall “[i]ssue bulletins, magazines, and printed material concerning the council, along with its objectives and functions.”); *India Human Rights Act*, *supra* note 28, art. 18(6) (“[T]he Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.”); *Nepal Act*, *supra* note 47, art. 14(2) (“Each year the Commission shall publish details of the activities carried out by it for the purpose of public information, provided that if the Commission deems it necessary, it may publish these details at any time.”).

¹⁵⁴ *Northern Ireland Human Rights Commission Code of Governance* [hereinafter *Northern Ireland Code of Governance*], § 19(1) (“The Chief Commissioner is the official media spokesperson for the Commission. In the absence of the Chief Commissioner, her/his designate is authorised to act as spokesperson for the Commission within agreed policy positions. All communications by Commissioners on behalf of the Commission with the media should be agreed with the Chief Commissioner or, in her/his absence, the Director or the Head of Communications and Education.”), *available at*

commission's Standing Orders provide guidelines to assist and regulate commissioners and staff commenting to the media in a private capacity.¹⁵⁵ In **Egypt** and many other NHRIs, the organizational infrastructure includes a Press and Public Relations Office

3(A)(iii) Programs for Teaching, Training, and Research

i. Overview

Many NHRIs have a mandate to promote human rights through developing, disseminating, and encouraging educational curricula and specialized training opportunities to improve knowledge and understanding of human rights both among the public and within the government. In Iraq, the Ministry of Human Rights and other governmental offices may be helpful partners in efforts to conduct human rights education and training for government employees, members of the security forces, government staff, and other stakeholders.

Regulations and procedures developed to facilitate the HCHR's mandate to perform research and educate the populace on the culture of human rights should incorporate considerations of potential partners, as well as the type of educational, training, and research interventions desired.

ii. Law 53 Parameters

Article 4(2) requires the HCHR to conduct studies and research, and submit recommendations and express opinions on issues related to the promotion and development of human rights. This function will require an assessment of educational curricula within Iraq's schools, for example, but also an assessment of human rights training and concepts addressed in the training of security sector personnel, public service staff, and in many other sectors across Iraq.

Additionally, and more specifically, Article 4(6) requires the HCHR to spread the culture of human rights by including human rights studies in educational curricula. This obligates the HCHR to develop mechanisms to assess current curricula and needs, develop appropriate human rights curricula, and engage in training and implementation as necessary.

http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/41/Code_of_Governance_for_Commissioners_%28February_2011%29.pdf

¹⁵⁵ *Id.* at § 19(3) ("When Commissioners are asked by the media to participate in a personal capacity, they should make it clear that they are not commenting on behalf of the Commission and that the public comment cannot be seen as compromising their ability to carry out their role within the Commission in an unbiased and apolitical manner. This applies equally where Commissioners are invited in a personal capacity to participate in a conference, seminar, meeting or other external event.").

However, the BoC may wish to develop regulations that further define the term “education curricula.” Currently, the law does not clarify which levels of educational institutions are included. Alternatively, however, “education curricula” may encompass a sufficiently broad category to include many forms and forums for education and training.

The organizational infrastructure of the HCHR should take these duties into account, and regulations or procedures that guide the implementation of the duty to educate should consider potential governmental and non-governmental partners to achieve these goals.

iii. Comparative Models

In **Algeria**, Presidential Order No. 01-71 mandates that the Human Rights Commission promote “research, education, and teaching of human rights in all training courses.”¹⁵⁶ Furthermore, the Commission’s education sub-commission is given the expansive task of “developing a global approach to integrating human rights education into curriculums at all levels of education and monitoring its effect; developing training programs for professions including state law enforcement employees; [and] monitoring the execution of United Nations Programs of Human Rights Training.”¹⁵⁷

The **Australian** NHRI provides human rights education resources for teachers called “rightsED,” which “aims to help students develop a critical understanding of human rights and responsibilities, as well as developing the attitudes, behaviours and skills to apply them in everyday life.”¹⁵⁸ The Australian NHRI will receive \$6.6 million over four years to support human rights education programs.¹⁵⁹ The majority of resources and activities have been developed for secondary students (14 years and up), with some resources and activities suitable for younger students (10 years and up). The resources are free to download or order and may be photocopied to use individually or as an entire resource,

¹⁵⁶ *Décret présidentiel No. 01-71 of 25 March 2001* (Algeria), Art. 6 (“La Commission a également pour missions: de mener toute action de sensibilisation, d’information et de communication sociale pour la promotion des droits de l’Homme,— de promouvoir la recherche, l’éducation et l’enseignement des droits de l’Homme dans tous les cycles de formation et dans les milieux socio-professionnels.”), [hereinafter *Algeria Decree 2001*].

¹⁵⁷ *Id.*, at art. 28 (“ La sous-commission permanente de l’éducation aux droits de l’Homme et de la communication a pour compétences: — d’élaborer une approche globale et complémentaire se rapportant aux voies et moyens visant l’intégration de l’éducation aux droits de l’Homme à tous les niveaux du système éducatif et de formation et de suivre sa mise en œuvre;— de contribuer à l’élaboration de programmes ciblés destinés aux professionnels notamment les agents de l’Etat chargés de l’application des lois ;— de suivre l’état d’exécution en Algérie des programmes des Nations Unies et de ses agences spécialisées se rapportant à l’éducation aux droits de l’Homme, à la démocratie et à la paix.”).

¹⁵⁸ Australian Human Rights Commission, *RightsEd*, available at: <http://www.hreoc.gov.au/education/rightsED.html>, [hereinafter *Australian Human Rights Commission website*].

¹⁵⁹ Australian Government Attorney-General’s Department, *Australia’s Human Rights Framework*, available at: <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/default.aspx>

thus allowing teacher, parents, and others to use the materials on their own initiative.¹⁶⁰ Further innovative educational resources produced by the Australian Commission include a teaching resource about human rights and responsibilities in Australia for adult students of English as a Second Language (ESL). This resource, created in partnership with “It’s your right!,” aims to increase awareness about the protection and promotion of human rights in Australia while developing English language skills.¹⁶¹

3(B) Advisory Functions: Reviewing and Recommending

i. Overview

The importance of the advisory functions of an NHRI cannot be overstated. The vast majority of NHRIs have a mandate to advise the legislative, judicial, and executive branches of government in the promotion and protection of human rights.¹⁶² NHRIs are often tasked with commenting on current and draft legislation, recommending on the ratification and implementation of international human rights instruments, promoting the creation, repeal, or modification of national laws and policies, and contributing to human rights reports for international bodies.¹⁶³

The HCHR’s mandate to analyze and provide advice on proposed or existing legislation is of particular significance, because it can lead to the codification of human rights principles into law, and can raise awareness of lawmakers about human rights norms.¹⁶⁴ While the HCHR cannot substitute for a properly functioning judiciary,¹⁶⁵ it well suited to review legislation and “act as a watchdog in the legislative process.”¹⁶⁶

Many NHRIs, through their other functions, are closely involved in legislation that has an impact on human rights. As such, NHRIs are able to analyze the effectiveness of existing laws, identify problems with the laws that have escaped the legislature’s attention, and suggest potential amendments.¹⁶⁷

¹⁶⁰ Australian Human Rights Commission website, *supra* note 158.

¹⁶¹ Australian Human Rights Commission, *It’s your right!*, available at: <http://www.hreoc.gov.au/education/esl/index.html>. (The resource “explores several cases of discrimination, in particular following the story of Hayat, a Muslim Ethiopian woman, who, after losing her job because her manager treats her unfairly, learns about her rights and the services available to her. She also learns that she has the power to do something to change her situation.”).

¹⁶² Centre for Human Rights UN HANDBOOK, *supra* note 2, at ¶ 182.

¹⁶³ *Id.*

¹⁶⁴ Commonwealth Secretariat, *NHRI Best Practice*, *supra* note 128, at 24.

¹⁶⁵ Centre for Human Rights UN HANDBOOK, *supra* note 2, at ¶ 190.

¹⁶⁶ *Id.* at ¶ 191.

¹⁶⁷ *Id.*

The HCHR's mandate to analyze and provide advice on the ratification and implementation of international human rights standards is a crucial part of its mission for at least two reasons. First, incorporation of human rights standards into domestic law is the first step towards full implementation of those standards.¹⁶⁸ Second, the HCHR's analysis and recommendations will raise the awareness of legislators and judges regarding human rights norms in general, and the state's international treaty obligations in particular.¹⁶⁹

3(B)(i) Functions Regarding National Legislation

i. Overview

Law 53 requires the HCHR to submit general recommendations and opinions about the protection and promotion of human rights in Iraq, and references both domestic and international law standards. However, the language of Article 4(3), regarding examination of Iraqi law for conformity with the Constitution, references "*laws in force*." Therefore, it is unclear, though highly recommended, that the HCHR's authority to provide evaluations and recommendation be extended to draft laws, repeals, and reforms under development or consideration.

This reading of Law 53 is supported by Article 4(1), which requires the HCHR to develop mechanisms to ensure that it protects the rights and freedoms stipulated in international laws, treaties and conventions ratified by Iraq.¹⁷⁰ Given this, **the HCHR should include in its advisory functions the responsibility to review both draft and current legislation for compliance with international human rights standards, and seek to harmonize Iraq's legal framework with such standards.** Suggested models include NHRIs in Algeria, Morocco and Northern Ireland.

Advisory functions regarding national legislation could be performed within a Legal directorate or unit, and should involve the establishment of Memoranda of Understanding with the Council of Representatives, the Council of Ministers, the Shura Council, and other national institutions facilitating collaboration.

ii. Law 53 Parameters

¹⁶⁸ *Id.* at ¶ 210.

¹⁶⁹ *Commonwealth Secretariat, NHRI Best Practice*, *supra* note 91, at 24.

¹⁷⁰ *Iraqi Law No. 53(2008)*, art. 4(1), requiring the development of mechanisms necessary to achieve the objectives stipulated in Article 3, which states in Article 3(second), "Protect the rights and freedoms stipulated in the constitution, international laws, treaties and conventions ratified by Iraq."

Article 3(2) expresses the HCHR's advisory jurisdictional scope as aiming to "protect the rights and freedoms stipulated in the Constitution, international laws, treaties and conventions ratified by Iraq."¹⁷¹

Articles 4(1)¹⁷² and 4(2)¹⁷³ outline coordination objectives to implement Article 3, and grant the authority to "submit recommendations and express opinions," respectively.

Article 4(3) obligates the HCHR to examine and evaluate legislations in force to determine to what extent they conform to the Constitution and submit recommendations to the Council of Representatives.¹⁷⁴

iii. Comparative Models

Most NHRIs have the ability, in an advisory capacity, to review legislation currently in force in their country for compatibility with international human rights standards.¹⁷⁵ Broader authorities to advise on the nation's legislative framework are also common. For example, in **Northern Ireland**, in addition to reviewing legislation in force for compliance with human rights standards, the Commission may also examine legislative proposals and provide reports on implications of the proposals for human rights, but only "...if requested by a Minister of the Government".¹⁷⁶

In **Algeria**, the power of review afforded to the Commission is even broader. The Judicial Sub-commission "may comment on any bill or regulatory text that could jeopardize the enjoyment of individual or collective rights or be incompatible with international treaties

¹⁷¹ *Id.* at art. 3(2).

¹⁷² *Id.* at art. 4 (1) ("Coordinate with relevant bodies to develop strategies and action mechanisms in order to ensure the achievement of HCHR objectives provided in Article (3) of this Law.").

¹⁷³ *Id.* at art. 4 (2) ("Conduct studies and researches; submit recommendations and express opinions on issues related to the promotion and development of human rights.").

¹⁷⁴ *Id.* at art. 4(3).

¹⁷⁵ See, e.g., *Northern Ireland Human Rights Commission Act 2000*, § 8(a) (The Commission shall "keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights."), [hereinafter *Northern Ireland Human Rights Act*]; *Kenya Act*, *supra* note 38, Part II, 16-(1)(f) (The Commission acts as "chief agent of compliance with its obligations under international treaties and conventions on human rights."); *India Human Rights Act*, *supra* note 28, art. 12 (The Commission shall "review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights;...review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;...[and] study treaties and other international instruments on human rights and make recommendations for their effective implementation."); *Nepal Act*, *supra* note 47, art. 9(f) ("Review the provisions on safeguards provided by the Constitution and other prevailing law for the enforcement of human rights and submit necessary recommendations for the effective implementation of such provisions."); *Mauritius Act*, *supra* note 143, art. 4(1) (The Commission shall "review the safeguards provided by or under any enactment for the protection of human rights;...[and] review the factors or difficulties that inhibit the enjoyment of human rights.").

¹⁷⁶ *Northern Ireland Human Rights Act*, *supra* note 175, § 8(b) (The Commission shall "examine any legislative proposal and report its views on any implications of such proposal for human rights.").

ratified by Algeria.¹⁷⁷

Morocco provides a useful example of these advisory functions in practice. The Morocco NHRI operationalized its review mandate through the creation of the Committee on the Study of Legislation and Politics, which may study *inter alia* the harmonization of international treaties under development.¹⁷⁸

3(B)(ii) Ratification and Implementation of International Standards

i. Overview

Law 53 requires the HCHR to both make recommendations concerning Iraq's accession to international human rights treaties and conventions, as well as to submit recommendations and proposals to committees preparing human rights reports for the United Nations.¹⁷⁹ These two advisory functions require the HCHR to monitor and report on compliance with international standards, but Law 53 does not clarify the weight the HCHR's opinions will carry when received by the relevant government bodies responsible for reporting to the United Nations.

The HCHR should consider standardizing the process of advising through Memoranda of Understanding with government committees, and developing procedures whereby the HCHR's proposals and recommendations are published through various media outlets.

By publishing recommendations, the HCHR could both demonstrate the fulfillment of its advisory objectives, and provide other stakeholders (such as civil society and international observers) with well-researched information. Further, the publication of HCHR recommendations would help to foster and strengthen a dialogue between governmental and civil society actors about the human rights situation in Iraq and the State's compliance with international conventions and treaties to which it is a party.

ii. Law 53 Parameters

¹⁷⁷ *Algeria Regulations*, *supra* note 26, art. 27.

¹⁷⁸ *Morocco Regulations*, *supra* note 41, art. 29 (The Committee shall "ponder the harmonization of the national legislative and regulatory texts with duly published international conventions and treaties on human rights ratified by the Kingdom or of which it is a signatory, and make recommendations relevant thereto; encourage the ratification and signature by the Kingdom of international agreements and conventions on human rights, and study draft human rights international conventions and legislative and regulatory texts submitted for the Council's appreciation.").

¹⁷⁹ *Iraqi Law No. 53* (2008), art. 4(4) & (7).

Article 4(3) of Law 53 gives the Commission the duty to “[s]ubmit proposals and recommendations concerning Iraq's accession to international human rights treaties and conventions.”¹⁸⁰ Additionally, Article 4(7) requires the Commission to “[s]ubmit recommendations and proposals to committees entrusted with the preparation of reports which the state is obliged to submit to the United Nations.”¹⁸¹

iii. Comparative Models

Most NHRIs also have the competency to promote ratification of or accession to treaties or conventions on human rights.¹⁸² Additionally, NHRIs also contribute to the development of national human rights reports submitted to the United Nations. For example, in **Morocco**, the commission can contribute, as the need arises, “to the preparation of the reports that public authorities are called upon to submit to the United Nations’ various agencies and to relevant international and regional institutions in compliance with the Kingdom’s international commitments, and provide, in such cases, assistance to national delegations participating in international gatherings on human rights.”¹⁸³

In **Tanzania**, the Commission must not only promote ratification of or accession to treaties or conventions on human rights, but also must “monitor and assess compliance, within the United Republic, by the government and other persons, with human rights standards provided for in treaties or conventions or under customary international law to which the United Republic has obligations.”¹⁸⁴

3(C) Protection Functions: Monitoring, Investigating, and Reporting

i. Overview

The investigation of human rights violations is one of the most important functions with which a government can entrust its NHRI. **The investigative machinery of an NHRI can serve both as a method of relief for victims of human rights abuses and as a strong deterrent to behavior that contravenes human rights standards.** Moreover, a government that entrusts its NHRI with such a mission demonstrates its commitment to human rights and its willingness to take its international and domestic legal obligations seriously.

¹⁸⁰ *Id.* at art. 4 (3).

¹⁸¹ *Id.* at art. 4 (7).

¹⁸² *See, e.g., Tanzania Act, supra* note 65, Part II 6-1(m) (“under the auspices of the government, to cooperate with agencies of the United Nations, the OAU, the Commonwealth and other bilateral, multilateral or regional and national institutions of other countries which are competent in the areas of protection and promotion of human rights and administrative justice.”).

¹⁸³ *Morocco Regulations, supra* note 41, art. 2 of 2001 Dahir. (art. 36 of Regulations).

¹⁸⁴ *Tanzania Act, supra* note 65, art. 6(m).

It is important that an NHRI create standard and fair procedures for investigating complaints in order to protect the rights of all parties involved, as well as procedures for *suo moto* investigations and regular monitoring activities. These procedures should reflect the principles of procedural fairness and justice. Procedural fairness, however, should be balanced with whatever degree of discretion is necessary to protect victims of human rights abuses.

An NHRI that effectively investigates human rights violations is well positioned to provide policy advice on human rights issues to other government bodies. The provision of reports to government bodies is important because it alerts government officials as to the existence of the problem and provides suggestions for its amelioration.

While many human rights abuses have their origins in legislative insufficiencies and unjust administrative practices, human rights abuses proliferate in the private sphere. NHRIs can illuminate these less visible human rights abuses and garner the attention of other government bodies to the problem.

3(C)(i) Prison Monitoring and Investigation

i. Overview

Visiting, investigating, monitoring, and reporting on the situation of detainees and detention centers within Iraq is a key function of the HCHR. **Comparative examples demonstrate that the HCHR must have full and total access to prisons, detention centers, holding cells, and other places of detention in order to fully perform this mission.**

The **Palestinian model** demonstrates the importance of “surprise” visits, and the **Afghanistan model** highlights the challenges that NHRIs may face in a volatile security situation or where political issues present obstacles to accessing detention centers. Law 53 enables the HCHR to visit detention centers and other places “without need for the prior authorization of said bodies” and grants access to detainees and facilities.¹⁸⁵ This establishes the legal right to “surprise” visits, but mechanisms to ensure the exercise of this right must be put in place. Further, Article 6 of Law 53 requires ministries and other bodies to provide information to and cooperate with the HCHR as it works to fulfill its mandate.

Given this legal foundation, the HCHR should establish a unit, working group, or directorate to oversee the monitoring functions of detention centers within Iraq, in coordination with the complaints and investigations directorate or unit, to ensure that

¹⁸⁵ *Iraqi Law No. 53 (2008)*, art 5(5).

detainees have access to regular complaints procedures in addition to HCHR officials during prison visits. Additionally, the HCHR should develop Memoranda of Understanding with governmental and non-governmental institutions that maintain detention centers, prisons, or institutions that perform similar functions. Such memoranda should outline the legal right of the HCHR to visit without notice, and the legal obligation of the institution to allow access to detainees and facilities.

ii. Law 53 Parameters

Law 53 gives the Commission an expansive mandate to “[c]onduct visits to prisons, social rehabilitation centers, detention centers and all other places without the need for the prior authorization of the said bodies”.¹⁸⁶ The Commission must further “...meet with those convicted and those detained, document cases of human rights violations and inform the relevant authorities to take the proper legal action.”¹⁸⁷

iii. Comparative Models

Several NHRIs reviewed share the HCHR’s important mandate to visit prisons—with or without permission from the detention facility.¹⁸⁸ For example, in **India**, the Commission is tasked with visiting, “any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon”.¹⁸⁹

Similarly, in **Afghanistan**, the NHRI is mandated to “visit detention centers to monitor the implementation laws on the treatment of prisoners.” However, in its 2009 report on the “Situation of Detention Centers and Prisons in Afghanistan”, the Commission noted that “technical and logistical difficulties, and problems accessing detention centers”

¹⁸⁶ *Iraq Law*, art. 5(5).

¹⁸⁷ *Id.*

¹⁸⁸ See, e.g. *Kenya Act*, *supra* note 38, art. 16.1(b) (The Commission shall “visit prisons and places of detention or related facilities with a view to assessing and inspecting the conditions under which the inmates are held and make appropriate recommendations thereon.”); *Northern Ireland Human Rights Commission Act*, *supra* note 175, Part VII, § 69C (“For the purpose of an investigation under section 69(8) a person authorised in writing by the Commission may enter a specified place of detention in Northern Ireland on one or more occasions during a specified period.”); *Tanzania Act*, *supra* note 135, Part II, Art. 6-1(h) (The Commission shall “visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and making recommendations to redress the existing problems in accordance with the provisions of this Act.”); *Nigeria National Human Rights Commission Act 1995*, art. 6.1(d) (The Commission shall have the power to “visit...places of detention in order to ascertain the conditions thereof and make recommendations to the appropriate authorities.”), [hereinafter *Nigeria Act*].

¹⁸⁹ *India Human Rights Act*, *supra* note 28, § 12(c).

prevented systematic observations and resulted in a lack of complete and verified information.¹⁹⁰

The **Palestine** Independent Commission on Human Rights (ICHR) may prove to be a useful example because of the detailed procedural guidelines provided for prison visitation. In Palestine, regional office staff must visit places of detention regularly in both scheduled and “surprise” visits.¹⁹¹ Places of detention visited include prisons, Preventive Security detention centers, General Intelligence (*mukhabarat*) detention centers, juvenile justice centers and social welfare institutions.¹⁹² Under the program of scheduled visits, each place of detention under Palestinian control in the Occupied Palestinian Territory should be visited at least once per month.¹⁹³ The unscheduled or “surprise” visit should be made when an ICHR officer responds to a specific complaint, or to a request for a visit, or when the officer has reason to believe that a human right may be being violated or may be at risk of violation in a centre.¹⁹⁴

3(C)(ii) Investigation *suo motu*

i. Overview

The power of investigation *suo motu* (on its own motion) is a distinctive monitoring feature of NHRIs, usually unavailable in the traditional court of law context. As such, the Iraqi HCHR may wish to emphasize this power operationally through developing guidelines or regulations that promote the efficacy of the *suo motu* investigation like those outlined in **Uganda**.

The BoC may also wish to look to the **South Africa** public enquiry hearings example as a method for operationalizing the *suo moto* investigation function. The South African model might be particularly useful for the HCHR's efforts to connect investigations with public outreach, education, and monitoring. Public enquiry hearings would increase the transparency and accountability of the HCHR, provide an additional access point for the public to both understand the work and vision of the HCHR, and to participate in its work to promote and protect human rights in Iraq.

ii. Law 53 Parameters

¹⁹⁰ Afghanistan Independent Human Rights Commission, *The Situation of Detention Centers and Prisons in Afghanistan*, (2009), available at:

http://www.aihrc.org.af/media/files/Reports/Thematic%20reports/rep_25_jun_2010.pdf.

¹⁹¹ Chris Sidoti, et al., *Evaluation of the Palestine Independent Commission for Human Rights*, (2010), § 4.3, available at: <http://www.ichr.ps/pdfs/isui23.pdf>.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

Article 5(2) of Law 53 requires the Commission to [c]onduct initial investigations on violations of human rights based on information.”¹⁹⁵ This provision, though somewhat ambiguous, appears to grant the Commission the power to investigate violations *suo motu* (on its own motion). The Commission thus has the authority to initiate its own investigations based on information gleaned from virtually any source, in order to fulfill its mandate.

Note: Though the functions are similar, initial investigation based on grievances filed before the Commission are considered separately in the Complaints Handling section, below.

iii. Comparative Models

As a monitoring function, *suo motu* investigations—or those initiated by the Commission itself—hold promise both as a preventative measure and as a mechanism to maintain the credibility and independence of the Commission. In **India**, the Commission is tasked with inquiring, *suo moto* into any complaint of “(i) a violation of human rights or abetment thereof or (ii) negligence in the prevention of such violation by a public servant”.¹⁹⁶

Exercising this discretionary power of inquiry is complicated, however, by the many ways *suo moto* investigations may begin. For example, the NHRI may receive anonymous complaints, or may observe, through a credible source such as a media report, that a fundamental right is being violated.

To help Commissioners make this determination, the **Ugandan** Human Rights Commission has issued specific guidelines outlining the process of Commission-initiated investigations as well as the purpose and methodology of focusing on systemic violations of fundamental rights.¹⁹⁷ According to the Ugandan protocol, the decision for the Commission to initiate an investigation into any alleged violation “...must be taken by the Director in consultation with the Chairperson or Secretary of the Commission or Commissioners.” Furthermore, before initiating the investigation, the Director must consider a set of criteria that includes:

- a) “Whether or not the public or a particular group will meaningfully gain from the investigation;
- b) Whether or not the complaint adversely affects the public or a particular group;
- c) Whether or not Commission resources will be justifiably spent on the investigation.”¹⁹⁸

¹⁹⁵ Iraqi Law No. 53 (2008), Art. 5(5).

¹⁹⁶ India Human Rights Act, *supra* note 28, art. 12(a).

¹⁹⁷ Uganda Human Rights Commission Complaints Handling Procedures Manual 2008, at 65–68, [hereinafter *Uganda Complaints Handling Manual*].

¹⁹⁸ *Id.* at 65.

In **South Africa**, some *suo moto* investigations take the unique form of public enquiry hearings, where Commissioners issue final recommendations following a public forum on a pressing human rights issue. These hearings may be a useful model for synthesizing the HCHR's promotional, monitoring, and quasi-judicial mandates. As the former Chairperson of the South African Commission notes: **"The way in which we have used public inquiries has been quite valuable as a tool in terms of looking [not only] at each separate aspect of our mandate, but [also] how we bring them all together in one intervention – an educative role, a monitoring role, [and] an accountability role."**¹⁹⁹

3(C)(iii) Reporting: Annual, Thematic, and Special

i. Overview

As the HCHR is mandated to produce and publish an annual report for the Council of Representatives, **the BoC should consider developing regulations outlining the timing, procedures, and structure of the annual reports, as well as mechanisms for public dissemination in a variety of media outlets.** Developing a system of regulations or protocols will enhance the efficacy of the HCHR's work, demonstrate the value of the HCHR to the government and parliament of Iraq and its citizens, and enable the HCHR to implement systematic reporting procedures to be followed year after year.

Additionally, to enhance the effectiveness of its monitoring function as well as its mandate to educate and inform the public on human rights issues in Iraq, **the BoC should consider developing guidelines for thematic or intermittent reporting, including potential topics that may demand investigation and reporting—such as the status of detention centers, access to healthcare among vulnerable populations, the economic situation of women heads of household, and other pressing human rights issues.** Mechanisms for the publication of such reports should also be developed, and may include publication on the HCHR website, dissemination through NGO networks, press releases in the media, and other outlets.

ii. Law 53 Parameters

Law 53 provides robust reporting requirements for the HCHR, and prescribes that the reports be made public through a variety of media venues. Specifically, Law 53 requires the HCHR to "[s]ubmit an annual report to the Council of Representatives containing general assessment of the human rights situation in Iraq and publish such report in different media outlets."²⁰⁰ The Law requires the HCHR to "[c]onduct studies and researches; submit recommendations and express opinions on issues related to the

¹⁹⁹ Erasmus South African Human Rights Commission paper, *supra* note 139, at 98.

²⁰⁰ *Iraq Law No. 53* (2008), art. 4 (8).

promotion and development of human rights.”²⁰¹ Additionally, the HCHR must spread a culture of human rights by publishing media materials on human rights related topics.²⁰²

Law 53 therefore obligates the HCHR not only to produce annual reports for parliament, but also to develop and publish thematic and special reports in order to advance the goals of public outreach, education, and coordination with civil society and other stakeholders. The content and timing of these reports is left to the discretion of the Commission.

iii. Comparative Models

Almost every NHRI examined must submit an annual report²⁰³ and most also submit additional thematic reports with wide discretion.²⁰⁴ The content of annual reports varies by NHRI, though some models, such as that of Palestine, are particularly instructive for Iraq due to the detailed nature of their protocols.

The **Palestinian Independent Commission for Human Rights (ICHR)** develops and disseminates several different types of reports throughout the year. These include annual and monthly reports on the general human rights situation, as well as thematic and special reports focusing on truth-seeking, legal issues, complaints and detention centers, and special topics. For each annual report, the ICHR follows the same format. Each report begins with an analysis of the legal and political context in which human rights are exercised in Palestine. This is followed by an assessment of the performance of the three branches of government. This assessment examines legal developments in each branch and notes trends in their practices and interrelations. Recommendations are made for improving government performance regarding separation of powers, the rule of law,

²⁰¹ *Id.* at art. 4 (2).

²⁰² *Id.* at art. 4(6).

²⁰³ See, e.g., *Namibia Ombudsman Act of 1990*, § 6(1) (“The Ombudsman shall forthwith compile a full report in respect of every matter enquired into or investigated by him or her in terms of this Act and which has not been rectified, corrected or remedied as contemplated in this Act to the satisfaction of the Ombudsman, and shall submit any such report as soon as possible to the Speaker of the National Assembly and shall transmit a copy of such report to the Cabinet and, in the case of a matter of which the administration vests in a local or regional authority, commission, board, corporation, committee, body or institution established or instituted by or under any law, a further copy to the authority, commission, board, corporation, committee, body or institution concerned.”); *Id.* at § 6(2) (“In addition to the report referred to in subsection (1) the Ombudsman shall submit annually not later than 31 March a report to the Speaker of the National Assembly in connection with all the Ombudsman activities during the period ending on 31 December of the previous year.”), [hereinafter *Namibia Ombudsman Act*]; *Ghana Act*, *supra* note 118, Part IV, 19-(1) (“The Commissioner shall, annually submit a report to Parliament which shall include a summary of the matters investigated, and the action taken on them by the Commission during the preceding year.”); *Kenya Act*, *supra* note 38, Part II, 21-(1) (“The Commission shall submit an annual report to the President and to the National Assembly through the Minister and may at any time submit special reports to the President and to the National Assembly on any matter.”).

²⁰⁴ See, e.g., *Ghana Act*, *supra* note 118, Part IV, 19-(4) (“The Commissioner may, in the public interest or in the interest of any person or department or any other authority, publish reports relating (a) generally to the exercise of the functions of the Commission whether or not the matters in the report have been subject of a report to Parliament.”).

respect for human rights and good governance. Finally, the report analyzes the impact of the Israeli violations on the performance of public institutions and authorities. The Annual Report is submitted to the President and the Speaker of the Palestinian Legislative Council and is then launched in a high-profile public event. The Report itself is made public and available in both Arabic and English.²⁰⁵

Thematic or special reporting provides another means through which NHRIs may raise awareness about contemporary issues. For example, recent thematic reports released by the **Afghanistan Independent Human Rights Commission (AIHRC)** include:

- *Discussion Paper on the Legality of Amnesties;*
- *Fair access of children to education in Afghanistan;*
- *Causes of torture in law enforcement institutions;*
- *The Situation of Detention Centers and Prisons in Afghanistan;* and
- *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan*²⁰⁶

Procedures for identifying when a thematic or special report should be issued often center on the public interest. For example, in **Ghana**, “[t]he Commissioner may, in the public interest or in the interest of any person or department or any other authority, publish reports relating generally to the exercise of the functions of the Commission whether or not the matters in the report have been subject of a report to Parliament.”²⁰⁷

²⁰⁵ See Palestinian Independent Commission for Human Rights website, <http://www.ichr.ps/ar/1/6>.

²⁰⁶ Afghanistan Independent Human Rights Commission, *Thematic Reports*, available at: http://www.aihrc.org.af/2010_eng/Eng_pages/Reports/thematic.aspx.

²⁰⁷ *Ghana Act*, *supra* note 118, Part IV, 19-(4).

Appendix II: Possible HCHR Reporting Procedures

Section 1. Annual Reports

3. The Commission shall submit an annual report of the previous year's activities and future work plans to the Council of Representatives by March 1 of the following year.²⁰⁸
 1. The report shall include a summary and evaluation of:
 1. All matters investigated, the action taken on those matters by the Commission during the preceding year, and whether or not they have been rectified, corrected or remedied as contemplated under Law 53 of 2008²⁰⁹;
 2. All activities of the Commission's committees.
 3. The Commission's financial status and expected needs for the next two years;
 4. All changes to Commission bylaws and administrative procedures; and
 5. Administrative changes and actions taken by the Commission.
4. The Commission will submit an annual Human Rights Assessment Report containing a general assessment of the human rights situation in Iraq to the Council of Representatives and publish this report in various media outlets by March 1 of each year.²¹⁰
 - a. This report shall include an impartial evaluation of:
 1. The human rights related conduct of the government, parliament, civil society, private individuals, and all other relevant parties;
 2. The current and expected human rights situation for all rights in Section 2 of the Iraqi Constitution, in international human rights instruments to which Iraq is a party, and all other rights the Commission determines to be proper to consider under its authority from Law 52 of 2008;
 3. The current and expected human rights situation of all religious, ethnic, philosophical, racial, gender, ideological, political, and other relevant categories of individuals and groups; and
 4. The activities of the Commission, including complaints, investigations, remedies and reports.

Section 2. Other Reports

²⁰⁸ *Iraqi Law No. 53 (2008)*, art. 12 (4); *see also*, *Namibia Ombudsman Act*, *supra* note 214, § 6(2).

²⁰⁹ *Ghana Act*, *supra* note 118, Part IV, 19(1) ("The Commissioner shall, annually submit a report to Parliament which shall include a summary of the matters investigated, and the action taken on them by the Commission during the preceding year.").

²¹⁰ *Iraqi Law No. 53 (2008)*, art. 4 (8).

1. The Commission may, in the public interest or in the interest of any person or department or any other appropriate authority, publish reports relating generally to the exercise of the functions of the Commission under this Law, to any particular case investigated by the Commission whether or not the matters in the report have been subject of a report to Council of Representatives, or in response to an external request made by a civil society organization, a government entity, an individual or other entity which the Commission determines it should address.²¹¹ The Board of Commissioners may set deadlines for such reports as necessary.
2. All reports to the Council of Representatives must be submitted to the Board of Commissioners at least 14 days before the deadline to submit the report to the Council of Representatives and must be approved by a two-thirds majority vote of quorum before being submitted to the Council of Representatives.
3. If the Board of Commissioners rejects a report, it shall provide an explanation of why the report was rejected and new version of the report shall be submitted to the Board of Commissioners within 14 days. The deadline for submitting a report to the Council of Representatives may be extended upon demonstration of good cause, including in the event of a rejection of a report by the Board of Commissioners.

Section 3. Distribution Procedures

1. All Commission reports shall be distributed to media outlets and be published and easily accessible to the public, including through the use of events and materials as provided by Art. 4(Sixth) of Law 53 of 2008.
2. If there is good cause, the Board of Commissioners may, by a two-thirds majority vote of quorum, withhold or redact portions of a report from the media and publishing. The Board of Commissioners must make public the decision to withhold the report and provide an explanation.

Section 4. Outreach Procedures

1. The Commission shall provide information regarding human rights generally and issues specific to Iraq to education institutions, civil society, the media, the government, and other relevant entities. This information may be in the form of a publication, conferences, symposiums, artistic and social events, and media materials.
2. The Commission shall coordinate with education institutions, civil society, the media, the government, and other relevant entities to create materials for outreach to those organizations.

²¹¹ *Ghana Act*, *supra* note 118, Part IV, 19(4).

3. The Commission shall coordinate with educational institutions and other relevant entities to ensure that a human rights culture consistent with the Iraqi Constitution Section 2 is included within educational curricula.
4. The Commission shall maintain a website that includes all Commission reports, complaints procedures and necessary forms, contact information, event information and other information relevant to the Commission's responsibilities and activities.

3(D) Quasi-Judicial Functions: Alternative Dispute Resolution

i. Overview

While NHRIs do not often have the authority to impose legally binding outcomes in relation to received complaints, **enabling legislation of most NHRIs provide for the attempted resolution of complaints through Alternative Dispute Resolution (ADR), such as mediation or conciliation.** Where attempted resolution is unsuccessful, or issues require the intervention of a court for, say, criminal proceedings, complaints may proceed to tribunals or courts which can issue final and binding determinations.²¹² In some countries NHRIs also have the ability to pursue complaints before tribunals or courts on behalf of complainants as *amicus curiae* (friends of the court).²¹³

Though Law 53 does not expressly grant the HCHR the mandate to mediate disputes, such an authority should be understood as implied in the HCHR's broader mandate, and found under its obligation to receive and investigate complaints. Efforts to bring resolution to human rights disputes through conciliation or mediation are constructive processes aimed at settling disputes amicably. Mediation and conciliation, in contrast to litigation, can provide a method of redress that brings individuals and communities together.²¹⁴ These forms of ADR may prove to be useful in the context of the Iraq's distinct obstacles.

The BoC should consider developing mechanisms for dispute resolution, as well as regulations or protocols to guide the process. **As the HCHR will be divided between a headquarters office and regional and governorate offices, the BoC should further consider the scope of authority that should be delegated to regional and governorate offices to engage in ADR, and the reporting and oversight mechanisms required for such processes to be effective, confidential, fair, and legitimate.**

The **Kenyan** model of establishing a panel of at least one Commissioner, a representative from the Legal Services department, and an expert in the area of dispute services, may be desirable for Iraq, with possible additions to the panel as necessary or at the request of the parties.

²¹² Tracy Raymond, Australian Human Rights Commission, *Alternative Dispute Resolution in the Human Rights and Anti-Discrimination Law Context: Reflections on Theory, Practice, and Skills*, 1.2, (2006), available at: www.hreoc.gov.au/complaints_information/publications/ADR_2006.html.

²¹³ See *The Human Rights Commission of Sierra Leone Act of 2004*, Part III, art. 12, [hereinafter *Sierra Leone Act 2004*]; *India Human Rights Act*, *supra* note 28, art. 12(b); and *Australian Human Rights Commission Act No. 125 of 1986*, Part IIB, Division 2, Art. 46PV(1), [hereinafter *Australian Human Rights Act*]

²¹⁴ Erasmus South African Human Rights Commission Act paper, *supra* note 139, at 98.

The development of ADR protocols should also include decisions as to the type of ADR the HCHR will pursue. Such as, will the ADR process seek to guide the parties to clarify their dispute and reach their own solution, or will the HCHR officials promote a particular outcome based on its own investigation of the content of the dispute? Will the parties be able to appeal or reject the ADR decision? The BoC should also be mindful that the HCHR has no authority to enforce ADR decisions, and that referral to the judicial system will always remain an option and, potentially, a requirement.

ii. Law 53 Parameters

Law 53 neither explicitly requires nor expressly prohibits the use of alternative dispute resolution (ADR) (or conciliation and mediation) as a means of realizing the HCHR's mandate to spread a culture of human rights, and to receive and investigate complaints. Law 53 states that the HCHR must "conduct initial investigations ... Ascertain the veracity of complaints... [and] Initiate lawsuits related to violations and refer them to the Public Prosecution to take legal action."²¹⁵

Though Law 53 is silent as to the potential for the HCHR to engage in ADR (or conciliation or mediation), the fact that the majority of NHRIs engage in ADR as a complementary process to referral to traditional judicial institutions, is instructive.²¹⁶ Given the HCHR's mandate to promote a culture of human rights and to receive and investigate complaints, the authority to attempt resolution of disputes as a complement to referral to the judiciary should be read into Law 53.

iii. Comparative Models

The **Canadian** NHRI attempts to address disputes through ADR before they rise to the level of investigations, offering voluntary mediation at all stages of the complaints process.²¹⁷ Mediation at the Canadian NHRI is facilitative and evaluative in nature,²¹⁸ The mediators assist the parties to clearly identify their interests in order to reach a mutually acceptable resolution of the complaint, aiming to ensure that agreements address both the interests of the parties and the public interest²¹⁹ While mediation is voluntary, the Canadian NHRI may require mandatory conciliation proceedings at any stage of the

²¹⁵ *Iraqi Law No. 53* (2008), art. 5.

²¹⁶ See, for example, the work of The National Commission on Human Rights (Indonesia), the Australian Human Rights Commission, the Fiji Human Rights Commission, and the New Zealand Human Rights Commission.

²¹⁷ Canadian Human Rights Commission, *Complaint Management and Resolution Process Results-based Management Accountability Framework, Final Report*, May 2004, p. 3, available at: http://www.chrc-ccdp.ca/pdf/rmaf_en.pdf, [hereinafter Canadian Human Rights Commission *Complaint Management and Accountability Framework*].

²¹⁸ *Id.*

²¹⁹ *Id.*

complaints process.²²⁰ **Remedies available through conciliation and mediation can include both monetary and non-monetary components.**²²¹

The **South African** NHRI, in contrast to the Canadian NHRI, must seek the permission of both parties in order to conciliate a complaint.²²² This is more similar to the Iraqi situation under Law 53. While the South African Commission may unilaterally decide to resolve a complaint through mediation, either the complainant or the respondent may appeal this decision.²²³ Moreover, the South African Human Rights Commission recognizes that, if either party objects to mediation, the likelihood of success in mediation is “remote.”²²⁴ In South Africa, a suitably qualified person appointed by the Commission may conduct mediation.²²⁵

The **Australian** NHRI promotes conciliation as an informal and flexible approach to the resolution of complaints.²²⁶ Although conciliation at the Australian NHRI may take the traditional form of face-to-face negotiations between a conciliator and the parties involved, it may also take the form of a telephone negotiation between the Commission and the parties, a telephone conciliation conference, or a simple exchange of letters between the parties involved.²²⁷ During conciliations, officers of the Commission serve as impartial third parties assisting in promoting a mutually agreed upon settlement.²²⁸ Unlike mediation where the parties develop their own resolution, however, conciliators here provide options to the parties as to possible terms of settlement.²²⁹ While legal representation is not necessary, parties may request that their lawyers attend negotiations.²³⁰ As many complaints handled by the Australian Commission relate to labour issues, remedies often include: an apology; reinstatement to a job or other position; compensation; and/or changes to institutional policies.²³¹

In **Kenya**, the conciliation process requires the Commission to constitute a conciliation panel consisting of at least one designated Commissioner, a member of the Legal Services Department, and, where necessary, and an appointed member who is an expert in the

²²⁰ *Id.*

²²¹ *Id.* at p. 4. (“Examples of agreements can include non-monetary components (such as apologies) and monetary components (such as compensation for lost wages and pain and suffering).”).

²²² *South African Human Rights Complaints Handling Manual* (2006), Part 2(2)(3), [hereinafter *South African Complaints Handling Manual*].

²²³ *Id.* at Part 2(3)(1).

²²⁴ *Id.* at Part 2(3)(2).

²²⁵ *Id.* at Part, 2(3)(3).

²²⁶ Australian Human Rights Commission, *Conciliation: How it Works*, available at: http://www.humanrights.gov.au/complaints_information/conciliation.html, [hereinafter Australian Commission, *Conciliation: How it Works*].

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

issues under consideration.²³² During the conciliation meetings, the panel may use any procedures it deems fit.²³³ Meetings conclude with the signing of a conciliation agreement “bearing the common seal of the Commission and signed by the designated Commissioner.”²³⁴

²³² *Kenya National Commission on Human Rights (Complaints Procedures) Regulations* (2005), *Legal Notice No. 115, Legislative Supplement No. 40, Kenya Gazette Supplement No. 67, Part IV—Conciliation*, § 24(4), [hereinafter *Kenya Complaints Procedures*].

²³³ *Id.* at § 25.

²³⁴ *Id.* at § 26(1).

SECTION 4: THE COMPLAINTS HANDLING PROCESS

4.1 Overview

- Establishing a clear, transparent, unbiased and practical complaints handling process is essential to the work of the HCHR.
- Complaints processes include: defining filing and information requirements; jurisdictional screening; developing external referral systems; building internal management rules for complaints; and putting case tracking systems into place.
- Law 53 requires confidentiality in the complaints handling process.
- Those who have had their rights violated, and those who are accused of violations, must be informed of their rights under the law, and should be informed of the HCHR's authorities. The HCHR should develop and widely publicize a Client's Rights Charter.
- The Board of Commissioners should develop protocols guiding available remedies, which could include: negotiation, conciliation, or mediation resulting in an agreed solution, such as payment of financial compensation; referral to the Public Prosecutor; the issuance of advisory opinions; or the issuance of non-binding decisions or reports.

NHRIs with complaints handling competencies have the potential to become positive and versatile supplements to existing judicial systems.²³⁵ While an NHRI cannot effectively replace a properly functioning judicial system,²³⁶ NHRIs can offer distinct advantages to people whose rights have been violated.²³⁷ By virtue of relatively informal procedural requirements, NHRIs place fewer barriers between the public and remedies for human rights abuses. Consequently, some NHRIs complaints mechanisms serve as citizens' preferred forum for redress. However, **without a practical and streamlined approach to complaints management, NHRIs experience long delays, unnecessary public confusion, and frustrated missions.**²³⁸

In Iraq, the HCHR's complaints handling function may prove particularly useful because demands on the Iraqi judiciary may limit the time and resources available to focus exclusively on matters of human rights. Therefore, because the HCHR is required to accept public complaints, regulations or guidelines are necessary to help

²³⁵ Centre for Human Rights UN HANDBOOK, *supra* note 20, at para. 220.

²³⁶ *Id.* at para. 219.

²³⁷ *Id.* at para. 220.

²³⁸ *Id.* at para. 98–99.

streamline the complaints intake and dispensation process, protect victims and the accused, streamline data, and protect and promote human rights.

The BoC should consider promulgating internal regulations that include:

- Complaint filing regulations and procedures;
- Clear guidelines for distinguishing the HCHR's complaints jurisdiction;
- External referral protocol;
- Methods to determine whether issues should be investigated, mediated or conciliated, or sent to a hearing;
- Method to distinguish or categorize complaints as individual versus systemic issues;
- Mechanisms for capturing the findings of complaints in a database;
- Clear confidentiality protocols for Commissioners, the secretariat, and others serving under their supervision;
- Accessible explanation of the rights of the public (such as a publicized Client Rights Charter); and
- Notice regarding possible remedies available for complainants.

Additionally, even if internal procedures are set forth clearly in regulatory guidelines, complaints handling may prove to be ineffective if the HCHR does not account for external factors. For example, delays may be attributed to the volume of complaints received or staff capacity in the complaints department. Complaints procedures and internal guidelines should be flexible enough to adjust to contingencies as they arise.

The exact structure of the complaints mechanism is less important than the clarity of the processes to be followed and the degree of rigor invested in adherence to those processes.²³⁹ If processes are clear and standardized, complaints will be handled more fairly and efficiently, and better serve to protect and educate the public.

4.2 Key Recommendations

(A) Filing and Information Requirements

- To ensure the effective and efficient functioning of complaints handling, the HCHR should develop a clear set of admissibility criteria for complaints filing and publicize such requirements, along with necessary forms and samples, on the HCHR website. Such efforts would align the HCHR with other NHRIs that engage in complaints handling.
- Regulations guiding filing requirements should include the manner of filing to ensure ease of access and understanding for members of the public. International standards suggest that complaints should be filed in writing and submitted either via email, through a link on the Commission website,

²³⁹ *Id.* at para. 221.

via post, or in person. Where reducing a complaint to writing proves challenging or impossible for a complainant, HCHR staff should be trained and prepared to provide assistance.

- Elements required for a properly filed claim may include:
 - Delineation of persons with *locus standi* to file;
 - A statute of limitations;
 - Jurisdictional limitations;
 - Standards of non-frivolity;
 - Standards of sufficient information to state a claim;
 - A prohibition on hearsay;
 - A prohibition on abusive language; and
 - A prohibition on anonymity (with appropriate confidentiality protocols in place).
- In alignment with international practice and to ensure equal access, the HCHR should not charge any fee for filing a complaint or supporting documentation, or for investigating a complaint.
- If a complaint meets all filing requirements, it should be accepted in any language spoken in Iraq.

(B) Jurisdictional Screening

- Law 53 does not bar the HCHR from receiving or investigating complaints where the complainant has not exhausted judicial remedies, or from receiving and investigating complaints in *sub judice* cases. In order to best protect against human rights abuses and fulfill its mandate to receive and investigate complaints, the HCHR should consider hearing complaints where the complainant has not exhausted judicial remedies, or where a case is *sub judice* (currently under consideration).
- The HCHR should coordinate with the judiciary and develop guidelines for intervention as *amicus curiae* in *sub judice* cases, including establishing thresholds for intervention and procedures for seeking leave of Court to intervene.
- The HCHR may consider developing guidelines for broader intervention and/or monitoring in *sub judice* cases, such as acting as counsel for a complainant, assisting the court, or acting as an expert.
- The HCHR may also develop guidelines for reviewing the process and manner in which judicial hearings are conducted in a court of law and whether such processes violated a party's human rights in particular cases. Though the HCHR does not have the authority under Law 53 to counter or overrule the final ruling of a court, part of its monitoring function entails ensuring that the judicial process adheres to Constitutional and

international standards of due process, impartiality, and non-discrimination.

- Subject-matter jurisdiction over complaints should be established as part of the complaints-handling regulations and may include, among other issues:
 - Violations of civil liberties by the government or its representatives in their official capacity;
 - Violations of due process;
 - Torture or ill-treatment in detention;
 - Government non-compliance with international obligations;
 - Discrimination based on sex, religion, political persuasion, disability, race, color, or national origin in employment;
 - Cases of failure to explain judicial decisions, delays in the implementation of decisions, or the incorrect application of the law in court cases;
 - Abuse or exploitation of public office;
 - Property rights infringement by the Executive; and
 - Failure of the Executive to provide services stipulated by law such as housing, education and medical treatment.

(C) External Referral Systems

- Where a complaint falls within the HCHR's jurisdiction, other institutions may be better positioned to resolve the issue or mitigate the dispute. In these cases, the HCHR should enact regulations for external referral to other groups or institutions, including timelines for communications with complainants and respondents, timelines for referral, and mechanisms for communication and follow-up with receiving institutions.
- A working group or supporting unit within the Complaints and Investigations Directorate may be useful to facilitate and manage external referrals.

(D) Protocol on the Internal Dispensation of Complaints

- HCHR regulations must dictate internal dispensation protocol to ensure the complaints handling process is efficient, unbiased, and responsive.
- Internal Dispensation Protocol should include:
 - Criteria to assess complaints for sufficiency under filing requirements;
 - Determination of HCHR jurisdiction over the issue;
 - Intake procedures—including record-keeping and coordination with the Registrar;
 - A determination of whether external referral is warranted;
 - If no external referral, then decision-making guidelines for investigation or alternative dispute resolution; and
 - Investigation procedures.

(E) Case Tracking Database

- It is imperative that the HCHR develop a Case Tracking Database, either through a Complaints Registrar or other mechanism within the Secretariat or the Directorate of Complaints & Investigation. Such a database would enable the HCHR to track trends in human rights violations and gauge its own successes and challenges in handling complaints.
- The HCHR also should develop an electronic records and data management system for the Case Tracking Database, as well as confidentiality protocols.
- Requests for information about case history should be expected. The HCHR is advised to develop regulations to address information requests that align with international standards on Freedom of Information and adjusted as Iraq develops its own Freedom of Information Laws. Regulations guiding responses to information requests should consider confidentiality protocols and the protection of parties to a complaint.

(F) Confidentiality

- Law 53 requires confidentiality in the complaints handling process. As such, complaints handling regulations must clarify confidentiality protocols that apply to the whole of the complaints handling procedure.
- Thresholds for information that may be shared both within and without the HCHR should also be developed, particularly where a complaint warrants HCHR intervention in the judicial process, or merits reference in an HCHR annual or special report.

(G) Client Rights

- At the core of the HCHR's complaints-handling duty lays the principle of service and support to the Iraqi public. Individuals, groups, and classes of people who have had their rights violated, as well as those accused of violations, must be informed of their rights under the law, and should be informed of the HCHR's authority to receive and investigate complaints, refer issues to the Public Prosecutor or other body, and to intervene in *suo judice* cases.
- The HCHR should develop and widely publicize a Client's Rights Charter, both to facilitate its complaints handling duty, and as part of its mandate to promote human rights.
- For each complaint received, the HCHR is advised to send a copy of the Client's Rights Charter, within a specified timeline, to both the complainant(s) and the respondent(s).

(H) Remedies

- Where a complaint falls within HCHR jurisdiction, protocols guiding available remedies should be developed to provide clarity to the complainant and respondent, and to guide HCHR staff in handling the dispute.

- Protocols regarding available remedies and related procedures should be publicized in the Client's Rights Charter.
- Potential remedies the HCHR may consider utilizing in its complaints handling process could include, for example:
 - Negotiation, conciliation, or mediation resulting in an agreed solution, such as payment of financial compensation;
 - Referral to the Public Prosecutor;
 - The issuance of advisory opinions; or
 - The issuance of non-binding decisions or reports.

(I) Staff Roles

- In addition to delineating staff roles in individual job descriptions, the Complaints Handling Regulations should clarify the relevant decision-making authority and role of staff members serving in the Complaints and Investigations Directorate, as well as related roles of other HCHR staff, such as those in the Legal Directorate, the Registrar, and the Board of Commissioners.
- The responsibilities of staff, as well as decision-making processes and procedures, should be published in the Client Rights Charter.

4 (A) Filing Requirements

i. Overview

In order to streamline the process of receiving complaints and to mitigate the potential for discrimination, bias, political pressure, or favoritism to interfere with this important function, a clear set of admissibility criteria for complaints is imperative.²⁴⁰ Many NHRIs publish clear and simple procedural regulations or manuals, made available to the public through various outlets and in local languages, in order to ensure accessibility to services and transparency in the complaints handling process.²⁴¹ These regulations and manuals often list requirements for a properly filed complaint.²⁴² Typical elements required for a properly filed complaint may include:

- A statute of limitations²⁴³;

²⁴⁰ *Id.* at para. 223.

²⁴¹ See, e.g., *South African Complaints Handling Manual*, *supra* note 222., p. 7 ("The Commission is committed to the provision of a high quality service in dealing with complaints and to ensuring that, as far as possible, its processes are accessible, simple and provided in a timely manner."); *Uganda Complaints Handling Manual*, *supra* note 197, p. 3 (This Manual aims "to be a reference point for all Commission staff and other users of the system" and "to create transparency in the process.").

²⁴² See, e.g., *India Regulations*, *supra* note 48, art. 8(1).

²⁴³ Law 53 of 2008 does not specify a statute of limitations for complaints. Article 5(1) states that the HCHR must receive complaints regarding violations committed "before and after this Law comes into force." However, difficulties in obtaining evidence, contacting witnesses, and carrying out other investigative

- Jurisdictional limits²⁴⁴;
- Standards of non-frivolity²⁴⁵;
- Standards of sufficient information to state a claim²⁴⁶;
- A prohibition on hearsay²⁴⁷;
- A prohibition on abusive language²⁴⁸; and
- A prohibition on anonymity.²⁴⁹

ii. Law 53 Parameters

The provisions of Law 53 require the HCHR to take on an active complaints handling role. Article 5 specifies that the HCHR must “[r]eceive complaints from individuals, groups and civil society organizations on violations committed *before and after this Law comes into force* while maintaining complete confidentiality of the names of the complainants.”²⁵⁰

However, the provisions of Law 53 neither delineate the nature of complaints-handling actions, nor designate the process by which the HCHR determines what to do with a complaint. In addition, how the HCHR might determine the veracity of complaints is left open, as is the form which “initial investigations” might take.

iii. Comparative Examples

Many NHRIs employ statutes of limitations, which vary in their durations and derogability. For example, the **Canadian** Human Rights Act permits the Commission to

procedures multiply over time. As such, the Commission may wish to establish a statute of limitations for complaints about past incidents while reserving the power to accept complaints after the statute of limitations runs in special circumstances.

²⁴⁴ Part III, Art. 22(4)(d) of the *Tanzania Act*, *supra* note 65, and Paragraph 41(c) of the *Canadian Human Rights Act*, R.S.C., ch. H 6 (1985), [hereinafter *Canadian Human Rights Act*] for example, contains a provision regarding jurisdiction.

²⁴⁵ Many NHRIs utilize such standards. Paragraph 41(d) of the *Canadian Human Rights Act*, *supra* note 244, permits the Commission to refuse to deal with a complaint that is “trivial, frivolous, vexatious, or made in bad faith.” Part IIB, Division 1, 46PH allows the President of the Commission to terminate any complaint he or she finds to be “trivial, vexatious, misconceived or lacking in substance.” Part III, Art. 22(4)(c) of the *Tanzania Act*, *supra* note 65, states that the Commission shall deal with every complaint brought before it unless “the complaint is frivolous, vexatious, or made in bad faith.” Part III, Art. 35(1)(b) of the *New Zealand Act of 1977*, *supra* note 43, allows the Commission to refuse to investigate a complaint that is “frivolous or vexatious or is not made in good faith.”

²⁴⁶ See e.g., *South African Human Rights Commission, Determination of the Procedure Contemplated in Section 9(6) of the South African Human Rights Commission Act No. 54 of 1994*, Government Gazette, 6 July 2007, Notice 817 of 2007, art. 4(1)(6), (prohibiting complaints “unattended due to the conduct of the complainant in failing to respond to the Commission’s request for information or documents in terms of a written request....”), [hereinafter: *South African Complaints Handling Procedures*, 2007].

²⁴⁷ See e.g., *Id.* at 4(1)(1) (Prohibiting complaints “based on hearsay, rumour or reports disseminated through the media....”).

²⁴⁸ See e.g., *Id.* at 4(1)(2).

²⁴⁹ See e.g., *Id.* at 4(1)(4); *India Regulations*, *supra* note 48, art. 8(1)(c) (prohibiting complaints “which are vague, anonymous or pseudonymous.”).

²⁵⁰ *Iraqi Law No. 53* (2008), art. 5(1), *emphasis added*.

refuse to deal with a complaint that is “based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances.”²⁵¹

Similarly, the Human Rights Act of the **United Kingdom** states that no proceedings shall be brought after “one year beginning with the date on which the act complained of took place; or such longer period as the court or tribunal considers equitable having regard to all the circumstances.”²⁵² Further, the **Australian** Human Rights Commission Act of 1986 states that the Commission may decide not to inquire into an act or practice if “the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice.”²⁵³

These derogable statutes of limitations stand in contrast to those that are absolute. The **Tanzanian** Establishing Act of 2001 specifies that the Commission shall deal with every complaint brought before it unless “the complaint relates to a decision, recommendation, act or omission of which the complainant has had, knowledge for more than 24 months before the complaint is received by the Commission...”²⁵⁴ The **Indian** Protection of Human Rights Act of 1993 states that “[t]he Commission...shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.”²⁵⁵

Given Iraq's unique history and the timing of past conflicts within the State, Iraq's HCHR may wish to consider an absolute statute of limitations reflecting a scope of potential complaints that may be received and the human resources capacity of the Commission.

Some NHRIs provide services to help to ensure equal access to filing such as phone or web-based staff assistance, interpretation services, or translation services.²⁵⁶ Additionally, guidelines may allow the complainant to use any language of his choice to file the complaint.²⁵⁷ This important guarantee requires the Commission to bear the cost of translation, but ensures accessibility to a broader group of the Commission's constituents.

²⁵¹ *Canadian Human Rights Act*, *supra* note 244, art. 41(e).

²⁵² *Human Rights Act*, 1998, c. 42, (Eng.), § 7(5), [hereinafter *United Kingdom Human Rights Act 1998*]

²⁵³ *Australian Human Rights Act*, *supra* note 213, Part I, Division 3, Art. 20(2)(c)(i).

²⁵⁴ *Tanzania Act*, *supra* note 65, Part III, Art. 22(4)(a).

²⁵⁵ *India Human Rights Act*, *supra* note 28, art. 36(2).

²⁵⁶ See e.g., *Australia Human Rights Commission-Complaints Information*, available at: http://www.hreoc.gov.au/complaints_information/index.html.

²⁵⁷ See, e.g. *Id.*, (“A complaint can be made in any language.”); *National Human Rights Commission (Procedure) Regulations of 1994* (India), Art. 8(3) (“Every attempt should be made to disclose a complete picture of the matter leading to the complaint and the same may be made in English or Hindi... To facilitate the filing of complaints, the Commission shall, however, entertain complaints in any language included in Eighth Schedule of the Constitution.”).

Use of a standardized complaint form also promotes access to efficient services, though failure to use a standard form should not result in a complaint being wholly dismissed. Rather, staff can help to transform a complaint into proper format. In **Australia**, for example, the NHRI provides a detailed, 8-page complaint form that gives complainants step-by-step instructions in simple language. The form includes instructions for providing supporting evidence, a section in which the filer can input the reasons for the complaint, and sections for contact and other information.²⁵⁸ In addition to the complaint form, the Australian NHRI allows petitioners to file by writing and e-mail. Similarly, the **Kenyan** NHRI allows complainants to use a complaint form that requires filers to sign a declaration confirming the veracity of the facts within the complaint and whether the complainant wishes to disclose his or her name.²⁵⁹

Some NHRIs require the complainant to have a personal interest in the complaint, but other NHRIs grant third parties standing to bring complaints on behalf of an interested party.²⁶⁰ Iraq's Law 53 indicates that groups and third parties may file complaints.

In **South Africa** the Complaints Handling Procedures identify persons who have standing to file complaints. These include:

- Persons acting in their own interest;
- Anyone acting on behalf of another person who cannot act in their own name;
- Anyone acting as a member of, or in the interests of a group or class of persons;
- Anyone acting in the public interest; or
- An association acting in the interest of its members.²⁶¹

In addition to the individuals and groups with *locus standi* enumerated in the South African regulations, some NHRIs allow Commissioners to bring complaints on their own initiative. For example, the **Palestinian Commission** allows "field researchers" to file complaints.²⁶²

Iraqi Law 53 expressly anticipates the filing of complaints by third parties, so complaints handling regulations should clarify the issue of *locus standi*.²⁶³

²⁵⁸ Australian Human Rights Commission Complaint Form Version 2/09, available at: http://www.hreoc.gov.au/complaints_information/download/complaint_form.pdf.

²⁵⁹ Kenya Act, *supra* note 38, Rules and Regulations, Complaint Data Collection Form, § 10.

²⁶⁰ Leonard F.M. Besselink, *National Institutions for the Protection of Human Rights Ombudsman Institutions: An Overview of Legal and Institutional Issues*, in HUMAN RIGHTS COMMISSIONS AND OMBUDSMAN OFFICES: NATIONAL EXPERIENCES THROUGHOUT THE WORLD 157, 161 (Kamel Hossain ed., 2001), [hereinafter Besselink, *National Human Rights Ombudsman Institutions*].

²⁶¹ South African Complaints Handling Procedures 2007, *supra* note 246, art. 2.

²⁶² The Independent Commission for Human Rights (Palestine), Complaints Handling, available at: <http://www.ichr.ps/etemplate.php?id=10&lid=9>, [hereinafter *Palestine Complaints Handling*]

²⁶³ Iraqi Law No. 53 (2008), art. 5(1)

Finally, most NHRIs expressly prohibit the levying of a fee in exchange for filing a complaint and specify that the complaint service be typically offered free to the public.²⁶⁴ The charging of any fee, even a small amount, could create a bar to access for some members of the public and inhibit the HCHR's ability to serve Iraqi's most vulnerable populations.

²⁶⁴ See, e.g., *South African Complaints Handling Procedures 2007*, *supra* note 246, art. 3(4); *India Regulations*, *supra* note 48, art. 8(2) ("No fee is chargeable on complaints.").

Appendix III: Model Complaint Form (Australian Human Rights Commission)

Part A – About you (the complainant)

Enquiry reference no:

Name: Mr/Mrs/Miss/Ms:.....

Address:

Post code:

Contact numbers: Home: Business: Fax:

Mobile: TTY: Email:

Only fill out this box if you are complaining on behalf of someone else
Name of that person:
What is your relationship to that person?.....

Only fill out this box if someone is assisting you with the complaint – for example a solicitor or union representative
Name of representative:
Organisation:
Postal address:
Contact numbers: Home: Business: Fax:.....
Mobile: TTY: Email:

****If you need help to fill in this form please contact one of our Complaint Information Officers on [phone number] (local call charge) or [phone number].**

Part B – Your complaint

Who are you complaining about? (the respondent)

1. Name/organisation:.....

Address:.....

Post code:.....

Contact numbers: Home:..... Business:..... Fax:.....

Mobile:..... TTY:..... Email:.....

What is this person's/organisation's relationship to you?

2. Name/organisation:.....

Address:.....

Post code:.....

Contact numbers: Home:..... Business:..... Fax:.....

Mobile:..... TTY:..... Email:.....

What is this person's/organisation's relationship to you?

**If you are complaining about more than two people or organisations,
please provide this additional information on an extra page.**

Why are you complaining to the Commission?

I am complaining because I believe:

- ☐ I have been discriminated against because of my **sex**
 - *(including pregnancy, marital status, family responsibilities);*
- ☐ I have been **sexually harassed**;
- ☐ I have been discriminated against because of my **race**;
 - *(including descent, national / ethnic origin, colour, immigrant status, racial hatred);*
- ☐ I have been discriminated against because I have a **disability**
 - *(including physical, intellectual, psychiatric, learning, work related, medical condition, disease such as cancer or HIV, associates and careers of a person with a disability);*
- ☐ I have been discriminated against because of my **age**;
- ☐ My human rights have been breached by a **federal** government agency; or
- ☐ I have been discriminated against in my **employment** because of my *(please tick which one)*:
 - ☐ sexual preference
 - ☐ trade union activity
 - ☐ criminal record
 - ☐ religious belief
 - ☐ political opinion
- ☐ I have been treated unfairly for another reason.

Please state the reason:

When did this happen? (Day/month/year)

What happened?

Describe the events that you want to complain about. We need to know **what** you say happened, **where** it happened and **who did it**. Please give us all the dates and other details that you can remember. If you are complaining about employment, please tell us when you commenced employment, your job title and whether you are still employed.

Signature:

Date:

Part C – Further information

Supporting Evidence

Please attach copies of any documents that may help us investigate your complaint (for example, letters, pay slips, doctor's certificates or references). If you cannot do this, please tell us about the documents or other evidence and how this evidence can be obtained.

How has this affected you?

Please tell us how what you are complaining about has affected you?

What outcome are you seeking?

Have you made a complaint about this to another agency?

(For example a state anti-discrimination or equal opportunity agency, a worker's compensation agency, an ombudsman or an industrial relations commission.)

If so, you must provide details of the complaint, the agency it was made to and any outcome. You should also attach copies of any letters you have received from the agency.

Have you tried to resolve your complaint in any other way?

(For example through an internal complaint process or your trade union.)

If so, please give details:

Remember

- To sign and date page 6 of this document; and
- Attach copies of any relevant documents.

Send your completed form to: *[Address of Human Rights Commission provided]*

4(B) Jurisdictional Screening

i. Overview

Clarifying the distinction between an NHRI's competence to address complaints and the competence of traditional courts to adjudicate a dispute is a central challenge for emerging NHRIs. The issue is also a key determinant of the success and administrability of an NHRI's complaints service. Lack of clarity presents multiple problems.

On the one hand, the risk that complainants will overwhelmingly prefer the Commission's more informal procedures, free services, and alternative remedies to the more formal, rigid, and costly court system, may prove a challenge and create an unmanageable workload for the Commission.²⁶⁵ On the other hand, confusion by the public about the boundaries an NHRI's role and what types of complaints it will accept may cause unnecessary barriers to public access to justice.²⁶⁶

In order to address these jurisdictional problems, many NHRIs define the jurisdictional scope of complaints through procedural rules aimed at promoting administrability or clarification of the subject matter of jurisdictional scope.²⁶⁷

4(B)(i) Procedural Rules Barring Jurisdiction

i. Overview

Procedural rules guiding the ongoing relationship between the HCHR and the Justice System are necessary for the effective functioning of the HCHR and to ensure clarity in the respective jurisdictions and authorities of the institutions.

²⁶⁵ Emile Francis Short, *The Development and Growth of Human Rights Commissions in Africa – The Ghanaian Experience*, in HUMAN RIGHTS COMMISSIONS AND OMBUDSMAN OFFICES: NATIONAL EXPERIENCES THROUGHOUT THE WORLD 187, 199 (Kamel Hossain ed., 2001) (“The fact that the Commission’s services, which are provided by professional lawyers and investigators, are delivered free coupled with its informal procedure has made it a more attractive forum than the traditional Courts for dispute resolution.”), [hereinafter Short, *Human Rights Commissions in Africa – The Ghanaian Experience*].

²⁶⁶ Sam K. Asibuo, *The Role of the Commission on Human Rights and Administrative Justice (CHRAJ) in Promoting Public Service Accountability under Ghana’s Fourth Republic*, p. 5 African Training and Research Centre in Administration and Research, available at: <http://unpan1.un.org/intradoc/groups/public/documents/CAFRAD/UNPAN017693.pdf> (“Many of the initial complaints were rejected probably because as a novelty in Ghana, complainants were ignorant of the jurisdiction of the office of the Ombudsman. This could be attributed to the lack of public education about the role and the activities of the Ombudsman.”), [hereinafter Asibuo, *The Role of CHRAJ in Ghana’s Fourth Republic*]

²⁶⁷ Besselink, *National Human Rights Ombudsmen Institution*, *supra* note 260, at 158.

Based on the particular needs of Iraq, the challenges faced by the judiciary, the scope of human rights protected under the Constitution, and the mandate of the HCHR to protect and promote human rights in Iraq, regulations should clarify that:

- Complainants should not be required to exhaust judicial remedies before the HCHR may act to investigate a complaint. Rather the HCHR may investigate any complaint of a violation of civil, political, economic, social, or cultural rights, whether or not the complainant has pursued judicial remedies;
- Where a case is *sub judice*, the HCHR may, at its discretion, seek leave of the Court to intervene as an *amicus curiae*;
- With the HCHR's discretion, seek leave of the court to intervene in any *sub judice* case in any capacity conducive to just and effective proceedings, including intervening as counsel or in any other capacity permitted by the rules of procedure;
- With the HCHR's discretion, review any complaint where a court or other statutory authority has issued a final ruling on the matter, including complaints concerning the process and manner in which hearings were conducted at a court of law, tribunal or statutory body, and whether such complaints amount to a violation of fundamental rights.

ii. Law 53 Parameters

Iraqi Law No. 53 requires the HCHR to take complaints from individuals, groups, and civil society organizations on “violations committed before and after this Law comes into force...”²⁶⁸ The Law also requires the Commission to conduct initial investigations based on received complaints or other sources of information, visit prisons and detention centers, and initiate lawsuits related to violations and “refer them to the Public Prosecution to take the necessary legal action and notify the HCHR of the outcomes.”²⁶⁹

Law 53 does not state that complainants are required to exhaust judicial remedies before the HCHR may pursue the complaint, nor does it address the role of the HCHR as *amicus curiae*, as a participant or monitor of *sub judice* cases (currently under consideration), or as a reviewer of final decisions rendered by the courts. These gaps in the relationship between the HCHR and the judiciary must be addressed in regulations and rules of procedure.

iii. Comparative Examples

The kinds of procedural rules considered by NHRIs may include requiring the exhaustion of judicial remedies and/or barring the hearing of a complaint when cases are either *sub judice* (currently under consideration by a court) or already decided by the courts. Such

²⁶⁸ Iraqi Law No. 53 (2008), art. 5(first).

²⁶⁹ *Id.* at art. 5.

procedural rules can help to clarify the relationship between the court system and the NHRI.

(A) Exhaustion of Judicial Remedies

While many NHRIs allow Commissioners to refuse to hear a complaint when the complainant fails to exhaust judicial remedies prior to filing a complaint, these provisions grant the Commissions a great deal of discretion. For example, the **Canadian** NHRI allows the Commission to reject a complaint when “the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available.”²⁷⁰

Similarly, the **New Zealand** NHRI may decline to deal with a complaint when “there is...an adequate remedy or right of appeal, other than the right to petition Parliament or to make a complaint to the Ombudsman, that it would be reasonable for the complainant or the person alleged to be aggrieved (if not the complainant) to exercise.”²⁷¹ The **Australian** Human Rights Act also grants this power to the NHRI.²⁷²

While these provisions appear to militate against allowing cases in which judicial remedies have not been exhausted, it is significant that they allow the commissions to exercise their discretion on this matter. An absolute bar would be a much stronger method to prevent complaints brought by complainants who have failed to exhaust their judicial remedies.

Alternatively, other NHRIs such as those in **Uganda** and **South Africa**,²⁷³ are not granted the express power to refuse to hear complaints based on a failure to exhaust judicial remedies. For these NHRIs, a complainant's choice, inability, or failure to exhaust judicial remedies prior to filing a complaint with the human rights commission is *not* grounds upon which the commission may refuse to hear a complaint.

(B) Intervention as *Amicus Curiae* in *sub judice* cases

Many NHRIs have the power to intervene in cases that are *sub judice* as *amicus curiae* (friend of the court), though these NHRIs must seek the permission of the court beforehand. For example, the Human Rights Commission Act of **Sierra Leone** grants the

²⁷⁰ *Canadian Human Rights Act*, *supra* note 244, art. 41(a).

²⁷¹ *New Zealand Act*, *supra* note 43, Part III, art. 80(3)(d).

²⁷² *Australian Human Rights Act*, *supra* note 212, Part II, Division 3, art. 20(2)(c)(iv) (Stating that the Commission may choose not to deal with a complaint if “some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act or practice.”).

²⁷³ *Uganda Complaints Handling Manual*, *supra* note 197, § 3(1), and *South Africa Complaints Handling Manual*, *supra* note 222, Part 1(8), which list the justifications on which the NHRI may reject complaints. Neither allows nor mentions the exhaustion of judicial remedies.

Commission the power to appoint a legal practitioner to intervene, with leave of the court, as *amicus curiae*, in legal proceedings in cases that involve human rights issues over which the Commission has competence.²⁷⁴ The Human Rights Commission of **India** similarly the power to “intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.”²⁷⁵

In **Fiji**, the Human Rights Commission is able to intervene both on its own initiative and at the request of the court. The Commission has successfully intervened to assist the court in resolving important human rights questions, such as whether corporal punishment in prison violates constitutional prohibitions on torture and cruel and degrading treatment or punishment.²⁷⁶

The **Australian** Human Rights Commission Act also grants any commissioner the power to intervene in “proceedings that involve special circumstances that satisfy the...Commissioner that it would be in the public interest...to assist the court concerned as *amicus curiae*.”²⁷⁷ The Australian Act, however, specifies that this “function may only be exercised with the leave of the court concerned.”²⁷⁸

In **Ireland**, the Human Rights Commission Act expressly grants the NHRI the right to intervene in cases as *amicus curiae*. To facilitate this duty, the NHRI developed internal guidelines listing factors to consider in deciding whether to apply to a court for liberty to appear as *amicus curiae* in *sub judice* proceedings. These factors include:

- The importance of the human rights issue or issues raised by the proceedings;
- The extent to which the case raises an issue or issues, the determination of which may affect to a significant extent a human right or human rights of those who are not parties to the proceedings;
- The extent to which the human rights issue or issues raised are central to the determination of the case;
- The extent to which the case falls within the priority areas of work as identified in Irish NHRI's Strategic Plan;
- The circumstances of the case;
- The extent to which the court is likely to be assisted by the participation as *amicus curiae* of the Human Rights Commission;
- Any implications for the Irish Human Rights Commission's participation as *amicus curiae* including:
 - resource implications (human, financial and time)

²⁷⁴ *Sierra Leone Act, 2004*, *supra* note 213, Part III, Art. 12 (Stating that such intervention “shall be restricted to issuing amicus curiae briefs dealing with the matter in question.”).

²⁷⁵ *India Human Rights Act*, *supra* note 28, art. 12(b).

²⁷⁶ *See, eg. Naushad Ali v. the State* (Criminal Appeal No. HAA 0083 of 2001 L).

²⁷⁷ *Australian Human Rights Act*, *supra* note 213, Part IIB, Division 2, art. 46PV(1).

²⁷⁸ *Id.* at art. 46PV(2).

- implications if the case is appealed and/or is subsequently the subject of a petition to an international court.²⁷⁹

(C) Broader Intervention and Monitoring in *sub judice* cases

While many NHRIs have broader powers to intervene in cases that are *sub judice*, some must seek the permission of the court. For example, the **Australian** NHRI may “intervene in proceedings that involve human rights issues” so long as the Commission secures the leave of the court hearing the proceedings.²⁸⁰ However, the intervention is not limited to submitting *amicus curiae* briefs. Instead, the Australian Commission may “do anything incidental or conducive to the performance of any of the preceding functions.”²⁸¹

In **New Zealand**, the NHRI has the power to be appointed as “intervener or as counsel assisting the court or tribunal” and to take part in the court or tribunal proceedings in “another way permitted by [the] rules or regulations.”²⁸²

Some NHRIs, however, lack the power to intervene in cases that are *sub judice*, whether as *amicus curiae* or in any other capacity. For example, in **Kenya**, the NHRI cannot investigate “any matter which is pending before a court or a judicial tribunal.”²⁸³ The NHRI Acts of Uganda²⁸⁴, Tanzania²⁸⁵, and Ghana²⁸⁶ similarly bar the commissions from intervening in any case currently pending before a court.

(D) Review of Final Decisions Rendered by the Courts

Many NHRIs may hear complaints where a court has already issued a final ruling. For example, the **Australian** NHRI has a wide degree of discretion whether or not to inquire into an act or practice that has already been dealt with by any “statutory authority.”²⁸⁷ The **South African** NHRI, however, may deal with complaints on which there is a judgment on the issues, but only consider complaints that concern the “process and

²⁷⁹ Irish Human Rights Commission, *Amicus Curiae Guidelines*, [last visited May 2012](http://www.ihrc.ie/download/pdf/amicus_curiae_guidelines.pdf), available at: http://www.ihrc.ie/download/pdf/amicus_curiae_guidelines.pdf.

²⁸⁰ *Australian Human Rights Act*, *supra* note 213, Part II, Division 2, art. 11(1)(o).

²⁸¹ *Id.* at art. 11(1)(p).

²⁸² *New Zealand Act 1993*, *supra* note 43, Part 1, art. 5(2)(j).

²⁸³ *Kenya Act*, *supra* note 38, Part IV, § 32(a) (“The Commission shall not investigate (a) any matter which is pending before a court or a judicial tribunal....”).

²⁸⁴ *Uganda Complaints Handling Manual*, *supra* note 197, § 1(4)(4)(a).

²⁸⁵ *Tanzania Act*, *supra* note 65, Part III, art. 16(2)(a).

²⁸⁶ *Ghana Act*, *supra* note 118, Part II, § 8(2)(a).

²⁸⁷ *Australian Human Rights Act*, *supra* note 213, Part II, Division 3, art. 20(2)(c)(v) (Stating that the “Commission may decide not to inquire into an act or practice...if...in a case where a complaint has been made to the Commission in relation to an act or practice: where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with...”).

manner in which the hearings are conducted at such court of law, tribunal or statutory body and if such complaint amounts to a violation of fundamental rights.”²⁸⁸

In contrast, other NHRIs are absolutely barred from reviewing final decisions rendered by the courts. For example, the NHRI of **Sierra Leone** may not investigate any matter “already decided by a court of competent jurisdiction.”²⁸⁹

4(B)(ii) Subject Matter Bars to Jurisdiction

i. Overview

Given the scope of the HCHR mandate under Law 53 to protect the rights and freedoms protected in the Iraqi Constitution, under international human rights instruments, and in legislation, **the HCHR should consider complaints that involve civil, political, economic, social, and cultural rights. These rights are protected under the Iraqi Constitution and by international laws, treaties, and conventions to which Iraq is a party.**

The State has a positive obligation to respect those rights and to prevent the violation of those rights by others. The HCHR can play a vital role in promoting and protecting these human rights through the complaints handling process, and in facilitating the promotion of those rights throughout Iraq.

In addition to asserting jurisdiction over civil, political, economic, social, and cultural rights, **the HCHR should consider the Palestinian model and provide the public with a list of illustrative complaint categories to help define the scope of issues the Commission has jurisdiction to hear, as well as a list of complaints that fall outside the scope of HCHR jurisdiction.** This would facilitate efficiency in the complaints process and enhance public understanding of their rights.

ii. Law 53 Parameters

Law 53 provides a broad scope of human rights violations that fall under the HCHR's complaints handling mandate. Article 5 states only that the HCHR must receive complaints on “violations committed before and after this Law comes into force...”²⁹⁰ and that the Commission must conduct initial investigations on “violations” of human rights.²⁹¹

²⁸⁸ *South African Complaints Handling Procedures 2007, supra note 246, art. 4(1)(3).*

²⁸⁹ *Sierra Leone Act 2004, supra note 213, Part III, art. 16(a).*

²⁹⁰ *Iraqi Law No. 53 (2008), art. 5(1).*

²⁹¹ *Id.* at art. 5(2).

Therefore, Law 53 provides no limitations as to the nature of the human rights violations that may be investigated by the HCHR. However, standards of acceptable and unacceptable subject matter must be established in order to establish *ex ante* matters of jurisdiction, ensure fairness to the complainant and the accused, standardize procedures for staff members performing complaints-handling functions, and ensure that complaints fit within the mandate and vision of the Commission.

The **Palestinian** model is particularly notable for the clarity of its subject-matter jurisdiction regulations.

iii. Comparative Examples

NHRI regulations must consider whether the complaint presents a matter that falls within the subject matter of the NHRI's mandate. Some NHRI guidelines establish whether, in addition to civil and political rights, the NHRI may consider economic and social rights. For example, because economic, social and cultural rights are embedded in the constitution in **Ghana** and **South Africa**, the public may file complaints regarding violations of such rights.

Some types of complaints lodged with the **Ghanaian Commission** include: "wrongful detention and assault by the security agencies, delay in the trial of suspects remanded into custody, gender discrimination and sexual harassment at the work place, and domestic violence" as well as cases where "children were being denied medical treatment...because of the beliefs of their parents."²⁹²

The **Palestinian Independent Commission for Human Rights** lists clear screening guidelines for distinguishing the Commission's jurisdiction on its website.²⁹³ The Palestine NHRI website provides examples of categories of accepted complaints and unaccepted complaints.²⁹⁴ In defining the scope of the complaints that are justiciable, the NHRI includes the following list of possible complaint categories:

- Cases of violations of basic liberties of citizens by the Palestinian National Authority, by either security services or civil bodies;
- Cases related to the Security Services which cover arrest and detention without following legal procedures; torture and ill-treatment during detention; death within prisons and detention centers; and delay in bringing detained individuals to trial or placing charges;
- Cases of Palestinian National Authority's non-compliance with their legal obligations;

²⁹² Short, *Human Rights Commission in Africa – the Ghanaian Experience*, *supra* note 265, at 195.

²⁹³ *Palestine Complaints Handling*, *supra* note 262, available at:

<http://www.ichr.ps/etemplate.php?id=10&lid=9>.

²⁹⁴ *Id.*

- Cases related to appointment and employment, in which legal procedures and principles of equity are not followed;
- Cases of discriminatory practices in applying the rule of law, based on considerations of sex, religion, race, color or political persuasions;
- Cases of failure to explain decisions, delays in implementation of decisions or incorrect application of the law, and cases where false or misleading information is given;
- Cases of intervention in the jurisdiction of the Judicial Authority and non-compliance with its rulings;
- Cases in which public office and authority are exploited and abused;
- Cases in which the Executive Authority infringes on citizens' property; and
- Failure of the Executive Authority to provide services stipulated in laws such as, but not limited to, housing, education, and medical treatment;²⁹⁵

The **Palestinian** NHRI also provides a short list of complaints that fall outside its scope of authority, including:

- Complaints regarding conflicts between individuals or private institutions;
- Cases already filed in courts or other bodies of arbitration;
- Complaints related to obtaining humanitarian aid;
- Complaints regarding Israeli violations of Palestinian human rights; and
- If more than a year has lapsed since the violation took place, unless the violation is continuous.²⁹⁶

4(C) External Referral Systems

i. Overview

Many NHRIs have external referral systems in place for complaints that fall outside the jurisdiction of the Commission or, where the complaint falls inside the jurisdiction of the Commission, if another body would be better able to deal with the complaint, such as a criminal court.

For the HCHR, referral to the Public Prosecutor is required under Law 53 where legal action is necessary, but referral to other service providers or authorities may also prove necessary or useful. These may include, but are not limited to, the police, social welfare services, community groups or other organizations better equipped to address the particular issues raised in a complaint.

²⁹⁵ *Id.*

²⁹⁶ *Id.*

Like the Iraqi HCHR,²⁹⁷ many NHRIs cannot issue binding decisions about whether a human rights violation has occurred. Rather, they must refer cases to competent legal authorities if the complaint is deemed appropriate to pursue through legal means.²⁹⁸

A set of criteria for categorizing complaints as individual versus systemic should also be developed. If a pattern of complaints appears systemic, it may demonstrate an ongoing pattern of institutionalized rights violations and require specialized and broad-based intervention. Additionally the HCHR should consider developing a Memorandum of Understanding between the HCHR and the Public Prosecutor, to ensure that the HCHR refers cases in a strategically sound manner.

ii. Law 53 Parameters

Iraqi Law 53 is silent as to the duty to refer cases falling outside the scope of the HCHR authority to external bodies. The Law is also silent on the duty to refer where an institution other than the HCHR might be better suited to resolve a particular complaint. However, the HCHR is advised to establish a duty of external referral within its complaints handling guidelines, as well as a response deadline, like those instituted in **Tanzania** and **South Africa**. Such a duty would help to facilitate the public's access to the best remedial agency or body. Moreover, such a duty would allow the Commission to concentrate its resources on the human rights violations most clearly within the scope of its mandate.

iii. Comparative Examples

In **Tanzanian**, the NHRI regulations include an ideal response time for the Commission to refer complaints to other bodies or to forward complaints for internal dispensation.²⁹⁹ Likewise, the **South African** NHRI requires that, if a complaint does not fall within its jurisdiction, or "could be more effectively or expeditiously dealt with by another appropriate body," it must be referred within 7 days.³⁰⁰

The South African NHRI allows these referrals to be direct, where the Commission passes on the complaint to the relevant body, or indirect, where the Commission passes on the complainant's information to the relevant body.³⁰¹

²⁹⁷ *Iraqi Law No. 53* (2008), art. 5(4), the HCHR must "[i]nitiate lawsuits related to violations and refer them to the Public Prosecution to take the [necessary] legal action and notify the HCHR of the outcomes."

²⁹⁸ See, e.g., *Australia Human Rights Commission-Complaints Information*, last accessed at http://www.hreoc.gov.au/complaints_information/index.html

²⁹⁹ *Tanzanian Commission for Human Rights and Good Governance Client Services Charter* (2010), p. 17 ("When performing our role of handling of complaints of violations of human rights and principles of good governance, we shall strive to resolve these complaints in a timely, efficient and judicious manner. In this respect, we shall: [a]cknowledge receipt of complaints within 21 days of filing."), [hereinafter *Tanzanian Client Services Charter*].

³⁰⁰ *South African Complaints Handling Manual*, *supra* note 222, Part 1(9)(1).

³⁰¹ *Id.* at 1(9)(5).

4(D) Internal Dispensation Protocol

i. Overview

Guidelines for determining what action to take in relation to a complaint are necessary for the effective functioning of the HCHR's complaints handling service and to fulfill its mandate. In other NHRIs, the internal department charged with receiving complaints generally decides whether to dismiss, refer, or accept a complaint during the initial intake process.³⁰² After the NHRI accepts the complaint, the next action taken can include conducting investigations, utilizing Alternative Dispute Resolution, external referral, or other options.

4(D)(i) Intake

i. Overview

The initial intake of a submitted complaint is an important screening phase wherein the complaint is assessed for a variety of pre-established criteria and determinations are made as to whether it will be rejected or accepted for further processing. Such decisions are of great significance to the complainant, but also affect the effective and efficient functioning of the HCHR's complaints process as a whole.

Decisions regarding whether to reject a complaint should be based on clear and pre-established standards such as whether all filing requirements have been met and whether the complaint falls within the HCHR's established scope of authority. Regardless of whether a complaint is rejected or accepted for further processing, each complaint should be assigned an intake number upon receipt, and the complaint should be notified within a set period of time. A database of received complaints should also be maintained.

ii. Law 53 Parameters

Law 53 is silent as to intake requirements and procedures for the complaints handling duty of the HCHR. This lack of guidance makes it imperative for the Board of Commissioners to prioritize the development of complaints handling procedures.

iii. Comparative Models

³⁰² See, e.g., Canadian Human Rights Commission, *Complaint Management and Resolution Process Results-based Management Accountability Framework*, (May 2004), p. 2. But see, e.g., *The South African Complaints Handling Manual*, *supra* note 222, Part 3(1), which gives five categories for complaint disposition, including dismissal, referral, rejection, settlement, or findings.

Most NHRI's require complaints to be submitted in writing (either by post mail, electronic mail, or delivered in person) and accompanied by relevant supporting documentation. The Australian and South African complaints procedures follow this model. **Where a complainant is unable to reduce a complaint to writing, Commission staff should provide assistance.**

In **South Africa**, upon receipt of a complaint, the Registrar ensures that a reference number is allotted to the complaint and recorded in the Register of Complaints.³⁰³ Additionally, the Registrar must acknowledge receipt of the complaint to the complainant within 14 days and provide the complainant of the reference number assigned to the complaint.³⁰⁴ Upon recording by the Registrar, the complaint must then be allocated to a member of the Legal Services Program within 3 days for screening and assessing.³⁰⁵

Initial assessment then requires those charged with reviewing the complaint (in the **South African** case, to the Head of the Legal Department) to determine whether the complaint falls within the NHRI's jurisdiction and, if so, whether it should be externally referred to another body better able to deal with it. If the complaint falls within the NHRI's jurisdiction and is not suitable for external referral, then the complaints handling committee will determine next steps, such as investigation, mediation, conciliation, or negotiation and the forms these processes should take.³⁰⁶

In **Australia**, the NHRI's intake process includes complaints officers contacting the petitioner to talk about their grievance as well as other fact-finding processes.³⁰⁷ Generally, the commission will also contact the respondent, provide them with a copy of the complaint, and ask for comments.³⁰⁸

In **Ireland**, before deciding what action to take in relation to a complaint, the intake office considers a set of criteria that includes:

- Whether the request is anonymous;
- Whether the information is inadequate, incorrect, or misleading;
- Whether the person has cooperated with the Commission in relation to the request;
- Whether it would be difficult to establish facts accurately due to the lapse of time since the events complained of; and
- The projected costs of conducting an enquiry.³⁰⁹

³⁰³ *South African Complaints Handling Procedures 2007*, *supra* note 246, art. 3.4.

³⁰⁴ *Id.* at 3.5

³⁰⁵ *Id.* at 3.10.

³⁰⁶ *South Africa Complaints Handling Manual*, *supra* note 222, § 1.1-1.3.

³⁰⁷ *Australia Human Rights Commission Complaints Process*, available at: http://www.hreoc.gov.au/pdf/complaints/UD_complaint_process.pdf.

³⁰⁸ *Id.*

³⁰⁹ *Irish Human Rights Commission Guidelines for dealing with requests under section 9(1)(b) and Applications under Section 10 of the Human Rights Commission Act, 2000*, Stage 3.

During the initial screening phase, complaints may be accepted or closed based on these criteria.

4(D)(ii) Alternative Dispute Resolution

i. Overview

The initial complaint screening might reveal that the complaint involves issues appropriate for Alternative Dispute Resolution (ADR), such as family matters, employment discrimination matters, or non-complex land-related matters.³¹⁰

ii. Law 53 Parameters

Law 53 neither requires nor prohibits the use of alternative dispute resolution (ADR) as a means of realizing the HCHR's mandate to receive and investigate complaints. However, the HCHR may determine that Alternative Dispute Resolution is an efficient mechanism to resolve certain types of complaints where amicable agreement can be reached. Indeed, where the issue addressed in a complaint does not create a legal cause of action for the complainant, or indicate a violation that would require court intervention, ADR may be the only mechanism available to provide redress for certain human rights abuses.

To facilitate internal dispensation of cases appropriate for ADR, protocols should provide guidance on which situations may qualify for ADR, and on referral or handling mechanisms.

iii. Comparative Models

The **Uganda** Human Rights Commission identifies the following factors as important indicators whether a complaint should be mediated through ADR:

- The urgency of the matter;
- The relationship between the complainant and respondent; and
- The complexity of the matter.³¹¹

During this stage, determining whether a complaint should be submitted for ADR may be as simple as enquiring about whether the parties involved would be amenable to alternative dispute resolution.³¹²

³¹⁰ *Uganda Complaints Handling Manual*, *supra* note 197, § 7(1).

³¹¹ *Id.*

³¹² *Australia Human Rights Commission-Complaints Information*, available at: http://www.hreoc.gov.au/complaints_information/index.html.

4(D)(iii) Investigation

i. Overview

Law 53 provides broad powers of investigation to the HCHR. The power to conduct investigations comes with great responsibilities. It requires the HCHR to develop investigation procedures and processes that:

- Ensure the necessary qualifications and experience of investigators;
- Standardize the collection of evidence;
- Ensure the proper maintenance and storage of evidence once collected,;
- Protect the confidentiality of victims, the accused, and other stakeholders; and
- Coordinate with departments and agencies both inside and outside of the HCHR.

Furthermore, HCHR regulations for investigation procedures should consider the various types of human rights investigations that may be considered. These include:

- Field investigation, also known as on-site investigation;
- Interviews, in person or on the phone;'
- Archival research into existing documents or records;
- Documentary reviews; and
- Testing of evidence

The goal behind any investigative process is to determine whether a human rights violation has occurred and who is responsible for that violation. Once collected, information obtained must be recorded and documented, and reports must be written by investigators for review by other stakeholders.

These tasks require the recruitment of highly skilled and well-trained investigators who possess the capacity to work well with people from diverse religious, ethnic, and political backgrounds. **The investigator must display a respect for diversity and an ability to work patiently and sympathetically with those involved in the complaint in an impartial and unbiased manner.**

ii. Law 53 Parameters

Article 5(2) of Law 53 requires the HCHR to “conduct initial investigations on violations of human rights based on information.” Article 5(3) requires the HCHR to “ascertain the veracity of complaints received by the HCHR and conduct initial investigations, if necessary. These duties provide broad powers of investigation to the HCHR to follow up on complaints received, or on information received from other sources—as the Law appears to allow for *suo moto* investigations. (For a discussion of *suo moto* investigation, see above).

Additionally, the Law grants the HCHR some authority to compel information in the course of investigation. Article 6, for example, compels ministries, bodies not associated

with ministries, and all independent commissions “to provide documents, data, statistics and information related to the work and functions of the HCHR on a specified date” or the HCHR shall inform the CoR.³¹³

iii. Comparative Models

Investigation powers vary greatly across NHRIs. Some NHRIs have expansive powers of investigations, while others are more modest. **Ghana's** NHRI, for example, has expansive powers including the power to issue subpoenas requiring the attendance of a person or the production of any document or record relevant to the investigation,³¹⁴ the power to question any person in respect of any subject matter under investigation before the Commission,³¹⁵ and the power to seize documents or other evidence.³¹⁶

In **Kenya**, the NHRI has the authority to issue an enforce summons for witness and personal appearances before the Commission, or for the production of documents. Each type of summons requires use of a standardized form.³¹⁷ Additionally, investigators have the authority to visit scenes of the investigation³¹⁸ and may use gathered evidence to initiate a public hearing.³¹⁹

In **South Africa**, upon determining that a complaint requires investigation, the NHRI has the authority, under its establishment Act, to compel testimony, information, documentation, and other evidence “reasonably necessary in connection with any investigation” through written notification meeting a basic set of criteria outlined under the law.³²⁰ Furthermore, witnesses called before the Commission are compelled to provide testimony or documentation even that information is self-incriminating. However, the establishment Act provides protections against the use of self-incriminating evidence obtained through such testimony in criminal proceedings.³²¹

In addition to investigating complaints and gathering evidence, **investigating Commission officers may be required to write a report about their findings and their recommendations for the dispensation of the complaint.** These reports may be more or less formal depending on the Commission's aims. For example, **Uganda's** NHRI provides detailed regulations for the format of an investigation report that include the following categories:

- Background,

³¹³ *Iraqi Law No. 53 (2008)*, art. 6.

³¹⁴ *Constitution of the Republic of Ghana*, Ch. 18, *Commission on Human Rights and Administrative Justice*, § 219(1)(a).

³¹⁵ *Id.* at 219(1)(b).

³¹⁶ *Id.* at 219(1)(c).

³¹⁷ *Kenya Complaints Procedures*, *supra* note 232, art. 21(1)(a).

³¹⁸ *Id.* at art. 21(1)(b).

³¹⁹ *Id.* at art 21(2)(c).

³²⁰ *South African Act*, *supra* note 59, art. 9.

³²¹ *Id.*

- Objective,
- Methodology,
- Identification of beneficiaries and victims,
- Findings,
- Observations,
- Opinion, and
- Recommendations.³²²

Under this standard, recommendations may include advising the Commission to proceed further for remedial actions such as alternative dispute resolution, a public hearing or referral for legal action.

4(E) Case Tracking Database

i. Overview

Maintaining and ensuring the protection of a database of information for each complaint is of significant importance for the HCHR. A Case-Tracking Database, or Register of Complaints fulfils several purposes.

First, it enables the HCHR to refer back to records if related complaints arise in the future or evidence collected in a complaint becomes necessary in a judicial proceeding. This is particularly important given the HCHR's obligation to refer cases to the Public Prosecutor if legal action is necessary.

Second, a Case-Tracking Database would enable the HCHR to identify patterns in the human rights situation in Iraq and develop statistical data on a variety of human rights issues facing the country. This is particularly important given the HCHR's mandate to protect human rights in Iraq, as the identification of systemic problems and patterns is a first step toward improvement.

Third, a Case-Tracking Database would provide a wealth of information that may drive other HCHR activities, such as communicating with international bodies, identifying issues for *suo moto* investigation, making recommendations about policy and law, and engaging in public outreach and education. The information gleaned from the complaints and investigations process will provide useful information to the HCHR that will support the overall work of the Commission. However, given the sensitive nature of the information, strict confidentiality protocols will need to be developed, as will mechanisms for the safe storage of the information.

ii. Law 53 Parameters

³²² *Uganda Complaints Handling Manual*, *supra* note 197, § 5(3).

Law 53 does not expressly require the maintenance of a Case-Tracking Database or a Registrar of Complaints. However, the duties and functions mandated to the Commission include conducting studies and research on the human rights situation in Iraq, making recommendations on law and policy,³²³ supporting the reporting process to the United Nations on international human rights obligations,³²⁴ and publishing regular reports.³²⁵ The information collected and maintained in a Case-Tracking Database will provide invaluable information that will help to achieve these goals.

iii. Comparative Models

Many NHRIs utilize a case-tracking system, either through a Complaints Registrar or other mechanism, as a means to ensure efficient case management and effective accountability and evaluation.

For example, in **Kenya**, the NHRI's Complaints Procedures specifically require the Legal Services Department, which is the administrative arm of the Commission mandated to handle complaints, to maintain a Registrar of Complaints "in which all complaints shall upon receipt, be entered."³²⁶

South Africa's Complaints Manual requires not only the maintenance of a Register of Complaints, but mandates timelines for acknowledgement and communication both within the NHRI and with the complainant and other stakeholders.³²⁷ Upon receipt of a complaint, the Registrar must ensure a reference number is allocated to the complaint and that the number is recorded in the Registry. The Registrar must then acknowledge receipt of a complaint within 14 days and provide the complaint of the reference number.³²⁸

The fundamental principle of complaints management in **South Africa** is "If it is not in the system, it does not exist' — complaints should be equated to stock, complainants to clients, and complaints to managers and service providers." Moreover, the complaints process requires having "a record of every step and development in the matter" because, as stated repeatedly in the complaints assessment literature "if it is not in the system, it does not exist."³²⁹ This approach to maintaining a complaints database should be instructive for Iraq.

³²³ *Iraqi Law No. 53* (2008), art. 4(2).

³²⁴ *Id.* at art. 4(7).

³²⁵ *Id.* at art. 4(8).

³²⁶ *Kenya Complaints Procedures*, *supra* note 232, art. 15.

³²⁷ *South African Complaints Handling Procedures 2007*, *supra* note 246, art. 3.4.

³²⁸ *Id.* at art. 3.5.

³²⁹ South African Human Rights Commission, Department of Justice and Constitutional Development National Conference 1—3 February 2012 (The Review of Victims Charter National Implementation Plan

In **Uganda's** Complaints Handling Procedures Manual, filing and recording procedures are outlined for both admissible and inadmissible complaints. If a complaint is found not to be admissible based on established admissibility criteria (either it is not within the Commission's jurisdiction or it does not raise a human rights violation), several steps are required. First, the reasons for rejection must be well documented and based on law or policy. Then, the receiving officer must advise the complainant of alternative legal or practical remedies, issue a "notice of inability to proceed" and seek review with a Director within 30 days.³³⁰ Additionally, the officer must issue an appeal form to the complainant and allow time for the complainant to exercise his or her right to request a review. Finally, the officer must photocopy all documents and store them in the Office General File.³³¹

Where a complaint is deemed admissible, the receiving officer must record the complaint on the Commissions official form and open a file for the complainant. The receiving officer must then proceed to ensure the accuracy of the details in the complaints file and authenticate all supporting documentation provided or revealed through investigation.³³²

4(F) Confidentiality

i. Overview

Confidentiality is an invaluable component of the complaints handling process for many NHRIs and facilitates the effective resolution of cases while protecting the privacy and safety of complainants, respondents, and Commission staff. Confidentiality in the handling of victim information is mandated under Law 53.

ii. Law 53 Parameters

Iraqi Law 53 mandates confidentiality requirements for Commissioners, the Secretariat, and other HCHR staff serving under their supervision.³³³ Specifically, the Law requires the HCHR to protect the "complete confidentiality" of the names of the complainants. As such, the HCHR must determine thresholds for confidentiality within its complaints handling regulations.

2007-2011), Topic: Best Practices in Complaints Management, 2012, slides 7 and 8, available at http://www.justice.gov.za/VC/events/2012natconf/paper_sahrc.pdf.

³³⁰ Uganda Complaints Handling Manual, *supra* note 197, § 4.3.1.1-4.3.1.2.

³³¹ *Id.* at § 4.3.1.3.

³³² *Id.* at § 4.3.2.

³³³ *Iraqi Law No. 53* (2008), art. 5(1), the HCHR must "[r]eceive complaints from individuals, groups and civil society organizations on violations committed before and after this Law comes into force while maintaining complete confidentiality of the names of the complainants."

iii. Comparative Models

The **Canadian Human Rights Commission** notes that “keeping confidential such documents as complaint forms, investigation reports and expert opinions, and the information they contain, helps ensure the integrity of the Commission’s investigative process and ensures that the rights and reputations of individuals affected by a complaint, including complainants, respondents and witnesses, are not unduly jeopardized.”³³⁴

To ensure uniform respect for confidentiality throughout the complaints process, many NHRIs utilize and adhere to confidentiality protocols that control the various stages of the complaint process. For example, the **Kenyan** NHRI maintains a strict confidentiality standard in its regulations, which state that the NHRI “shall not disclose or publish matters or information given or received by it in confidence without the prior consent of a party or informant.”³³⁵

In **South Africa**, in contrast, there is no legal requirement for confidentiality, but the protection of privacy is a foundational principle of the complaints handling process. The NHRI’s Complaints Handling Memo, which expands upon and explains complaints procedures, states that, though no provision in the legislation or regulations specifies the confidential nature of complaints, “privacy of the investigation process enables it to proceed speedily and tends to maximize the opportunities to ultimately resolve the matter by conciliation, negotiation, or mediation.”³³⁶ Respecting privacy and confidentiality in the complaints handling process therefore, though not legally mandated, provides “both a more efficient and effective way of dealing with most complaints.”

4(G) Client Rights

i. Overview

As part of the Complaints Handling regulations and procedures, the HCHR may wish to issue an accessible explanation of the rights of the public with regard to services and duties of the HCHR.³³⁷ This explanation of rights may include an assurance of neutrality because the Commission is tasked with dual roles that may sometimes challenge its position as a neutral party. While the Commission must sensitize the public to human

³³⁴ Canadian Human Rights Commission, Frequently Asked Questions, <http://www.chrc-ccdp.ca/faq/page4-eng.aspx#12>.

³³⁵ *Kenya Act*, *supra* note 38, art. 14.

³³⁶ South African Complaints Handling Manual, *supra* note 222, p. 7, March 2001, updated February 2005.

³³⁷ See, e.g., *Tanzania Client Services Charter* *supra* note 299, p. 15 (“[Our clients] have the following rights: to lodge complaints, to know the status of their complaints,...to complain to the Executive Secretary if unsatisfied with the support staff and to the Chairman of the Commission if unsatisfied with the Executive Secretary and the Commissioners; to confidentiality and privacy; to [receive] legal advice....”).

rights issues through promotional competencies, it must also serve as a neutral fact-finder and objective decision-maker through its quasi-judicial functions.³³⁸

A client rights charter may also include commitments about the quality of service the public may expect from the Commission, especially regarding the complaints procedures.

ii. Law 53 Parameters

In describing the complaints handling obligations of the HCHR, Law 53 does not expressly mandate a Client Rights Charter. However, the scope of responsibilities referred to under the law necessitates the development and use of such a charter to aid in the assessment and dispensation of complaints received.

Additionally, a robust and comprehensive Client Rights Charter would assist the HCHR to fulfill its mandate to strengthen, promote, and develop human rights principles and culture within Iraq. If the public is not educated about the work of the HCHR and does not have an adequate understanding of and access to the complaints handling process, the HCHR's ability to process complaints and utilize the information gleaned from complaints and resolutions will be severely hindered.

iii. Comparative Models

The **Tanzania Client Service Charter** provides the following standard:

“[W]e shall: [a]cknowledge receipt of complaints within 21 days of filing; be fair, transparent and impartial in the resolution of complaints; be prompt in the handling of complaints and dispensation of justice; resolve complaints through alternate dispute resolution, wherever feasible; encourage parties involved to comply with the Commission's recommendations; initiate court actions on all parties not complying with the Commission's recommendations even after the expir[ation] of four months.”³³⁹

In **Australia**, the NHRI offers both a Charter of Services available on their website, as well as published list of Frequently Asked Questions that address client rights and the NHRI's obligations within the complaints handling process. Questions presented and answered include:

- How do I lodge a complaint?
- What types of complaints can I make to the Commission?
- Will it cost me anything to lodge a complaint?
- How long will it take?
- What will happen to my complaint?

³³⁸ Besselink, *National Human Rights Ombudsman Institutions*, *supra* note 260, at 158.

³³⁹ *Tanzanian Client Services Charter*, *supra* note 299, p. 17.

- Will a copy of my complaint be given to the respondent?
- Will I be given a copy of the information the respondent gives to the Commission?
- Will the Commission represent me?
- Will I need a lawyer?
- What can I do if my complaint is dismissed by the President or cannot be conciliated?
- What happens if I decide I do not want to continue with my complaint?
- What happens when both Commonwealth and State laws apply?
- I do not live in [the capital city] - how will you help me? ³⁴⁰

The **Australian** Charter of Services includes information about the Commission; defines Commission “customers” as complainants, respondents, and other stakeholders; and provides services standards such as:

- Treating clients with dignity and respect;
- Ensuring that clients understand how the process works;
- Promptly and efficiently handling complaints;
- Providing professional and objective complaints handling procedures; and
- Providing full reasons for all decisions in the complaints process.³⁴¹

4(H) Remedies

i. Overview

Protocols regarding possible remedies available to complainants are useful to provide clarity to the complainant and the respondent. Direct remedies available through the complaints procedures are often limited, but are undefined under Iraqi Law 53,

Potential remedies available through the complaints procedures include:

- Alternative Dispute Resolution (ADR), such as negotiation, conciliation, or reconciliation. These efforts seek an agreed resolution, such as payment of financial compensation to the victim(s). Little or extensive investigation will be required on a case-by-case basis;³⁴²
- Referral of complaints to the Public Prosecutor;³⁴³
- Issuance of advisory opinions; and
- Issuance of non-binding recommendations or reports.³⁴⁴

³⁴⁰ Australian Human Rights Commission, Frequently Asked Questions: Complaints, http://www.hreoc.gov.au/complaints_information/complaints_faq.html.

³⁴¹ Australian Human Rights Commission, Charter of Services to Customers, August 201, 2010, available at http://www.hreoc.gov.au/complaints_information/charter_of_services/index.html.

³⁴² *Uganda Complaints Handling Manual*, *supra* note 197, § 16(1).

³⁴³ *Iraq Law No. 53* (2008), art. 5(4).

³⁴⁴ *Id.* at art. 4(2) (The HCHR shall “submit recommendations and express opinions on issues related to the promotion and development of human rights.”).

The establishment of public hearings generating a final report of recommendations or a call for additional action is also a potential option. Similar programs are utilized in **South Africa, Kenya**, and other NHRIs.

Given the sweeping language of Law 53, the HCHR will undoubtedly receive complaints about human rights violations that fall within its jurisdiction (as the HCHR will define within bylaws and regulations), but which do not necessarily merit referral to the Public Prosecutor for legal action.

In these cases, the HCHR may engage in quasi-judicial functions to resolve complaints, including, among several options, Alternative Dispute Resolution, such as negotiation and mediation. **The types of remedies available must be defined in the complaints handling procedures.** In addition, HCHR staff must be trained in the skills necessary to effectively implement such remedies, and clients must be informed of their rights and options with regard to these remedies.

For a more detailed discussion of the HCHR's quasi-judicial functions, see *Section 3: The Work of the HCHR, 3(D): Quasi-Judicial Functions: Alternative Dispute Resolution* above.

ii. Law 53 Parameters

With regard to resolution of complaints received, Law 53 states only that the HCHR must "initiate lawsuits related to violations and refer them to the Public Prosecutor to take necessary legal action and notify the HCHR of the outcomes."³⁴⁵ The scope of the HCHR's complaints handling jurisdiction is broadly defined under the Law as human rights violations "committed before and after this Law comes into force."³⁴⁶

The Law is silent as to remedies available for complainants where legal action either is not available or where the Public Prosecutor determines that legal action is not necessary.

iii. Comparative Models

In **Australia**, complaints to the NHRI are often resolved through conciliation. In the Australia process, people involved in the complaint talk through the issues and agree to an outcome, such as an apology, reinstatement to a job lost through discrimination or other human rights violation, compensation for lost wages, changes to policies, and other remedies.³⁴⁷ A neutral third party guides the process. Where conciliation does not work

³⁴⁵ *Iraqi Law No. 53 (2008)*, art. 5(4).

³⁴⁶ *Id.* at art 5(1).

³⁴⁷ Australian Human Rights Commission, Complaints information, available at http://www.hreoc.gov.au/complaints_information/index.html.

for the parties or the parties wish to pursue legal action, they must take the matter to the courts.

In **South Africa**, the NHRI establishment Act empowers the Commission to resolve matters through mediation, conciliation, or negotiation—all forms of Alternative Dispute Resolution (ADR). Regulations establish which complaints may qualify for ADR. As in the Australian Commission, the goal of negotiation or conciliation is for the parties to arrive at a mutually agreed resolution, with a neutral party (in the South African case, an officer of the Commission) guiding the process. Where mediation is appropriate, a “suitably qualified person” will conduct the proceedings.³⁴⁸

In addition to mediation, negotiation, and conciliation, complaints referred to the **South African** Commission may be investigated and assessed for a public hearing or proceed to litigation. **Public hearings may be appropriate, for example, when there is a “class of complaints” that can be handled together.** A class of complaints is a set of complaints of the same type or which indicate a systemic problem. Procedures for a public hearing in South Africa include considerations of subject-matter jurisdiction, budget, privacy of the parties, witnesses, record-keeping, and reporting findings.³⁴⁹

Alternatively, a case may proceed to litigation where internal efforts to resolve the dispute have failed or the issues raised in a complaint merit the attention and resources of the courts. South Africa’s NHRI has the authority to intervene in litigation in a variety of ways, which makes the determination whether or not to litigate dependent on content as well as resource availability. As a rule of thumb, the South African NHRI notes that “obviously, the higher the impact of the case, the more people involved and the fact that it may create some new jurisprudence, will be motivating factors for approving a case for litigation.”³⁵⁰ The NHRI notes the time, cost, and resource challenges that often make litigation an unfavorable option.

In line with **South Africa’s** robust complaints procedures and regulations, the Commission has developed a specific process for dealing with the approval of litigation cases within the Legal Department. The process includes:

- Ensuring that the basic criteria for a complaint are present;
- Ensuring that internal remedies such as mediation have been exhausted or failed;
- Identifying whether other organizations (such as an NGO) are pursuing litigation;
 - If an NGO or other body is pursuing litigation, determining whether that organization has sufficient capacity to deal with the litigation or if the Commission should take the lead.

³⁴⁸ South Africa Complaints Handling Manual, *supra* note 222, § 2.2-2.3, May 5, 2006.

³⁴⁹ South African Human Rights Commission, Policy and Criteria for Public Hearings, May 5, 2006.

³⁵⁰ *South African Complaints Handling Manual*, *supra* note 222, Attachment: Policy and Criteria for Litigation, § 2, (March 2001, updated February 2005).

- If sufficient capacity is found, determining whether the Commission should join as *amicus curiae*;
- Considering whether the complaint includes some of the following important considerations which make litigation more favorable (not an exhaustive list):
 - If the damage caused by the conduct is serious or the complainant is being unlawfully detained;
 - If the outcome of litigation will have a wider impact on a larger number of people or community;
 - Whether there is a prevalence of a particular type of complaint;
 - Whether the violation is continuing or ongoing;
 - Whether the complaint touches on a constitutional principle.
- Considering whether, on the merits of the complaint, there is a reasonable prospect of success;
- Whether the Commission has sufficient human and financial resources to pursue litigation;
- Whether counsel with the appropriate experience and expertise is available; and
- “No hard and fast rule... each case must be decided on its own merits.”³⁵¹

In the **Ugandan Human Rights Commission**, in addition to mediation as a remedy, the NHRI also offers counseling to complainants at any stage in the process where it appears the complainant needs help, information, or consoling.³⁵²

Additionally, the Ugandan NHRI has the additional quasi-judicial authority to sit as a Tribunal composed of a single Commissioner assisted by legal counsel. Though the Tribunal is more informal than a court of law, the decisions and remedies determined by the Tribunal are binding on the parties.³⁵³ The Iraqi High Commission for Human Rights does not have the authority to issue binding decisions under Law 53. However, procedures that protect against bias and ensure neutrality are instructive in any remedial proceedings the HCHR may determine are appropriate under its mandate.

4(I) Staff Roles

i. Overview

A well-trained staff with the capacity to deal impartially and compassionately with complainants, and who understand and rigorously follow complaints procedures, is an invaluable component in any complaints handling process. **Staff within the complaints process should be specifically trained to fulfill their roles and respect diversity, but should also have a sound understanding of the HCHR's functions,**

³⁵¹ *Id.*, § 5-7, (March 2001, updated February 2005).

³⁵² *Uganda Complaints Handling Manual*, *supra* note 197, § 8.

³⁵³ *Id.* at § 9.

jurisdiction, regulations, and procedures. They should be able to communicate effectively and respectfully with people from diverse backgrounds, and should also be able to write clear, concise, and coherent reports about decisions and actions taken.

ii. Law 53 Parameters

Law 53 provides broad authority to the HCHR to develop complaints handling procedures and its internal organizational structure. However, the internal organizational structure should reflect the staffing needs of the complaints process, and the complaints handling regulations and procedures should consider the role of staff at every stage of the complaint.

The authority of the BoC to hire and train staff is found in Article 13, while the authority to develop an internal organizational structure conducive to fulfilling the mandate of the Commission is found in Article 11.

iii. Comparative Models

The **Ugandan** NHRI's Complaints Handling Procedures Manual provides a highly instructive summary of the roles of various officers in the complaint handling process. Officers identified in the regulations include:

- Receiving Officer;
- Investigations Officer;
- Regional Human Rights Officer;
- Process Server;
- Registrar;
- Director;
- Commission Counsel (related to Tribunal procedures); and
- Tribunal Clerk (related to Tribunal procedures).³⁵⁴

While the Ugandan NHRI's adjudicative mandate is much broader than the HCHR's, these role descriptions may serve as useful examples if the HCHR's complaints function grows over time.

³⁵⁴ *Id.* at, § 16.

Appendix IV:

Possible HCHR Complaints Procedures

Chapter 1. Definitions

For the purposes of these Procedures:

- (1) Any word or expression to which a meaning has been assigned in the Act shall have that meaning unless the context indicates otherwise.
- (2) "Appeal" means a challenge against a decision or finding made by the Iraqi High Commission on Human Rights.
- (3) "Assessment" means a preliminary decision regarding a complaint.
- (4) "Commission" means the Iraqi High Commission on Human Rights.
- (5) "Complaint" means a communication addressed to the Commission alleging conduct or omissions that constitutes a *prima facie* violation of a fundamental right.
- (6) "Conciliation" means a process through which parties in dispute use services of a third person to assist in bringing parties together in an effort to ascertain the facts of the case and to effect a mutually effective solution.
- (7) "Decision" means a conclusion reached, determination made or resolution taken regarding a complaint.
- (8) "Finding" means a statement or document containing the full reasoning of a decision of the Commission, after an investigation of a complaint.
- (9) "Fundamental rights" means any right contained in Section Two of the Iraqi Constitution, rights identified in international human rights instruments to which Iraq is a party, and related rights determined to be fundamental by the Commission.
- (10) "Investigation" means efforts undertaken by the Commission to obtain information related to a complaint.
- (11) "Law" means Law No. 53 of 2008 establishing the Iraqi High Commission for Human Rights.
- (12) "Litigation" means litigation as envisaged by Art. 5(fourth) of the Law.
- (13) "Mediation" means a process through which the parties in dispute use the services of a third person who controls the process without having any influence on the content to help resolve a dispute or produce an agreement or conciliation, which dispute shall only be mediated if both parties have agreed to such mediation in writing.
- (14) "Negotiation" means the reaching of an agreement through discussion and compromise.
- (15) "Respondent" means the person, group, class of persons, organ of state, association or organizations whom it is alleged violated or threatened to violate a fundamental right.

Chapter 2. Complaints Procedures

Section 1. General Principles

1. The Commission shall exercise fairness, transparency and impartiality in the resolution of complaints; promptly handle complaints and the dispensation of justice; respect the confidentiality of parties to a dispute to the extent possible and according to the Law and internal protocols; resolve complaints through alternate dispute resolution, wherever feasible; and encourage parties involved to comply with the Commission's recommendations.

Section 2. Jurisdiction and Jurisdictional Screening Protocol

1. The assessment of complaints shall include deciding whether a complaint falls within the Commission's jurisdiction.
2. A complaint falls within the Commission's jurisdiction when:
 - (a) The matter constitutes a complaint; and
 - (b) The matter concerns fundamental rights.³⁵⁵
3. The Commission shall have jurisdiction over all such cases, regardless of whether the complainant has exhausted their judicial remedies.³⁵⁶
4. The Commission shall have concurrent jurisdiction with the court system, such that it may:
 - (a) Intervene as *amicus curiae*³⁵⁷;

³⁵⁵ See, e.g., *Uganda Complaints Handling Manual*, *supra* note 197, § 3(2)(1); Article 12(b) of the *India Human Rights Act*, *supra* note 28, (granting the Indian Human Rights Commission the power to "inquire, suo motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court]1, into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant."). While Iraqi Law Number 53 of 2008 does not grant the HCHR a similar power to investigate complaints *suo motu*, Article 5(2) does grant the HCHR the power to investigate complaints received from petitions.

³⁵⁶ See *Uganda Complaints Handling Manual*, *supra* note 197, § 3(1) and *South Africa Complaints Handling Manual*, *supra* note 222,, Part 1(8), which do not mandate or even mention the exhaustion of judicial remedies. *But See* Paragraph 41(a) of the *Canadian Human Rights Act*, *supra* note 244, which permits the Commission to refuse to deal with a complaint when "the alleged victim of the discriminatory practice to which the complaint relates ought to exhaust grievance or review procedures otherwise reasonably available;" Part III, Art. 80(3)(d) of the *New Zealand Act*, *supra* note 43, similarly permits the Commission to decline to deal with a complaint when "there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition Parliament or to make a complaint to the Ombudsman, that it would be reasonable for the complainant or the person alleged to be aggrieved (if not the complainant) to exercise;" Part II, Division 3, Art. 20(2)(c)(iv) of the *Australian Human Rights Act*, *supra* note 213, also permits the Commission to choose not to deal with a complaint if "[it] is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act or practice." While these latter three provisions militate against allowing cases in which judicial remedies have not been exhausted, it is significant that they allow the commissions to exercise their discretion on this matter.

³⁵⁷ See, e.g., *Sierra Leone Act of 2004*, *supra* note 231, Part III, Art. 12 ("The Commission may, where it finds it necessary, appoint a legal practitioner of not less than five years' standing, to intervene, with leave of the court, in legal proceedings in cases which involve human rights issues over which the Commission has

- (b) Monitor judicial proceedings³⁵⁸; and
- (c) Hear complaints where a court has already issued a final ruling.³⁵⁹

Section 3. Filing Requirements

1. The Commission shall deal with every complaint brought before it unless the Commission is satisfied that the complaint is:
 - a. Not within the jurisdiction of the Commission.³⁶⁰
 - b. In relation to a decision, recommendation, act or omission which took place prior to 6 April 2012;³⁶¹

competence but such intervention shall be restricted to issuing amicus curiae briefs dealing with the matter in question.”); *The Indian Human Rights Act*, *supra* note 28, art. 12(b) (Stating that the Commission shall “intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.”); *Australian Human Rights Act*, *supra* note 213, Part IIB, Division 2, art. 46PV(1).

³⁵⁸ See, e.g., *Australian Human Rights Act*, *supra* note 213, Part II, Division 2, Art. 11(1)(o) (Stating that the Commission may “intervene in proceedings that involve human rights issues” so long as the Commission secures the “leave of the court hearing the proceedings.”). Article 11(1)(p) further states that the Commission may “do anything incidental or conducive to the performance of any of the preceding functions;” Part 1, Art. 5(2)(j) of the *New Zealand Act*, *supra* note 43, grants the Commission the power to “apply to a court or tribunal, under rules of court or regulations specifying the tribunal's procedure, to be appointed as intervener or as counsel assisting the court or tribunal, or to take part in proceedings before the court or tribunal in another way permitted by those rules or regulations....”.

³⁵⁹ See, e.g., *The Australian Human Rights Act*, *supra* note 213, Part II, Division 3, Art. 20(2)(c)(v) (Stating that the “Commission may decide not to inquire into an act or practice...if...in a case where a complaint has been made to the Commission in relation to an act or practice: where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with...”; *South African Complaints Handling Procedures 2007*, *supra* note 246, art. 4(1)(3) (Providing that the Commission may deal not with a complaint on which there is a judgment on the issues so long as “the Commission may consider any complaint regarding the process and manner in which the hearings are conducted at such court of law, tribunal or statutory body and if such complaint amounts to a violation of fundamental rights.”). But see, e.g., *Sierra Leone Act of 2004*, *supra* note 213, Part III, Art. 16(a) (“The Commission’s power of investigation under this Act shall not include the investigation of any matter—(a) pending before, or already decided by a court of competent jurisdiction....”).

³⁶⁰ Part III, Art. 22(4)(d) of the *Tanzania Act*, *supra* note 65, and Paragraph 41(c) of the *Canadian Human Rights Act*, *supra* note 244 contain this provision.

³⁶¹ *Iraqi Law 53* (2008) does not specify a statute of limitations for complaints. Article 5 (first) of the Law states that the Commission must receive complaints regarding violations committed “before and after this Law comes into force.” However, difficulties in obtaining evidence, contacting witnesses, and carrying out other investigative procedures multiply over time. As such, the Commission may wish to establish a statute of limitations for complaints about past incidents while reserving the power to accept complaints after the statute of limitations runs in special circumstances (See, *infra* art. 2 § 3.2 of these bylaws). The date “6 April 2012” reflects the date the Council of Representatives endorsed the slate of original and reserve Commissioners nominated by the Committee of Experts and establishes a clean, clear, and concise date wherein the Commission may consider complaints regarding violations that take place this established time. Other options for time limits may be December 2008, when Law 53 establishing the Commission was passed.

- c. In relation to a decision, recommendation, act or omission of which the complainant has had knowledge for more than 24 months³⁶² or such longer period as the Commission considers equitable having regard to all the circumstances enumerated in Section 3(2) of these Bylaws, excepting;
- d. Trivial, frivolous, vexatious or made in bad faith³⁶³; or
- e. Based on hearsay, rumour or reports disseminated through the media, provided the Commission may conduct an enquiry to verify any allegation of a violation of fundamental rights that is reported in the media or obtained from any source; and upon verification, such alleged violation dealt with in the terms of the Law and these Bylaws³⁶⁴;
- f. Couched in language that is abusive, insulting, rude or disparaging, provided that the Commission may consider a complaint if such language is removed³⁶⁵; or
- g. An anonymous complaint, provided that the Commission, at its discretion, may make enquires to ascertain the allegations of possible human rights violations and if ascertained it may deal with the complaint under the terms provided for in the Law and these Bylaws. Notwithstanding what has been stated aforesaid the

³⁶² In addition to establishing a date before which all violations will not be considered, the Commission should also consider establishing a statute of limitations (subject to exceptions under certain circumstances), limiting the time between violation and complaint. Other National Human Rights Institutions employ statutes of limitations, which vary in their durations. For example, paragraph 41(e) of the *Canadian Human Rights Act*, *supra* note 244, permits the Commission to refuse to deal with a complaint that is "based on acts or omissions the last of which occurred more than one year, or such longer period of time as the Commission considers appropriate in the circumstances." Similarly, § 7(5) of the *United Kingdom Human Rights Act 1998*, *supra* note 252, states that no proceedings shall be brought after "one year beginning with the date on which the act complained of took place; or (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances." Further, Part I, Division 3, Art. 20(2)(c)(i) of the *Australian Human Rights Act*, *supra* note 213, states that the Commission may decide not to inquire into an act or practice if "the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice." These derogable statutes of limitations stand in contrast to Part III, Art. 22(4)(a) of the *Tanzanian Act*, *supra* note 65, which specifies that the Commission shall deal with every complaint brought before it unless "the complaint relates to a decision, recommendation, act or omission of which the complainant has had, knowledge for more than 24 months before the complaint is received by the Commission..." and Art. 36(2) of *The Indian Human Rights Act*, *supra* note 28, which states that "[t]he Commission...shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed." 60 months is the suggested statute of limitations under these bylaws based on Iraq's unique history and the timing of past conflicts within the State.

³⁶³ Many National Human Rights Institutions utilize this prohibition. Paragraph 41(d) of the *Canadian Human Rights Act*, *supra* note 244, permits the Commission to refuse to deal with a complaint that is "trivial, frivolous, vexatious, or made in bad faith." Part IIB, Division 1, 46PH allows the President of the Commission to terminate any complaint he or she finds to be "trivial, vexatious, misconceived or lacking in substance." Part III, Art. 22(4)(c) of the *Tanzanian Act*, *supra* note 65, states that the Commission shall deal with every complaint brought before it unless "the complaint is frivolous, vexatious, or made in bad faith." Part III, Art. 35(1)(b) of the *New Zealand Act*, *supra* note 43, allows the Commission to refuse to investigate a complaint that is "frivolous or vexatious or is not made in good faith."

³⁶⁴ *South African Complaints Handling Procedures of 2007*, *supra* note 246, art. 4(1)(1).

³⁶⁵ *Id.* at 4(1)(2).

Commission may consider a complaint in which the complainant requests to keep his or her identity confidential.³⁶⁶

- h. Lacking in sufficient information to evaluate and for which the complainant has been contacted and has failed to provide sufficient information, provided that on good cause shown by the complainant, the complaint may be reinstated.³⁶⁷
2. The Commission may deal with any complaint which it would otherwise reject for the reason that the complainant has had knowledge for more than 24 months before the complaint is received by the Commission if:
 - a. For the purposes of ensuring that ends of justice are met, it is otherwise worth to deal with the complaint than rejecting it;
 - b. A complaint is of a Constitutional importance; or
 - c. Considering the nature of the complaint and circumstances surrounding the complainant, the Commission is satisfied that it should deal with such complaint.³⁶⁸

Section 4. Filing Procedures

1. When a person contacts the Commission, in person, by telephone, electronically or by other means, and appears to want to make a complaint, the complaints procedure shall be explained to that person, the Client's Rights Charter shall be provided to him or her, and that person shall be asked to write out their complaint either on the Commission's complaint form or in a letter.³⁶⁹
2. If a person is unable, for whatever reason (language or literacy difficulties, a disability, distance from a Commission office, etc.) to write, the Commission shall make all reasonable efforts to ensure that the person is able to make a complaint. Such efforts may include:
 - a. Providing and audio recording device onto which the individual may make a complaint orally.
 - b. Asking the individual to obtain the assistance of a friend, relative or other associate who may be able to put it in writing for them.
 - c. If the person or persons are close to one of the Commission's offices, offering an appointment and the assistance of an officer to write out the complaint. In these circumstances, care must be taken to ensure that Commission staff does not unduly influence the complainant and that statements represent a comprehensive and accurate description of the matters complained about.³⁷⁰

³⁶⁶ *Id.* at 4(1)(4).

³⁶⁷ *Id.* at 4(1)(6).

³⁶⁸ This provision comes from Part III, Art. 22(4)(d) of *Tanzania Act*, *supra* note 65, and is included as a safety valve in order to insure that the statute of limitations is not an absolute bar.

³⁶⁹ *Id.* at 1(5)(2).

³⁷⁰ *Id.* at 1(5)(3).

3. While every attempt should be made to disclose a complete picture of the complaint in Arabic, Kurdish, or any other language spoken in Iraq, the Commission shall entertain complaints in any language.³⁷¹
4. A complaint must identify the name and address of the person making the complaint and, if relevant, the person on whose behalf the complaint is made.³⁷²
5. The complaint should identify the respondent. The complainant may do this, but sometimes the correct identification and contact details for the respondent will need to be obtained by the Commission. This may occur, for example, in relation to complaints against a government agency, where this information may be more readily available to the Commission than to the complainant. If the respondent is a private individual, the onus will generally be on the complainant to provide relevant details in support of the complaint.³⁷³
6. Any complaint submitted to the Commission for consideration shall be submitted in writing in a form established by the Commission and, where possible, shall be accompanied by relevant supporting documents that substantiate the complaint.³⁷⁴ Such supporting documents must be furnished to the Commission before a finding is made and can be furnished through an investigation, hearing, negotiation, mediation, or conciliation.
7. A member of the Commission's staff may assist any person who is unable to reduce the complaint into writing and the Commission may at any stage require that the complaint be made under oath or affirmation.³⁷⁵
8. Complaints shall be logged on a prescribed form, except for electronic mail submissions and other submissions that cannot be so prescribed.³⁷⁶

³⁷¹ *India Regulations*, *supra* note 48, art. 8(3) ("Every attempt should be made to disclose a complete picture of the matter leading to the complaint and the same may be made in English or Hindi to enable the Commission to take immediate action. To facilitate the filing of complaints, the Commission shall, however, entertain complaints in any language included in Eighth Schedule of the Constitution."); *Australian Human Rights Commission-Complaints Information*, available at: http://www.hreoc.gov.au/complaints_information/index.html ("A complaint can be made in any language.").

³⁷² *Tanzania Act*, *supra* note 65, art. 1(5)(4).

³⁷³ *Id.* at 1(5)(5).

³⁷⁴ *South African Complaints Handling Procedures of 2007*, *supra* note 246, art.3(1).

³⁷⁵ *Id.* at 3(2).

³⁷⁶ *Id.* at 3(3). Many NHRIs provide a standard complaint form, such as the *Kenya Act*, *supra* note 38, Rules and Regulations, Complaint Data Collection Form or the Australian Human Rights Commission Complaint Form Version 2/09, available at: http://www.hreoc.gov.au/complaints_information/download/complaint_form.pdf.

9. Upon receipt of the complaint, the Commission shall ensure that a reference number has been allocated to the complaint and that such complaint has been logged in a complaints register.³⁷⁷
10. The Commission will acknowledge receipt of the complaint within 14 days and advise the complainant of the reference number allocated to the complaint.³⁷⁸
11. There shall be no charge for the handling of complaints.³⁷⁹
12. All complaints received and logged by the Commission will be allocated to staff within 3 days for screening and assessing complaints.³⁸⁰
13. After a complaint has been accepted, the complainant is to provide the Commission with a full statement on oath or affirmation, including details of all witnesses. Such a statement of complaint, if not provided by the complainant at the outset, may have been obtained as part of the screening or investigation process, in order to enable the Commission to clearly assess the issues raised in the complaint. If not, one should be obtained at this stage, as it will assist the parties and the Commission to deal with the matter in the most effective way possible.³⁸¹
14. The screening and assessing of complaints shall be completed within 7 days of the duty being allocated.³⁸²
15. The Commission shall provide a written decision regarding acceptance, rejection, and next steps for the complaint to the complainant within 7 days of the initial screening and assessment, giving full reasons for the decision and advising the complainant of his or her right of appeal of said decision.³⁸³

Section 5. External Referrals

1. The Commission must determine, if a complaint appears to be within its jurisdiction, whether it should be referred to another body which is better able to deal with the matter.
2. If the Commission determines that the complaint does not fall within the jurisdiction of the Commission, or could be dealt with more effectively or expeditiously by another organization, statutory body or institution created by the Constitution or any other

³⁷⁷ *South African Complaints Handling Procedures of 2007*, *supra* note 246, art. 3(4).

³⁷⁸ *Id.* at 3(5).

³⁷⁹ *Id.* at 3(9).

³⁸⁰ *Id.* at 3(10).

³⁸¹ *South Africa Complaints Handling Manual*, *supra* note 222, (2006), Part 2(1)(2).

³⁸² *South African Complaints Handling Procedures*, *supra* note 246, art. 3(11).

³⁸³ *Id.* at 3(12).

piece of legislation, it shall, within 7 days of such determination, refer the complainant to such an appropriate body and shall be entitled to request and receive periodic reports on the status of such a referred complaint if the complaint constitutes a *prima facie* violation of or threat to a fundamental right.³⁸⁴ This process should be undertaken with due regard to the confidentiality standards set out in Chapter 2, § 8 of these bylaws. If the complaint does not constitute a *prima facie* violation or threat to a fundamental right, the Commission shall close the complainant's file accordingly.³⁸⁵

Section 6. Internal Dispensation

Subsection 1: The Internal Dispensation Protocol

1. If the Commission determines to accept a complaint, it must decide what action to take in relation to it.
2. The first decision the Commission must make is whether to use alternative dispute resolution (ADR) or to begin the process of investigation. Since mediation is voluntary³⁸⁶, determining whether a complaint should be mediated shall be determined by inquiring about whether the complainant and the respondent involved would be amenable to ADR.
3. If either party is not amenable to ADR, then the Commission shall begin its investigation.
4. If both parties are amenable to ADR, the complaint shall be sent to mediation. If the complaint is not settled in mediation, it shall then be sent for investigation.³⁸⁷
5. After the Commission investigates the complaint, the Commission must decide whether to use conciliation, begin the hearing process, or dismiss the complaint on the grounds of insufficient evidence to support the complainant's allegations.³⁸⁸
6. Refer to Figure 1 of these bylaws for a visual representation of the above internal dispensation protocol.

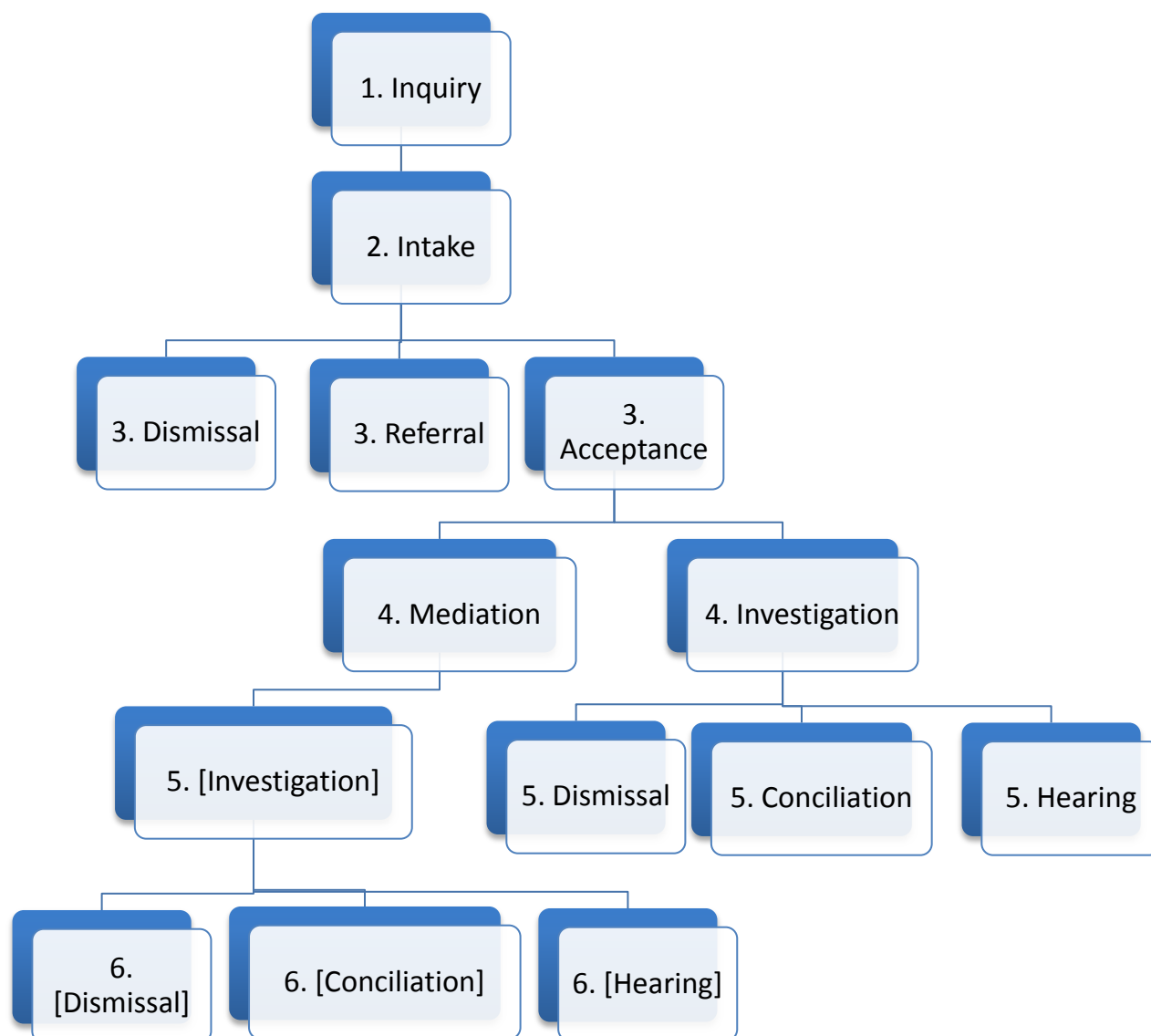
³⁸⁴ *South African Complaints Handling Procedures of 2007*, *supra* note 246, art. 4(2)(1).

³⁸⁵ *Id.* at 4(2)(2).

³⁸⁶ *Canadian Human Rights Commission Complaint Management and Resolution Process Results-based Management Accountability Framework*, May 2004, p. 3.

³⁸⁷ *Id.* at 4.

³⁸⁸ *Id.*

Figure 3: Internal Dispensation Flowchart

Subsection 2: Internal Dispensation Procedure

1. In reviewing the sufficiency of a complaint, or putting it to a respondent to answer, the group or class of persons³⁸⁹ on whose behalf the complaint is made shall be

³⁸⁹ *Iraqi Law No. 53 (2008)*, art. 5(1), provides that the following persons may lodge complaints with the Commission: individuals, groups, and civil society organizations. These categories include:

- (a) Anyone acting in their own interest;
- (b) Anyone acting on behalf of another person who cannot act in their own name;
- (c) Anyone acting as a member of, or in the interests of a group or class of persons;
- (d) Anyone acting in the public interest;

adequately described and defined. If the complaint is on behalf of a small number of individuals, the group may be described by naming the individuals involved.

2. A complainant, a respondent, an interested party and any other person whose conduct or act is likely to be the subject of adverse comment by the Commission may be represented by an advocate or by any other person suitable to represent him.³⁹⁰
3. After a complaint has been received by the Commission, the Commission shall notify the person against whom the complain is made and, at the discretion of the Commission, any other interested party, and shall give sufficient opportunity to all parties to whom notice has been given to appear, in person or through a representative, at a Commission office or through an established procedure to present evidence and make representations.³⁹¹
4. Complaints received by the Commission may be dismissed, referred, or accepted as established by these Bylaws.³⁹²
5. A dismissal is a decision concerning a complaint regarding matters with which the Commission does not deal as set out in Section 3 above. The complaint file should be closed once this decision is sent and complainant advised of his or her right of appeal.³⁹³
6. Complaints that are outside the Commission's jurisdiction or better dealt with elsewhere are to be referred to the appropriate body by way of a standard letter, signed by or on behalf of the Commission. The complaint file is closed once the referral letter has been sent and complainant has been advised of his or her right to appeal the decision.³⁹⁴
7. If, at the expiration of 45 days from the date of the Commission's decision to reject a complaint, no appeal has been received, the complaint file should be closed. If the decision is appealed the complaint should be referred to the Chairperson and appeal body as soon as possible. If the decision is upheld, the complainant should be advised and the file closed.³⁹⁵
8. If a complaint is resolved by mediation or conciliation the Commission shall make a record of the agreement reached between the parties in settlement of the matter. If

(e) An association acting in the interest of its members; and

(f) An organization acting in the interests of an individual, a group or class or persons, or itself.

³⁹⁰ *Tanzania Act*, *supra* note 65, Part IV, art. 23.

³⁹¹ *Id.* at art. 24.

³⁹² *South Africa Complaints Handling Manual* (2006), *supra* note 222, Part 3(1).

³⁹³ *Id.* at 3(2).

³⁹⁴ *Id.* at 3(3).

³⁹⁵ *Id.* at 3(5).

possible, this should be initialled or signed by the parties at the time. A copy is to be placed on the Commission's file and copies sent to the parties, together with a letter from the Commission confirming that the complaint is closed. The letter should be signed by the designated member of the Commission staff, or, if the matter was settled by a member of the Commission, the relevant Commissioner.³⁹⁶

9. A formal investigation of a complaint may result in findings by the Commission. There is no limitation on the Commission as to what its findings in any particular case might be. These findings may include, for example: a finding that there has been no violation of human rights; a finding that there has been a violation of a person's human rights; recommendations regarding the future conduct of the respondent; or actions to be taken to provide redress.³⁹⁷
10. If at any point subsequent to receiving a complaint, the Commission is of the view that the decision, recommendation, act or omission that was the subject matter of the investigation:
 - a. Amounts to a breach of any of the fundamental rights and freedoms provided the Constitution or otherwise deemed appropriate for consideration by the Commission as consistent with the Law;
 - b. Appears to have been contrary to law;
 - c. Was unreasonable, unjust, oppressive, discriminatory or was in accordance with a rule of law or a provision of any Act or a practice that is unreasonable, unjust, oppressive, or discriminatory; or
 - d. Was based wholly or partly on mistake of law or fact;
 - e. Was based on irrelevant grounds or made for an improper purpose; or
 - f. Was made in the exercise of a discretionary power and reasons should have been given for the decision, the Commission shall report its decision, recommendation and the reasons for it to the appropriate authority concerned,³⁹⁸

The appropriate authority, department or person shall, within such time not exceeding three months from the date of a recommendation as the Commission prescribes, make a report to the Commission with details of any action taken by such authority to redress the impugned fundamental rights or acts of maladministration.³⁹⁹

11. If within the prescribed time after the report is made no action is taken which seems to the Commission to be adequate and appropriate, the Commission, may after considering the comments, if any, made by or on behalf of the department, authority or person against whom the complaint was made either, bring an action before any court or recommend to any competent authority to bring an action and seek such

³⁹⁶ *Id.* at 3(6).

³⁹⁷ *Id.* at 3(8).

³⁹⁸ *Ghana Act*, *supra* note 118, Part IV, § 18(1).

³⁹⁹ *Tanzania Act*, *supra* note 65, Part V, 28(2).

remedy as may be appropriate for the enforcement of the recommendations of the Commission.⁴⁰⁰

12. The provisions of this section shall not be construed as precluding the Commission from resolving any complaint or rectifying any act or omission emanating from a violation of any fundamental right or acts of maladministration in any other manner including mediation and conciliation.⁴⁰¹
13. The findings of the Commission must be made known to the parties to the complaint and shall be published if deemed appropriate upon consideration of the issue of confidentiality established in these Bylaws. If the investigation of a complaint results in findings, the report of these should be signed by a member of the Commission and issued to the parties as soon as possible. The date on which the Commission makes its findings will generally mark the closure of the complaint.⁴⁰²
14. Once the Commission has made findings this will bring an end to the internal complaint handling process. In certain circumstances, however, further action on the part of the Commission may be seen as necessary, desirable or appropriate.⁴⁰³
15. If the respondent indicates his or her intention to ignore the Commission's findings, the Commission shall consider if external litigation is appropriate.⁴⁰⁴

Subsection 3: Acceptance

1. Upon determining that a complaint does constitute a *prima facie* violation of a fundamental right, the Commission shall determine the procedure to be adopted in dealing with the complaint.⁴⁰⁵
2. Such a determination will be made taking into account the mandate of the Commission and may include but not be limited to mediation, conciliation, hearings and litigation.⁴⁰⁶
3. The Commission may at any stage determine that a complaint be investigated⁴⁰⁷, in which case the investigation shall proceed and a report detailing the outcome of the investigation will be completed.⁴⁰⁸

⁴⁰⁰ *Ghana Act*, *supra* note 118, Part IV, 18(2).

⁴⁰¹ *Tanzania Act*, *supra* note 65, Part V, 28(2).

⁴⁰² *South Africa Complaints Handling Manual* (2006), *supra* note 222, Part 3(9).

⁴⁰³ *Id.* at 3(10).

⁴⁰⁴ *Id.* at 3(11).

⁴⁰⁵ *Id.* at 5(1).

⁴⁰⁶ *Id.* at 5(2).

⁴⁰⁷ *Id.* at 5(3).

⁴⁰⁸ *Id.* at 5(3)(4).

4. The outcome of any investigation will be made known to the complainant and the respondent within 20 days of the completion of the investigation.⁴⁰⁹ The Commission may publish such outcome in the media.
5. Where any time limits cannot be met then in that case the complainant shall be advised of this accompanied by reasons for such failure.⁴¹⁰
6. In the event that hearings fail to resolve the dispute, the Commission may utilize any other method to resolve complaint that is not inconsistent with the Law, the Bylaws or the Constitution.⁴¹¹
7. The decision to adopt a particular process to deal with a complaint shall not be open to appeal.⁴¹²

Subsection 4: Investigations

1. Where the Commission decides to conduct an investigation, the Commission shall undertake to interview or speak to the complainant and the respondent and their witnesses and any other relevant parties and collect any other necessary evidence and cross check information in order to ascertain, clarify or verify facts.⁴¹³ The investigations should also seek to identify victims of the violation(s). The Commission may obtain information from such persons and in such manner and make such inquiries as it considers necessary.⁴¹⁴
2. The Commission should seek to obtain information from the any person whom, in its opinion is able to give any information in relation to a matter being investigated by the Commission⁴¹⁵ including:
 - a. A request of all relevant information⁴¹⁶; and
 - b. A request of the production of any document, paper or other evidence that in the Commission's opinion relates to the matter being investigated and which may be in the possession or control of that person.⁴¹⁷
3. The Commission may summon before it and examine under oath or affirmation:
 - a. A person required to give information or produce anything under the previous subsection.
 - b. A complainant.

⁴⁰⁹ *Id.* at 5(3)(5).

⁴¹⁰ *Id.* at 5(3)(6).

⁴¹¹ *Id.* at 5(4).

⁴¹² *Id.* at 5(5).

⁴¹³ *Ghana Act, supra* note 118, Part III, § 14(1).

⁴¹⁴ *Id.* at § 14(3).

⁴¹⁵ *Id.* at § 15(1).

⁴¹⁶ *Id.* at § 15(1)(a).

⁴¹⁷ *Id.* at § 15(1)(b).

- c. Any other person who the Commission considers will be able to give information required under the previous subsection.⁴¹⁸
4. Any person summoned by and appearing before the Commission as a witness is entitled to be paid by way of reimbursement of his or her expenses, such allowances as are payable to a witness appearing before criminal proceedings.⁴¹⁹
5. Any person invited by the Commission to attend any meeting of the Commission may be paid such allowances as the Commission may consider reasonable.⁴²⁰
6. In preparing for the investigation, the individuals tasked with the investigation should have an investigations plan that should be submitted to the appropriate Commission or Regional Office administrator together with the requisition for funds for any investigations travel.⁴²¹
7. The investigations plan should include:
- a. The number of complaint files that the investigations officer will carry on a particular trip;
 - b. What actions will be taken on each file and why. This includes looking at what facts need to be ascertained or verified and who shall do so and how it shall be done;
 - c. How much time is required on each file and account for the time;
 - d. Movement plan;
 - e. Any other necessary information, such as summonses to produce information.⁴²²
8. Where possible and necessary, using the information on file, the investigators should contact witnesses, respondents, and complainants and advise them of his or her impending visit giving them at least two weeks notice in advance.⁴²³
9. The investigators may interview as many witnesses as is necessary in the course of the investigation.
10. In dealing with uncooperative respondents and witnesses, the Commission shall make a decision whether or not to inform the respondent of the investigator's impending visit.⁴²⁴
11. During an investigation, an investigator:

⁴¹⁸ *Id.* at § 15(2).

⁴¹⁹ *Tanzania Act supra* note 65, Part IV, art. 27(3).

⁴²⁰ *Id.* at art. 27(4).

⁴²¹ *Uganda Complaints Handling Manual, supra* note 197, § 5(2)(1).

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Id.* at § 5(2)(3).

- a. Introduce him or herself;
 - b. Shall show his or her identification;
 - c. Shall not under any circumstances assign duties to another person;
 - d. Shall be professional and courteous;
 - e. Shall ensure that every page of the witness statement or complaint is signed and dated by both the investigator and the witness; and
 - f. Shall identify victims in the complaint.⁴²⁵
12. When deemed necessary by the Commission, an additional investigation shall be undertaken following the same procedures as the provided *supra*.⁴²⁶
 13. The investigation shall last no more than two (2) months from the time initiated, with an extension allowed based on a showing of good cause to be evaluated by the Commission.⁴²⁷
 14. The investigation shall be undertaken consistent with the consideration of confidentiality expressed in these bylaws.

Subsection 5: Mediation

1. The Commission may determine that a complaint should be resolved by mediation, though the process is voluntary and primarily facilitative.⁴²⁸
2. The Commission shall send complaints to mediation immediately following the filing of the complaint (once the complaint has been accepted), though mediation shall be offered at all stages of the complaint process.
3. Mediation shall be without prejudice.⁴²⁹
4. If the complainant and respondent accept mediation, a mediator shall assist the parties to identify their interests, with the goal of reaching a mutual resolution that also addresses the public interest elements of the complaint.⁴³⁰
5. A qualified person appointed by the Commission as a mediator will conduct mediation. The mediator may be a member of the Commission staff where appropriate.⁴³¹

⁴²⁵ *Id.* at § 5(2)(4).

⁴²⁶ *Id.* at § 5(2)(5).

⁴²⁷ *Id.* at § 5(2)(6).

⁴²⁸ *Canadian Human Rights Commission Complaint Management and Resolution Process Results-based Management Accountability Framework*, May 2004, p. 3.

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *South Africa Complaints Handling Manual* (2006), *supra* note 222, Part 2(3)(3).

6. Any discussions regarding whether mediation is appropriate and the contents of the mediation shall be comprehensively documented in file notes or letters and any agreement that is reached between the parties should be confirmed in Commission letters that also confirm closure of the complaint on the basis that it has been successfully resolved by mediation.⁴³²

Subsection 6: Conciliation

1. If it appears to be a matter that may be amenable to resolution by conciliation, the Commissioners shall refer the complaint to conciliation. Conciliation is similar to mediation, but more evaluative in nature. Conciliators shall be appointed by Commissioners and shall be responsible for ensuring settlements that address the public interest as well as the interests of the complainant and respondent. The conciliation process, unlike the mediation process, is mandatory where it is determined to be the most effective or efficient remedial option.⁴³³
2. Normally, the conciliation process is held after the Commission carries out its investigation.⁴³⁴ However, depending on the nature of the complaint and the relationship between the parties, it may be appropriate to attempt conciliation with little or no investigation of the matter, beyond that which has been undertaken as part of the screening process. Such circumstances might include relatively simple complaints, or ones involving a respondent who is usually co-operative with the Commission and a complainant who appears to be seeking a reasonable outcome.⁴³⁵
3. Conciliation can take place in a face-to-face meeting called a 'conciliation conference' or through a telephone conference. In some cases complaints can be resolved through an exchange of letters or by passing messages by phone or email through the conciliator.⁴³⁶
4. All contacts with the parties throughout this process should be documented either in letters or, if by telephone, in file notes, which are to be placed securely on the file. If the parties reach agreement, this should be documented in letters from the Commission to the parties, which will also serve to record the fact that the complaint has been dealt with and the Commission's file will be closed on that basis.⁴³⁷

⁴³² *Id.* at 2(3)(4).

⁴³³ See, e.g., *Canadian Human Rights Commission Complaint Management and Resolution Process Results-based Management Accountability Framework*, May 2004, p. 3. But see, e.g., *South African Complaints Handling Manual* (2006), *supra* note 222, Part 2(3)(3).

⁴³⁴ *Id.*

⁴³⁵ *South Africa Complaints Handling Manual* (2006), *supra* note 222, Part 2(2)(2).

⁴³⁶ Australian Human Rights Commission, *The Complaints Process*, available at: http://www.hreoc.gov.au/pdf/complaints/UD_complaint_process.pdf, 1.

⁴³⁷ *Id.* at 2(2)(4).

5. If complaints are formally investigated, the possibility of resolving them by conciliation should always remain an option throughout the later stages of the complaint handling process.⁴³⁸

Subsection 7: Hearings

1. The Commission shall adopt a hearings procedure that is not inconsistent with the terms of the Law.
2. The Commission shall have power to determine its own procedure for the conduct of hearings of matters brought before it but may otherwise be guided by such procedures as may be prescribed by these Bylaws and the Law.⁴³⁹
3. In conducting an inquiry, the Commission shall observe the rules of justice but shall not be bound by any legal or technical rules of evidence applicable to proceedings before the courts; and all legal proceedings shall be conducted informally and expeditiously.⁴⁴⁰

Subsection 8: Litigation

1. At the discretion of the Commission, legal proceedings may be initiated by referral to the Public Prosecutor as consistent with the terms of the Law.⁴⁴¹

Subsection 9: Appeals

1. An appeal in the terms of these Bylaws shall be in writing and shall be lodged within 45 days from date of posting, delivering, faxing or emailing the rejection, referral, finding or other appealable decision. Appeals lodged after the 45-day period may still be considered provided the complainant has shown good cause for such failure to lodge within the time limits prescribed.⁴⁴²
2. Upon receipt of the appeal, any staff person duly authorized to do so shall ensure that a reference number has been allocated to the appeal and that such appeal has been recorded in the Appeals Register.⁴⁴³
3. The Commission must acknowledge receipt of the appeal within 14 days and advise the complainant of the reference number allocated to the appeal.⁴⁴⁴

⁴³⁸ *Id.* at 2(2)(5).

⁴³⁹ *Tanzania Act*, *supra* note 65, art. 20(1).

⁴⁴⁰ *Id.* at 20(2).

⁴⁴¹ *Iraqi Law No. 53 (2008)*, art. 5(4) (stating that the HCHR must “[i]nitiate lawsuits related to violations and refer them to the Public Prosecution to take the [necessary] legal action and notify the HCHR of the outcomes.”).

⁴⁴² ⁴⁴² *South African Complaints Handling Procedures of 2007*, *supra* note 246, art. 8(1).

⁴⁴³ *Id.* at 8(4).

⁴⁴⁴ *Id.* at 8(5).

4. If the Commission is satisfied that the appeal should be rejected, it shall have 45 days to inform the complainant in writing of the decision and giving reasons for the rejection of appeal.⁴⁴⁵
5. If the Commission is satisfied that the appeal should be upheld, it shall have 45 days to inform the complainant in writing of the decision and shall advise the complainant of the subsequent processes of the Commission.⁴⁴⁶
6. Where any of the time limits prescribed under this section cannot be met, the complainant shall be advised of this and of the reasons for such failure.⁴⁴⁷

Subsection 10: Coordination

1. The Commission shall endeavor to coordinate with the police, relevant Ministries, the Council of Representatives, and other stakeholders on all matters including:
 - a. The referral of complaints from the police and detention facilities
 - b. Investigations
 - c. The assessment of complaints
 - d. The conciliation of complaints
 - e. All other matter relevant to the Commission's work.
2. Where appropriate, the Commission may coordinate with international bodies during the complaints process when deemed necessary and appropriate by the Commission.

Subsection 11: Role of Regional and Governmental Offices

1. The Regional and Governmental Offices shall be incorporated into the complaints procedures including:
 - a. Receiving complaints from the public
 - b. Coordinating with local civil society and government organizations
 - c. Performing or assisting in investigations
 - d. Conducting hearings as requested by the Commission
 - e. Engaging in the complaints procedure as determined to be appropriate by the Commission.

Section 7. Case Tracking Database

1. The Commission shall establish a means of capturing the Commission's findings and recommendations in a database or through another tracking system to ensure both efficient case management and effective accountability and evaluation.⁴⁴⁸

⁴⁴⁵ *Id.* at 8(6).

⁴⁴⁶ *Id.* at 8(7).

⁴⁴⁷ *Id.* at 8(8).

⁴⁴⁸ *Kenya Act, supra* note 38, art. 15.

Section 8. Confidentiality

1. The Commission shall not disclose or make public matters or information given or received by it in confidence without the prior consent of a party or informant.⁴⁴⁹
2. The Commission may, either on its own initiative or on an application, take appropriate measures, including allowing an anonymous complaint, and make any order it considers necessary to ensure the confidentiality of an inquiry or any part of it if, having considered all available alternative measures, the Commission is satisfied that there is a real and substantial risk that:
 - a. The disclosure would Prejudice the national security or sovereignty of the State, its defense or international relations;
 - b. A confidential source of information in relation to the inquiry or to the enforcement of the criminal law would be identified or compromised; or
 - c. The fairness of the inquiry is such that the need to prevent disclosure outweighs the interests of having the inquiry or that pad of the, inquiry conducted in public; or
 - d. The life, liberty or physical safety of a person or the interests of vulnerable persons, including children will be endangered.⁴⁵⁰
3. The Commission may prohibit or restrict the publication of any evidence given before it or the identity of any person if it considers that the reasons for ordering such a prohibition or restriction outweigh the public interest in a public hearing and publication of that evidence or identity.⁴⁵¹
4. Every member of the Commission and every person employed by the Commission shall take reasonable precautions to avoid disclosing any matter the disclosure of which is prohibited or restricted by the Commission under subsection (2) or subsection (3).⁴⁵²

Section 9. Client Rights

1. The Board of Commissioners shall issue an accessible explanation of the rights of the public. This explanation shall include an assurance of neutrality and a commitment regarding the quality of service the public may expect from the Commission.⁴⁵³

⁴⁴⁹ *Id.* at art. 14.

⁴⁵⁰ *Tanzania Act*, *supra* note 65, Part III, art. 19(1).

⁴⁵¹ *Id.* at Part III, Art. 19(2).

⁴⁵² *Id.* at Part III, Art. 19(3).

⁴⁵³ *Tanzania Client Service Charter*, *supra* note 300, at 17 (stating that the Commission shall “[a]cknowledge receipt of complaints within 21 days of filing; [b]e fair, transparent and impartial in the resolution of complaints; [b]e prompt in the handling of complaints and dispensation of justice; [r]esolve complaints through alternate dispute resolution, wherever feasible; [e]ncourage parties involved to comply with the

Section 10. Remedies

1. Potential remedies available through the complaints procedures include but are not limited to: the payment of financial compensation⁴⁵⁴, the referral of complaints to the public prosecutor⁴⁵⁵, the issuance of advisory opinions, and the issuance of non-binding recommendations or reports.⁴⁵⁶

Section 11. Staff Roles

1. The Receiving Officer
 - a. Receive all complainants.
 - b. Make a preliminary assessment of complaints on admissibility in consultation with the Regional or Governorate Human Rights Officer.
 - c. Advise or refer complaints as appropriate.
 - d. Register complaints in accordance with these bylaws
 - e. Forward the complaint to the Regional or Governorate Human Rights Officers following the initial assessment.
 - f. Be professional and courteous to complainants.⁴⁵⁷
2. The Investigations Officer
 - a. Ensure that the allegations letter is sent out within the specified time.
 - b. Carry out objective, thorough and meticulous investigations into any given complaint as directed by the Regional or Governorate Human Rights Officer.
 - c. Ensure that investigations are completed in a timely manner within the given time frames, except in exceptional circumstances.
 - d. Write a clear and detailed investigations report within the given time frame.⁴⁵⁸
3. The Regional or Governorate Human Rights Officer
 - a. Supervise the complaints process in the regional or governorate office.
 - b. Sign all letters going out from the regional or governorate office.
 - c. Make a decision at any stage of the investigations whether the complaint should proceed further or not.
 - d. Make a decision to close a file.

Commission's recommendations; [and] [i]nitiate court actions on all parties not complying with the Commission's recommendations even after the expiry of four months.").

⁴⁵⁴ *Uganda Complaints Handling Manual*, *supra* note 197, § 16(1).

⁴⁵⁵ *Iraqi Law No. 53 (2008)*, art. 5(4).

⁴⁵⁶ *Id.* at art. 4(2) (The HCHR shall "submit recommendations and express opinions on issues related to the promotion and development of human rights.").

⁴⁵⁷ *Uganda Complaints Handling Manual*, *supra* note 197, § 16(1). Note that these staff roles are intended to serve merely as useful examples if the HCHR's complaints function grows over time. Regional officers, for instance, would only be need as regional offices are established.

⁴⁵⁸ *Id.* at § 16(2).

- e. Sign all “notices of inability to proceed” and other correspondences at the regional level.
 - f. Send a report, on a monthly basis, to the Director, of all files he or she intends to close at the regional office, including file numbers, brief facts and reasons for closure.
 - g. Ensure that files for the hearing are sent to the Director by the 15th day of the last month before allocation.
 - h. Approve all budgets, expenses and payments made at the regional Level.⁴⁵⁹
4. The Process Server
- a. Receive summons from Commission Counsel, Registrar or the Director.
 - b. Draw up a budget for the service, which budget should include transportation and per diem where applicable. Transportation cost estimates depend on the distance to be covered and must always be realistic.
 - c. Present the budget to the immediate budget holder for approval.
 - d. Fill out the requisition form for the planned service and attach it to the budget.
 - e. Ensure that money is received in good time in order to affect service early. It is the responsibility of the process server to ensure that the entire requisition process is properly followed and started in good time.
 - f. Record costs of the different distances and submit the same to the budget holder and Accounts office together with the accountability.
 - g. Peruse the file for the most recent address details and particulars of the person they are intending to serve. Thereafter, updates should be made on the file where the process server discovers from the field that the particulars and addresses have changed.
 - h. Serve summonses, hearing notices and any other relevant documents in accordance with these bylaws.⁴⁶⁰
5. The Commission Counsel

Before a Hearing

- a. Read the file cover to cover including minutes before cause listing any file.
- b. Ensure that the complaint file has all the relevant documents, for example the complaint statement and witness summonses.
- c. Liaise with the Hearing Commissioner to cause list the file.
- d. Summonses and hearing notices for the hearing, the summonses should be issued a month in advance in order to allow service in good time and that the two weeks rule is observed.
- e. Prepare file numbers, get proper particulars and get updated clear addresses.
- f. Read through the affidavit of service of the process server.

⁴⁵⁹ *Id.* at § 16(3).

⁴⁶⁰ *Id.* at 16(4).

- g. Draft a budget for transportation and accommodation refund for witnesses and hearing Commissioner and take the budget to the budget holder for approval.
- h. Record prices of distances and submit them to the budget holder and accounts office.
- i. Meet with complainants and witnesses to brief them on what is expected of them before or during the hearing. Find a date in advance before the hearing to brief the complainant on how to present their case. This meeting should be budgeted for before the hearing so that the Commission provides transportation and accommodation where needed.
- j. Handle files on first come, first serve basis, bearing in mind that he or she jointly shares responsibility with the Commissioner to ensure that matters are disposed of within a year. Where this not done, counsel must write to the Regional Human Rights Officer and copy to the Director with an explanation.⁴⁶¹

During a Hearing

- a. Guide the hearing Commissioner on points of law during the hearing.
- b. Carry out research for the hearing Commissioner.
- c. Advise the hearing Commissioner on legal matters, both substantial and procedural.
- d. Keep minutes on the file to indicate the stage of the matter.
- e. Always be neutral during the hearing. Commission Counsel must avoid appearing biased towards Complainant.
- f. Defend against adjournments so that there is limited case backlog. No complaint may be adjourned more than three times. Commission Counsel should be in touch with Attorney General's representatives in the matters to avoid adjournments, delays and non-attendance by State attorneys.

After a Hearing

- a. Ensure witnesses are paid their transportation refund and other appropriate allowances.
- b. Make an account of the witness refund monies and write a report.
- c. Write submissions for the hearing Commissioner.
- d. Follow up on all hearing decisions, extract Commission orders and ensure that both parties are served with the decisions and an order.

6. The Clerk

The Clerk shall be under the Complaints Director, Investigations Officers, and the Registrar.

- a. Be the custodian of all files that have been disposed of and all files sent to the Director.

⁴⁶¹ *Id.* at 16(5).

- b. Record all files received from or sent out to regions and all files assigned to staff in the Directorate. All files received and assigned to Directorate staff shall be recorded and tracked.
 - c. Ensure that files are filed properly up to their conclusion.
 - d. Update the status of all files within 5 days of receipt. The Clerk should be able to provide complainants or staff with the status of any file in his custody.
 - e. Prepare a periodic review of all the files of each hearing Commissioner and at which stage they are every first week of the month. Circulate the list to the Director, Commissioners, Registrar and Chairperson.
 - f. Ensure that the cause list is issued after Commissioners have finalized matters for hearing.
 - g. Circulate the cause list by email, a month in advance, to Commissioners, all staff in the Directorate, the Registrar, all Regional and Governorate Human Rights Officers and all Commission Counsels in the region or governorate.
 - h. Receive and prepare parties before or during hearings and mediations.
 - i. Ensure that witnesses take an oath before they give evidence at a hearing.
 - j. Act as an interpreter in the hearing proceedings, either where necessary or if called upon by the Hearing Commissioner.
 - k. Help in effecting service of summonses or letters and deliver files as instructed.
 - l. Ensure that correspondence sent out on files in his or her custody are attached to the relevant files.⁴⁶²
7. The Registrar
- a. Inform Counsels and Commissioners regarding which files have been allocated to them within two weeks of receiving files from the Chairperson.
 - b. Duplicate the file for Counsel and hearing Commissioner.
 - c. Ensure smooth and effective administration of hearings.
 - d. Sign and seal all summons and hearing notices.
 - e. Liaise with Counsel and Commissioners to ensure the hearing process runs effectively.
 - f. Produce and distribute cause lists, in conjunction with the tribunal clerk, within two weeks before the beginning of the following month.
 - g. Ensure that the order and certificates are ready at the pronouncement of decisions.⁴⁶³
8. The Director
- a. Read all files sent in from the regional or governorate offices and make decisions on them.
 - b. Ensure that the decision on any given complaint file is made with the time limits.
 - c. Work closely with the Registrar and Regional or Governorate Human Rights Officer to ensure that complaints are resolved in a fair and timely manner.

⁴⁶² *Id.* at 16(6).

⁴⁶³ *Id.* at 16(7).

- d. Oversee the conduct of investigations initiated by the Commission
- e. Receive monthly reports on the resolution of complaints files at the regional offices.
- f. Supervise the complaints handling process both at the headquarters and in all regional offices to ensure that it complies with these bylaws.⁴⁶⁴

⁴⁶⁴ *Id.* at 16(8).

SECTION 5: EXTERNAL RELATIONS

5.1 Overview

- Developing a range of tools to further its work with the government, including Memoranda of Understanding, liaison offices, working groups, and regular stakeholder meetings.
- Developing Memoranda of Understanding with the United Nations and other collaborating international organizations.
- The HCHR should pay particular attention to other international civil society partners and international donors.
- Developing Memoranda of Understanding with Iraqi Civil Society Organizations as appropriate.

In order for an NHRI maximize its effectiveness in the protection and promotion of human rights, it must create and maintain collaborative relationships with a wide range of organizations and groups.⁴⁶⁵ In recognition of this need for collaboration, the Paris Principles state that NHRIs should cooperate with a wide range of stakeholders and other bodies, which fall into three broad categories.

First, NHRIs should cooperate with legislative, executive, and judicial governmental bodies within their state.⁴⁶⁶ Second, NHRIs have a responsibility to collaborate with “the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.”⁴⁶⁷ Third, NHRIs should cooperate with non-governmental organizations and other civil society members.⁴⁶⁸

⁴⁶⁵ Centre for Human Rights UN HANDBOOK, *supra* note 20, at para. 106.

⁴⁶⁶ Paris Principles, *supra* note 1, (“To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.”); *Id.* (“The composition of the national institution and the appointment of its members...” should occur with the advice of representatives from “...Government departments.”).

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.* (“In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.”); *Id.* (“The composition of the national institution and the appointment of its members...” should occur with the advice of representatives from “trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists....”).

An NHRI must collaborate with governmental bodies in order to fulfill its advisory and monitoring mandate.⁴⁶⁹ Without open channels of communication between NHRIs and governmental bodies, the ability of the former to advise the latter on violations of human rights, issues related to legislation, and compliance with international human rights instruments would be hampered.⁴⁷⁰

NHRIs should also cooperate with the United Nations, other intergovernmental organizations, and international non-governmental organizations. NHRIs can access resources and expertise available within such organizations.⁴⁷¹ In addition, intergovernmental and international non-governmental organizations can facilitate interaction and expertise sharing between different NHRIs.⁴⁷² The United Nations, for example, often holds meetings with representatives of NHRIs from various countries in order to facilitate the exchange of information and experiences.⁴⁷³

NHRIs can also benefit from a close relationship with civil society organizations for several reasons. First, NGOs and community organizations can enhance the visibility of an NHRI by informing members of the public of its existence and available services.⁴⁷⁴ NGOs are often in a unique position in society from which to identify vulnerable individuals and groups, and to provide helpful information and expertise to support the work of an NHRI.⁴⁷⁵ A relationship with civil society, therefore, would benefit the work of the HCHR by providing increased access members of society who are most at risk of human rights abuses.⁴⁷⁶

Second, NGOs and community organizations can serve as intermediaries for victims of human rights abuses who are unwilling to approach a government body to file a complaint or seek redress.⁴⁷⁷ Civil society groups can further provide contact information and support in order to encourage such individuals to engage an NHRI.⁴⁷⁸

Third, NGOs have more operational flexibility than NHRIs, which allows them to provide reports on the domestic status of human rights and potential amendments to deficient legislation.⁴⁷⁹ Moreover, NGOs can alert NHRIs to social changes in a country.⁴⁸⁰ This

⁴⁶⁹ Morten Kjærum, *National Human Rights Institutions Implementing Rights*, Danish Institute for Human Rights (2003), p. 7, [hereinafter Kjaerum, *National Human Rights Institutions Implementing Rights*].

⁴⁷⁰ *Id.*

⁴⁷¹ Centre for Human Rights UN HANDBOOK, *supra* note 20, at para. 116.

⁴⁷² *Id.* at para. 117.

⁴⁷³ *Id.*

⁴⁷⁴ *Id.* at para. 108.

⁴⁷⁵ *Id.* at para. 163.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.* at para. 109.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.* at para. 110.

⁴⁸⁰ *Id.*

information can help guide an NHRI's work and maximize its effectiveness.⁴⁸¹ Moreover, civil society organizations can act as partners with NHRIs in education, training, and information dissemination projects.⁴⁸²

For the HCHR, collaboration with these groups would serve not only to support the overall work of the Commission, but would also provide additional resources, information, and access that may otherwise be unavailable. Informational exchanges with these groups can occur on either a regular consultation basis or an ad hoc basis.⁴⁸³

5.2 Key Recommendations

(A) Coordination with Government

- Government institutions are obligated under Law 53 to comply with requests of the HCHR for documents, data, statistics and information related to the work of the Commission. To facilitate information exchange, the HCHR should develop Memoranda of Understanding with governmental institutions, such as the Speaker's Office, the Council of Ministers, the Ministry of Justice, the Ministry of Human Rights, the Higher Judicial Council, and others.
- The HCHR may also consider establishing a supporting unit or working group tasked with coordinating with governmental institutions, holding regular meetings, and monitoring compliance with human rights standards within the government agencies.
- The HCHR may also request that the Prime Minister's Office establish a coordinating group within the Council of Ministers to work directly with the HCHR.

(B) Cooperation with United Nations and other International Stakeholders

- Law 53 obligates the HCHR to communicate and coordinate with the United Nations and other international bodies to ensure the achievement of HCHR goals. To facilitate the exchange of information and the efficient identification of areas wherein the international community can support the HCHR, the Commission should develop a Memoranda of Understanding with the United Nations and other relevant international bodies.
- The HCHR may also consider establishing a supporting unit or working group dedicated to coordinating relations with international stakeholders, including financial donors.

⁴⁸¹ *Id.*

⁴⁸² *Id.* at para. iii.

⁴⁸³ *Id.*

- Additionally, since HCHR is required to support the development of reports submitted to international institutions monitoring human rights, a committee or working group may be developed to work directly with government bodies charged with submitting such reports.

(C) Relationship with Civil Society

- Law 53 obligates the HCHR to coordinate with Iraqi civil society organizations working in the area of human rights. Such coordination can take many forms, but the HCHR is advised to develop formal mechanisms for communication—to both disseminate information about HCHR work and to receive suggestions and input from civil society.
- The HCHR should develop Memoranda of Understanding with Iraqi Civil Society Organizations as appropriate, without limiting the number or types of CSOs with which it coordinates.
- In addition to developing MOUs, the HCHR should also hold regular briefing sessions to inform civil society about its work, open to any organization or individual working in the field of human rights. Regular briefing sessions should be held by the Board of Commissioners, as well as the Directorate of Complaints and Investigations, the Directorate of Monitoring and Inspections, and the Directorate of Research, Education and Documentation, and others as appropriate.
- Each body within the HCHR would be advised to hold a briefing session approximately three times per year, resulting in a single HCHR briefing session per month, focused on different topics and HCHR functions.
- In addition to MOUs and regular briefing sessions, the HCHR should also develop a special “Civil Society Link” on its website where relevant information may be posted, and civil society leaders can submit queries and share relevant information.

5(A) Coordination with Governmental Bodies

i. Overview

The BoC should elaborate procedures for cooperation with governmental bodies and should strongly consider employing Memoranda of Understanding and other mechanisms for regularized cooperation, such as inviting members of the Government to observe BoC meetings. The BoC may also want to consider the coordination function when designing its own internal organizational structures in order to designate an individual or administrative sub-division responsible for coordination with governmental bodies.

ii. Law 53 Parameters

Article 6 of Law 53 requires Ministries, bodies not associated with ministries and all independent commissions to provide documents, data, statistics and information related to the work and functions of the HCHR.⁴⁸⁴ If these institutions do not comply with the requests of the Commission, the HCHR is to inform the Council of Representatives for further action.

iii. Comparative Models

Many NHRIs, like Iraq's HCHR, allow the Board of Commissioners to invite outside stakeholders, experts, or relevant individuals attend Board meetings, though such invited observers do not have the right to vote. In **Morocco**, for example, Ministers may attend Commission Board meetings to present information, either on their own initiative or upon request by the Commission. Authorized persons can represent the Ministers in this task.⁴⁸⁵ Also in Morocco, the Commission Chairperson can request relevant governmental departments to provide the Board with detailed reports on any issue submitted to the Commission's attention.⁴⁸⁶

In other forms of cooperation, NHRIs may utilize the skills or expertise government employees in various ways. In **Kenya**, for example, the Commission may conscript employees from other parts of the government for the purpose of conducting an investigation or service of the Commission where that employee is underutilized.⁴⁸⁷ In **Australia** the Chairperson may contract with government bodies for performance of any functions of the Commission. The bylaws set out the requirements for such an arrangement – that it be signed and in writing – and provide opt-out procedures for the governments.⁴⁸⁸

⁴⁸⁴ *Iraqi Law No. 53 (2008)*, art. 6.

⁴⁸⁵ *See Morocco Regulations, supra* note 41, art. 9 (“Les ministres participent à toutes les réunions du Conseil en tant que membres à titre consultatif ; ils présentent, à leur initiative ou à la demande du Conseil, des communications et informations utiles au Conseil et aux groupes de travail, et peuvent s’y faire représenter, le cas échéant”).

⁴⁸⁶ *See Morocco Act, supra* note 40, art. 11 (“All public authorities and public or private institutions shall endeavor to facilitate the Council’s mission.” “The Chairman of the Council may request a relevant department to provide him with a comprehensive report on an issue submitted to the Council’s attention”).

⁴⁸⁷ *Kenya Act, supra* note 38, § 20(1) (“The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilize the services of any public servant or investigation agency of the Government and where a public servant is so utilized under this subsection, the Commission shall pay such public servant or agency for the service rendered.”).

⁴⁸⁸ *Australian Human Rights Act, supra* note 213, art. 16 (“(1) The Minister may make an arrangement with a Minister of a State for or in relation to: (a) the performance on a joint basis of any functions of the Commission; (b) the performance by that State or by an instrumentality of that State on behalf of the Commonwealth of any functions of the Commission; or (c) the performance by the Commission of functions on behalf of that State relating to human rights or to discrimination in employment or occupation. (2) An arrangement under this section may contain such incidental or supplementary provisions as the Minister and the Minister of the State with whom the arrangement is made think

Northern Ireland has perhaps the most flexible and appropriate model for Iraq, allowing for the elaboration of Memoranda of Understanding with government and civil society bodies that have related functions in order to clarify the roles of each body and outline a working relationship. For example, the Memorandum of Understanding with the Police Ombudsman outlines procedures to cooperate on referral of complaints, training, and drafting their annual work plans.⁴⁸⁹

5(B) Cooperation with United Nations and International NGOs

i. Overview

Regular information sharing, reporting, and collaboration on specific programs should be established between the HCHR and the United Nations, as well as other international stakeholders. This may be accomplished through the establishment of a working group or unit mandated to work specifically with international NGOs and the United Nations, as well as through the development of Memoranda of Understanding and institutionalized coordination meetings.

Whatever the mechanisms, streamlining information-sharing and reporting processes with the United Nations and other international bodies is crucial to not only establishing the legitimacy of the HCHR, but also for allowing for best practices to develop within the HCHR itself. These considerations and mechanisms for coordination should be built into both the structural organization of the HCHR, and its bylaws and regulations.

ii. Law 53 Parameters

Article 4 of Law 53 calls on the Commission to “communicate with international independent and non-governmental institutions” to ensure the achievement of the HCHR objectives. Article 4(7) specifically requires the HCHR to “[s]ubmit recommendations and proposals to committees entrusted with the preparation of reports which the state is obliged to submit to the United Nations.”

necessary. (3) The Minister may arrange with the Minister of a State with whom an arrangement is in force under this section for the variation or revocation of the arrangement. (4) An arrangement under this section, or the variation or revocation of such an arrangement, shall be in writing, and a copy of each instrument by which an arrangement under this section is made, varied or revoked shall be published in the Gazette.”).

⁴⁸⁹ *Northern Ireland Memorandum of Understanding with the Police Ombudsman*, (agreed 2 November 2001), available at: <http://www.nihrc.org/documents/nihrc-general/working-with-others-%20mou/mou-police-ombudsman-november-2001.pdf>; See also, Northern Ireland Human Rights Commission, *Working with Others*, available at: <http://www.nihrc.org/index.php/working-with-others>.

iii. Comparative Models

Some NHRIs, such as those in **Morocco** and **Tunisia**, have designated a sub-division of the Secretariat or a sub-commission to cooperate with national and international bodies.⁴⁹⁰ Others allow for each substantive sub-commission to carry on cooperation when necessary as part of its substantive work program.

In **Afghanistan**, the NHRI has signed memoranda of understanding with United Nations Assistance Mission to Afghanistan (UNAMA), United Nations High Commissioner for Refugees (UNHCR), United Nations International Children's Emergency Fund (UNICEF), and UNWomen to strengthen cooperation in monitoring socio-economic and political rights, as well as women's and children's rights.⁴⁹¹

5(C) Relationship with Civil Society

i. Overview

Civil Society Organizations (CSOs) are indispensable partners for the protection and promotion of human rights. CSOs have access to vulnerable individuals and geographic locations where governmental and independent institutions may not. They can provide resources, expertise, and perspectives on human rights challenges and solutions that can support the work of the Iraqi HCHR. As such, the HCHR should develop mechanisms for coordinating with CSOs as it seeks to fulfill its mandate to monitor, protect, and promote human rights within Iraq.

Cooperation with civil society can mean working jointly or collaboratively on everything from discrete case management tasks to elaborating a national plan for the promotion of human rights. Cooperation can also include the development of Commission policies such how NGOs can bring complaints or raise issues before the commission, comment on reports, or be present in meetings.

Iraqi Law 53 mandates the HCHR to coordinate with civil society. Furthermore, the effective functioning of the Commission depends greatly on the resources and

⁴⁹⁰ *Morocco Regulations*, *supra* note 41, art. 36 ("L'administration du Conseil comprend les structures suivantes: - Communication, publication, documentation et promotion des droits de l'homme; - Protection des droits de l'homme et soutien aux victimes des violations; - Etude des législations et des politiques publiques ; - Coopération avec les institutions nationales et internationales; - Gestion administrative et financière"); *Tunisia Act*, Art. 17 ("L'unité des relations publiques et de la coopération internationale est chargée notamment des tâches suivantes: les relations avec les organisations non gouvernementales, les associations et les organismes agissant dans le domaine des droits de l'Homme, et les relations avec les institutions compétentes des Nations Unies, ainsi qu'avec les institutions régionales et nationales des droits de l'Homme dans les autres Etats.").

⁴⁹¹ *Afghanistan Independent Human Rights Commission*, 1389-1392 (2010-2013) *Strategic Plan and Action Plan*, 9 (2009).

expertise civil society organizations can bring to bear. Comparative models demonstrate that regularized mechanisms for coordination must be developed in order for effective collaboration to take place.

Given the complexity of the human rights challenges facing Iraq, and the scope of cultural, geographic, linguistic, ethnic, and religious issues that must be addressed in seeking to promote and protect human rights, **the Iraqi HCHR should consider developing Memoranda of Understanding with multiple civil society organizations, as well as establishing a sub-committee or working group charged specifically with coordinating projects and information sharing with various CSOs.**

Additionally, since civil society organizations within Iraq are themselves developing and growing more sophisticated with time, regular forums should be held wherein individuals or representatives of civil society organizations can come together with Commissioners and HCHR staff to share information, express opinions, and discuss next steps for human rights in Iraq.

ii. Law 53 Parameters

Article 4(5) of Law 53 requires the HCHR to coordinate with civil society organizations working in the human rights field in Iraq.⁴⁹² This coordination should, among other goals, support of the HCHR's mandated duties, including: developing strategies and action mechanisms;⁴⁹³ spreading a culture of human rights by organizing conferences, symposiums and other events;⁴⁹⁴ conducting research,⁴⁹⁵ and monitoring and reporting on the human rights situation in Iraq.

iii. Comparative Models

New Zealand's commission is tasked with preparing and publishing guidelines and voluntary codes of conduct for civil society actors, as well as developing a national plan of action for the protection of human rights in consultation with civil society.⁴⁹⁶

France's model is more circumspect, and utilizes existing means of coordination to establish ties with specific government and non-governmental structures, like the

⁴⁹² *Iraq Law No. 53 (2008)*, art. 4(5).

⁴⁹³ *Id.* at art. 4(1).

⁴⁹⁴ *Id.* at, art. 4(6).

⁴⁹⁵ *Id.* at art. 4(2).

⁴⁹⁶ See *New Zealand Act of 1993*, *supra* note 43, art. 5 ("5.2.b to encourage and co-ordinate programmes and activities in the field of human rights: Art. 5.2.e to prepare and publish, as the Commission considers appropriate, guidelines and voluntary codes of practice for the avoidance of acts or practices that may be inconsistent with, or contrary to, this Act: Art. 5.2.m to develop a national plan of action, in consultation with interested parties, for the promotion and protection of human rights in New Zealand").

Economic, Social and Environmental Advisors to the government through their representatives at the National Mediator's Office.⁴⁹⁷

The **Northern Ireland** Human Rights Commission utilizes memoranda of understanding with civil society actors to clarify how it will deal with matters that fall within the remits of both organizations, such as legal services, policy making, outreach, and strategic planning.⁴⁹⁸ One such memorandum includes a provision for an annual meetings between the heads of organizations and "regular, informal contact between equivalent staff in the organizations, particularly with respect to policy and casework."⁴⁹⁹ The memorandum also specifies, "where a conflict of interest or difference of opinion arises, the two organizations will keep each other informed of their respective positions and the reasons underpinning their views."⁵⁰⁰

Algeria's NHRI provides for the appointment of locally respected civil society leaders as "local correspondents" or liaison officers.⁵⁰¹ Algeria also has a sub-commission dedicated to the task of cooperation.⁵⁰²

The **Indonesian** human rights commission mandates building networks with various types of civil society groups, including individuals, groups, political organizations, community organizations and self-reliant organizations. Additionally, NGOs have the right to submit reports of human rights violations to the Commission.⁵⁰³

⁴⁹⁷ *France Regulations*, *supra* note 54, art. 23 ("Elle établit des liens avec le Parlement et le Conseil économique, social et environnemental par l'intermédiaire de leurs représentants, membres, ainsi qu'avec le Médiateur de la République. »).

⁴⁹⁸ See, e.g., Memorandum of Understanding between the Northern Ireland Human Rights Commission and the Northern Ireland Commissioner for Children and Young People (Sep. 2008), *available at*: http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/40/MOU_NIHRC_NICCY_final__0908.pdf.

⁴⁹⁹ *Id.* at 2.

⁵⁰⁰ *Id.*

⁵⁰¹ *Algeria Regulations*, *supra* note 26, art. 22 ("Le président de la Commission désigne, après avis du bureau de la Commission, des correspondants locaux choisis en dehors de la Commission, parmi des personnes notoirement connues pour leur engagement dans le domaine des droits de l'Homme.").

⁵⁰² *Id.* at art. 30 ("La sous-commission permanente des relations extérieures et de la coopération a pour compétences : d'encourager les pouvoirs publics compétents à l'effet d'adhérer ou de ratifier les instruments et pactes, internationaux et/ou régionaux concernant la promotion et la protection des droits de l'Homme; — de développer les relations de coopération, de concertation et d'échange d'expériences avec les institutions similaires aux niveaux régional et international; — de promouvoir et d'élargir les relations avec les organes des Nations Unies et régionaux concernés par la promotion et la protection des droits de l'Homme et d'établir des relations avec les experts algériens présents dans ces organes; — de renforcer les relations et de contribuer au développement des activités des ONG nationales actives dans le domaine des droits de l'Homme par le biais d'un partenariat de qualité; — de développer les relations avec les ONG régionales et internationales actives dans le domaine des droits de l'Homme.").

⁵⁰³ See *Indonesia Law 39*, *supra* note 26, art. 100 ("All people, groups, political organizations, community organizations, and self-reliant organizations and other non-government organizations, have the right to participate in protecting, upholding and promoting human rights.").

SECTION 6: ADMINISTRATION OF HCHR OPERATIONS

6.1 Overview

- The HCHR should develop Rules of Procedure for meetings of the Board of Commissioners and Directorate or sub-committee meetings.
- Law 53 requires the Board of Commissioners to formulate and issue special service and recruitment rules for staff during its first month of operation.
- Law 53 is silent as to leave policies, codes of conduct, and expenditures. Policies should be developed to clarify these issues for Commissioners and HCHR staff.
- The HCHR should develop financial and budget management regulations.

Like any other organization, NHRIs must ensure that operations are both efficient and effective in order to achieve mandated goals.⁵⁰⁴ Operational efficiency and effectiveness depends upon the development of working methods and rules of procedure, personnel management,⁵⁰⁵ and financial resource management⁵⁰⁶, among other key administrative issues.

Working methods and rules of procedure are necessary to the operation of any NHRI.⁵⁰⁷ These rules govern many different matters, from the timing of meetings to the establishment of working groups.⁵⁰⁸ **The development of rules should aim to “maximize operational efficiency.”⁵⁰⁹ Inefficient rules based on tradition or personal convenience should be eschewed.⁵¹⁰** However, it should be noted that there is no single correct way to establish working methods for maximum efficiency. Diversity in the working methods of NHRIs is “a strength and not a weakness.”⁵¹¹

The “efficiency, representative nature and impartiality” of staff members is also a crucial determinant of the operational efficiency of NHRIs.⁵¹²

⁵⁰⁴ Centre for Human Rights, *supra* note 20, at para. 119.

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.* at para. 121.

⁵⁰⁷ *Id.* at para. 125.

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

⁵¹¹ Morten Kjaerum, *The Experiences of European National Human Rights Institutions*, in NATIONAL HUMAN RIGHTS INSTITUTIONS: ARTICLES AND WORKING PAPERS, The Danish Centre for Human Rights (Birgit Lindsnaes, Lone Lindholt, Kristine Yigen, eds., 2001), p. 113, [hereinafter Kjaerum, *The Experiences of European National Human Rights Institutions*].

⁵¹² Centre for Human Rights, *supra* note 20, at para. 126.

6.1 Key Recommendations

(A) Working Methods

- To facilitate the efficient functioning of BoC meetings, legitimacy in decision-making, and ensure appropriate record-keeping, the HCHR should develop Rules of Procedure for BoC meetings.
- Rules of Procedure should include rules on: debating; voting; quorum; and the keeping, approval, and publication of minutes. Rules should also address the development and dissemination of the agenda; Commissioner attendance and commentary for preservation in the minutes; and procedures for public access to BoC Meetings, BoC decisions, and meeting minutes.
- Confidentiality protocols should be developed to guide which information and documentation from BoC meetings should be disseminated to the public, as well as procedures the public may follow when seeking information not otherwise publicized.
- Rules of Procedure for directorates, sub-committees, working groups, or units should be developed by those particular bodies.

(B) Staffing

- Law 53 requires the BoC to formulate and issue special service and recruitment rules during its first month of operation. The Law also embraces positive discrimination to ensure representation of women and minorities within the Board of Commissioners. In developing rules of recruitment, the HCHR should seek to staff the Commission with qualified individuals representing the diverse ethnic, religious and linguistic make-up of Iraq, with particular attention to historically marginalized groups such as women, minorities, and the disabled, among others.
- The BoC should conduct a needs assessment to determine the current and future staffing requirements of the Commission, as well as the financial needs of the Commission in order develop provide remuneration and benefits schedules.
- As part of the recruitment rules, the BoC should develop: job descriptions; terms of service; mechanisms for evaluating job performance; advancement schedules; a remuneration schedule; training and capacity-building programs; medical benefits; retirement benefits; processes to create new posts; pension benefits; and misconduct and termination rules.
- A remuneration schedule based on years of experience, level of education, position, and other criteria should be developed *ex ante* and published on the HCHR website. These efforts will demonstrate the transparency of the HCHR staffing policies and avoid discrimination.

- Staff policies should include a Code of Conduct and Ethics, and a Conflict of Interest Protocol.

(C) Commissioners

- Though some aspects of Commissioners' terms of service are delineated in Law 53, the Law is silent as to leave policies, codes of conduct, and expenditures. Policies should be developed to clarify these issues for Commissioners.
- As Law 53 requires that Commissioners act independently, the HCHR should develop a Code of Conduct and Ethics, as well as a declaration of Conflicts of Interest, for all Commissioners to demonstrate their commitment to independence and the steps they will take to remain independent.
- As part of the Code of Conduct and Ethics, the HCHR should develop guidelines for recusal from decision-making where a potential conflict of interest arises.

(D) Financing and Budget Management

- The HCHR's financial and budget management regulations should include: defined accounting practices; internal and external auditing protocols; budget review and development procedures, as well as timelines; and consider means to manage and monitor various sources of HCHR funds, including both governmental and international resources.
- Budget estimates should be developed approximately three months before the commencement of the financial year.
- The HCHR should, within four months from the end of the financial year, submit to the Auditor-General, copies of all HCHR accounts, as well as a statement of income and expenditure, and a statement of assets and liabilities.
- The HCHR should consider adopting internationally recognized accounting standards, such as the Generally Recognized Accounting Practice (GRAP) designed for public institutions.
- The HCHR should also develop thresholds for expenditure amounts that may require the authorization of the BoC or other authority, and those amounts that may be authorized by a particular HCHR body or officer.

6(A) Working Methods

i. Overview

Under Article 10 of Iraqi Law 53, the BoC must meet once a month and for extraordinary meetings called by the Chairperson.⁵¹³ The rules governing procedure, including debating, voting, quorum, and record keeping should be addressed and developed in bylaws to ensure standard operating procedures, protect the legitimacy of the institution, and ensure accountability among members.

6(A)(i) Rules of Procedure

i. Overview

As Law 53 does not elaborate on the Procedural Rules to be followed by the Board of Commissioners, best practices dictate that such rules should be addressed by the BoC in bylaws. As an example, the Chairperson or Executive Secretary would be given responsibility for drawing up an agenda and a deadline for circulating materials, as well as a procedure for adding new items to the agenda during the meeting and challenges to rulings on order. Additionally, the BoC may want to enshrine a method for Commissioners to have input into meetings they cannot attend, such as having their written comments read by the Chairperson.

ii. Law 53 Parameters

Article 10 states that “[d]ecisions and recommendations shall be made by majority vote of the present members of the BoC. In case of an equal number of votes, the vote of the chairperson shall be the deciding vote.”⁵¹⁴ However, article 10 does not specify any other guidelines for the operation of meetings. Such decisions must be made by the BoC when developing bylaws.

iii. Comparative Models

Algeria offers a notable example of detailed rules guiding meetings and decision-making procedures for its NHRI:

- The agenda and all necessary documents are sent to Commissioners by the Executive Secretary at least one week in advance of the meeting;
- During meetings, all Commissioners are allowed to propose amendments to agenda items with the support of 5 peers;
- The Chairperson puts any proposed amendments to a vote the in order they are raised;⁵¹⁵
- Responsibility for preparing meeting materials (such as documents or recordings) rests the Executive Secretary.⁵¹⁶

⁵¹³ *Iraqi Law No. 53 (2008)*, art 10 (1).

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

Sub-committees develop procedures for Sub-committee meetings within their bylaws.⁵¹⁷

Similarly, in **Northern Ireland**, the agenda for meetings and any reports and discussion papers drawn up at the request of the Chairperson must be circulated to all Commissioners prior to the meeting date.⁵¹⁸ Any items for inclusion in the agenda must be sent to the Chairperson at least 10 days before the meeting date.⁵¹⁹ Additionally, items not raised with the Chairperson within 10 days may be raised at the meeting and discussed, provided consensus exists about the matter being addressed.⁵²⁰ Should a Commissioner be unable to attend a meeting, he or she may request the Chief Commissioner to circulate his or her written comments.⁵²¹

Additionally, a ruling by the Chairperson during a meeting shall only be challenged if a majority of the Commissioners who are present and voting support the challenge. The Commissioner offering the challenge shall speak in favor and the Chairperson against. No one else may speak. A challenge to the Chairperson's ruling shall be deemed to have been carried if more than two-thirds of those members present vote in favor.⁵²²

India's NHRI follows a similar procedure whereby the Executive Secretary prepares the agenda for each meeting in conjunction with the Chairperson, copies of which are sent to the Secretariat.⁵²³ The agenda must be circulated to the Commission members at least two days before the meeting.⁵²⁴ Of significance is the requirement that agendas be, as much as possible, self-contained.⁵²⁵ If this cannot be achieved, specific files addressing the information in the agenda should be made available to the Commissioners.

Something unaddressed by Northern Ireland, Algeria or India is the procedure for changing the Rules of Procedure. **Morocco** addresses this by allowing the rules to be changed by a two-thirds majority, on an amendment approved by the King.⁵²⁶

⁵¹⁶ *Algeria Regulations, supra* note 26, art. 34 ("Chaque sous-commission permanente se réunit selon un calendrier préétabli, arrêté par le bureau de la Commission. Le secrétaire général assure la préparation matérielle et technique de toutes les réunions des sous-commissions permanentes. Toute sous-commission permanente ne peut valablement délibérer que si la majorité de ses membres est présente. Elle prend ses décisions par consensus ou à la majorité des membres présents et votants.").

⁵¹⁷ *Id.* at art. 18 ("Les recommandations de la Commission sont prises par voie de consensus. En l'absence de consensus, elles sont adoptées à la majorité des membres présents et votants. En cas de partage égal des voix, celle du président de la Commission est prépondérante. ").

⁵¹⁸ *Northern Ireland Standing Orders, supra* note 57, n. 14.

⁵¹⁹ *Id.* at n. 15.

⁵²⁰ *Id.*

⁵²¹ *Id.*, at n. 16.

⁵²² *Id.*

⁵²³ *India Regulations, supra* note 48, § 7.

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Morocco Regulations, supra* note 41, art. 54 ("Le présent règlement intérieur peut être modifié sur décision des 2/3 des membres du conseil, après approbation de l'amendement par Sa Majesté le Roi.").

6(A)(ii) Attendance

i. Overview

Attendance covers two separate but related ideas: (1) the attendance obligations placed on Commissioners and (2) the possibility of non-commissioners attending meetings in a non-voting capacity.

Records of attendance, consequences for the repeated non-attendance of Commissioners at meetings, and the rights of invitees attending meetings, should be addressed in bylaws and regulations.

ii. Law 53 Parameters

Regarding the first point, Iraqi Law 53 dictates termination for a Commissioner who is absent for three consecutive meetings without good reason. Regarding the second, Law 53 allows the Iraqi Commission to “invite representatives of state departments, representatives of the public and private sectors and observers to attend their meetings.”⁵²⁷ However, the Law does not specify the form such an invitation would take or who within the Commission must authorize it.

iii. Comparative Models

Like Iraq, in **Northern Ireland** the Commissioners can invite outsiders to attend meetings and may also decide to make all or some of the meetings public.⁵²⁸ In addition to having outsiders attend Commission meetings, Northern Ireland's bylaws specify that, upon receipt of an invitation from a Commissioner, non-commissioners may also become “non-voting members” of the Commission's committees.⁵²⁹ However, for in order to join a committee, the majority of all committee members must be Commissioners.⁵³⁰ Given Law 53's openness on this question, such a limitation may be an important consideration in Iraq.

In **Egypt**, the Council (board of commissioners) may invite representatives from state agencies to attend meetings.⁵³¹ Additionally, the Chairperson may invite “those whose opinion or experience the Chairperson deems appropriate to be seen concerning a matter

⁵²⁷ *Iraqi Law No. 53 (2008)*, art. 10(2) (“The BoC may invite representatives of state departments, public, mixed and private sectors, as well as civil society organizations to attend meetings as observers.”).

⁵²⁸ *Northern Ireland Standing Orders*, *supra* note 57, n. 6 (“The Commission can invite the attendance of other persons at its meetings or parts thereof.”).

⁵²⁹ *Id.* at n. 35.

⁵³⁰ *Id.*

⁵³¹ *Egypt Law No. 94 (2003)*, *supra* note 135, at art. 4.

brought forward for review or discussion.”⁵³² Neither representatives from state agencies nor other invited guests are entitled to vote.

In **Morocco**, Commissioners may request that ministers attend board meetings meetings to present information. Alternatively, persons authorized by invited ministers can represent the Ministers in this task.⁵³³

6(A)(iii) Quorum

i. Overview

In deciding the quorum, the Iraqi BoC should balance the Commission's effective operation against the legitimacy of its decision-making process. In order to be consistent with its peers, the BoC could select a quorum between one-third and two-thirds of members, but should also consider the particular needs of the HCHR to demonstrate to the public that its processes ensure accountability and legitimacy. Given the scrutiny the HCHR will be subject to, a quorum of at least half – or 6 Commissioners—should be the absolute minimum required to form a quorum.

Additionally, the BoC should specify procedures to follow if a quorum is not reached and whether special meetings have a different quorum requirement. If special meetings shall have a different quorum requirement, the BoC should also specify what types of decisions may be taken at a special meeting to prevent creating a loophole in which quorum requirements could be avoided altogether and thereby threaten the legitimacy of the institution. The BoC should further consider whether Commissioners may attend meetings remotely, whether by phone or other means, or submit written comments when absent.

ii. Law 53 Parameters

Law 53 does not set out the numbers of Commissioners necessary to form a quorum. Article 10(1) requires a majority vote of present members of the BoC to carry a decision or recommendation,⁵³⁴ but does not specify whether a simple majority or super-majority of members is required for a quorum.

⁵³² *Id.* at art. 6.

⁵³³ See *Morocco Regulations*, *supra* note 41, at art. 9 (“Les ministres participent à toutes les réunions du Conseil en tant que membres à titre consultatif ; ils présentent, à leur initiative ou à la demande du Conseil, des communications et informations utiles au Conseil et aux groupes de travail, et peuvent s’y faire représenter, le cas échéant”).

⁵³⁴ *Iraq Law No. 53* (2008), art. 10 (“The BoC shall meet once a month. The Chairperson may, when necessary, call for an extraordinary meeting. Decisions and recommendations shall be made by majority vote of the present members of the BoC. In case of an equal number of votes, the vote of the chairperson shall be the deciding vote.”).

iii. Comparative Models

The number of Commissioners needed for a meeting to be considered quorate changes from jurisdiction to jurisdiction from roughly from one-third of all Commissioners to two-thirds of all Commissioners.

In **Morocco**, for example, two-thirds of the Commissioners must be present to form a quorum.⁵³⁵ **Egypt** similarly requires that two-thirds of Council members be present to form a quorum.⁵³⁶ In **Thailand**, however, “not less than one-half the total number of existing members shall constitute a quorum.”⁵³⁷ In **France** the quorum is one-third of the Commissioners entitled to vote, plus one.⁵³⁸ **Northern Ireland** increases this number slightly, so that a minimum of one-half (1/2) the number of Commissioners, plus one must be present.⁵³⁹

Morocco's regulations also outline what happens if a quorum is not reached. In this situation, the Chairperson should reconvene the meeting again within 8 days. Even if a valid quorum is not formed at this second meeting, the meeting should continue regardless.⁵⁴⁰ Morocco also has separate rules for ordinary and special meetings. The rules related to a quorum apply to ordinary meetings. Special Meetings, on the other hand, are not subject to any quorum rules.⁵⁴¹

⁵³⁵ *Morocco Regulations*, *supra* note 41, at art 19 (“Les réunions du Conseil sont valablement tenues en présence des 2/3 de ses membres. Si ce quorum n'est pas atteint, le Président procède à une deuxième convocation, dans les huit jours ; dans ce cas le Conseil tient valablement sa réunion quel que soit le nombre des membres présents.”).

⁵³⁶ Egyptian Law No. 94 (2003), *supra* note 135, at art. 6.

⁵³⁷ Thailand National Human Rights Commission Act, B.E. 2542 (November 25, 1999), § 14, [hereinafter *Thailand Human Rights Commission Act*].

⁵³⁸ *France Regulations*, *supra* note 54, at art. 19 (“Pour l'adoption d'un projet d'avis ou d'un document, le quorum de vote exigé est égal au nombre immédiatement supérieur à un tiers du nombre total des membres de la Commission.”).

⁵³⁹ *Northern Ireland Standing Orders*, *supra* note 57, n. 13 (“A minimum of 50% + one of Commissioners will be present for the Commission meeting to be deemed quorate.”).

⁵⁴⁰ *Id*; *Algeria Regulations*, *supra* note 26, at art. 15 (“Au début de chaque session de l'assemblée plénière, il est procédé à l'appel nominal des membres de la Commission pour déterminer le *quorum*, qui est constitué de dix huit (18) membres présents parmi les membres ayant voix délibérative. Si le *quorum* n'est pas atteint, le président de la commission renvoie la session de l'assemblée plénière à 24 heures. Dans ce cas, les délibérations de l'assemblée plénière sur les points inscrits à l'ordre du jour sont valables quel que soit le nombre des membres présents.”).

⁵⁴¹ *Algeria Regulations*, *supra* note 26, at art. 20 (“Le président de la Commission est le porte-parole de la Commission. A ce titre, il est chargé par l'assemblée plénière de communiquer à la presse nationale et internationale toute déclaration officielle sur un événement ou une situation, ayant fait préalablement l'objet d'une délibération de l'assemblée plénière. En tant que de besoin, le président peut confier cette mission de porte-parole à un membre.”).

Likewise, **Tanzania** has separate rules for ordinary meetings and other meetings. For an ordinary meeting, the quorum is more than one-half the total number of Commissioners on the Commission.⁵⁴² For any other meeting, the quorum is more than one-half (1/2) the members of the Commission required to attend the particular meeting.⁵⁴³

6(A)(iv) Voting

i. Overview

To support the legitimacy of the HCHR and ensure accountability among members, the BoC should consider requiring Commissioners to raise hands to support or reject a motion or otherwise declare their opinion to other members, rather than allow secret ballots or other private forms of voting. The BoC should record the votes of particular Commissioners in the meeting minutes to ensure accurate record-keeping and transparency, but may wish to decide on a case-by-case basis whether such information should be published in Reports of Action Taken within meetings.

Additionally, like the Northern Ireland NHRI, Commissioners should agree to Collective Responsibility for all decisions taken by the BoC and each Commissioner should work to implement orders and follow decisions taken.

However, to preserve diversity of viewpoints and respect the expertise of Commissioners, members should be allowed to have their dissenting opinions noted in the minutes.

Finally, the Iraqi HCHR should consider requiring members with personal interests in decisions up for vote in plenary meetings to recuse themselves from voting. Other members with knowledge of potential conflicts of interest among colleagues should also have the ability to raise the issue of recusal if a member does not recuse him or herself voluntarily. This requirement will help avoid conflicts of interest and increase accountability among the Commissioners.

ii. Law 53 Parameters

Law 53 mandates that decisions be made by majority vote of the present members of the Commission, with the Chair holding the deciding vote in the event of a tie.⁵⁴⁴ Given this requirement, once a quorum is established, the number of votes necessary to take a decision is provided under the Law. However, Law 53 does not address the manner of voting, and the BoC would be advised to develop procedures that clarify whether voting

⁵⁴² *Tanzanian Act*, *supra* note 65, § 21(2) (“In proceedings under this Act, the quorum for a meeting of the Commission shall be formed by the presence of more than half of the total number of the Commissioners of the Commission;”)

⁵⁴³ *Id.* § 21(3); (“The quorum for any other meeting of the Commission shall be formed by the presence of more than half of the members of the Commission required to attend the meeting.”).

⁵⁴⁴ *Iraqi Law No. 53* (2008), art. 10 (First).

shall be open or secret, whether Commissioners may register reservations to a given decision, and whether some or all voting results shall be reported.

Additionally, Law 53 does not address potential conflicts of interest in decision-making among Commissioners. Though a Disclosure of Conflicts of Interests procedure, as well as Codes of Conduct and Ethics for Commissioners and HCHR officers and staff should be developed to guide broader issues, the BoC should also consider member duties with regard to decision-making where personal interests are at stake.

iii. Comparative Models

Voting procedures operate differently among various NHRIs. In **Algeria**, the establishment law specifies hand-raising as the proper method for voting unless the Commission decides otherwise.⁵⁴⁵ In **Northern Ireland**, Commissioners are required to agree to “Collective Responsibility,” whereby any decision reached is followed by all.⁵⁴⁶ However, Commissioners who wish to have their dissent to a particular decision recorded in the minutes may elect to do so.⁵⁴⁷

With regard to personal interests or conflicts of interests, some NHRIs require Commissioners to recuse themselves from voting. In **Thailand**, for example, the establishment law states that “in a meeting, if there is a consideration of a matter in which a member has a private interest, that member has no right to attend such meeting.”⁵⁴⁸

6(A)(v) Public Access

i. Overview

Regulations addressing public access to BoC activities should address the accessibility of meeting minutes, general and special reports, Commission strategy documents, information on complaints and investigations, as well as the openness of deliberations. Public access regulations may be inter-dependent with structural regulations if the Commission has a directorate, sub-committee or unit dedicated to outreach and documentation (which is recommended).

⁵⁴⁵ *Algeria Regulations*, Art. 19 (“Le vote des membres présents s’effectue à main levée, à moins que l’assemblée plénière en décide autrement.”).

⁵⁴⁶ *Northern Ireland Standing Orders*, *supra* note 57, n. 21 (“The Commission operates on the basis of collective responsibility. All Commissioners should agree to abide by and implement decisions taken at Commission meetings.”).

⁵⁴⁷ *Id.* at art. 21.

⁵⁴⁸ Thailand National Human Rights Commission Act, *supra* note 537, § 14.

To ensure transparency and support accountability within the HCHR, the BoC should specify procedures for inviting external observers or presenters to meetings, as allowed for under Law 53. Considerations may include whether individual Commissioners may extend an invitation or whether a number of members must support the invite.

Additionally, like the NHRIs in **Northern Ireland** and **Tanzania**, the BoC should publish its meeting minutes on the HCHR website after the minutes have been adopted, but should also establish guidelines for determining which information or documents should remain confidential.

Finally, the BoC should consider the **South African** model and develop additional communication mechanisms whereby members of the public can request access to documents or actions not otherwise published through normal protocols. Such a mechanism would be supported by national efforts to develop freedom of information legislation and comply with international standards regarding freedom of information. Any such mechanism, however, should include guidelines for releasing requested information, including considerations of confidentiality, timelines for responses, procedures for requests, and who bears the costs.

ii. Law 53 Parameters

Law 53 requires the Commission to coordinate with “relevant bodies” to develop strategies and action mechanisms to ensure the achievement of HCHR objects.⁵⁴⁹ Coordination requires, to some degree, disseminating information about BoC activities to said “relevant bodies,” which includes civil society organizations, governmental and non-governmental organizations, international stakeholders, and the general public.

Additionally, Law 53 states that the BoC may invite “representatives of state departments, representatives of the public and private sectors and observers to attend their meetings.”⁵⁵⁰ Law 53 also admonishes the Commission to “maintain complete confidentiality of the names of the complainants.”

Generally, Law 53 has relatively few privacy provisions in comparison to other NHRIs, so the BoC has great liberty to share information with the public in a variety of forms. Under the Paris Principle’s duty of transparency, the BoC would be well-advised to develop specific procedures to ensure that its activities and decisions are regularly reported and accessible to the public.

iii. Comparative Models

⁵⁴⁹ *Iraqi Law No. 53* (2008), art. 4(1).

⁵⁵⁰ *Id.* at art. 10(2) (“The BoC may invite representatives of state departments, public, mixed and private sectors, as well as civil society organizations to attend meetings as observers.”).

Most NHRIs either allow or require public accessibility to decisions made by boards of commissioners. **Tanzania**, for example, employs a presumption in favor of all proceedings being open for scrutiny by the public.⁵⁵¹ However based on the needs of the case, proceedings can be held in private.⁵⁵² In **Northern Ireland**, the commission may decide to open some or all of its meetings to the general public.⁵⁵³ Additionally, Commissioner attendance at meetings must be recorded and published in the Commission's annual report. The minutes of each Commission meeting—whether open to the public or closed—must be published on the NHRI's website once adopted by the Commission, except for that material deemed by the Commission to be confidential.⁵⁵⁴

France sits at the other end of the privacy spectrum among NHRIs: all meetings are closed to the public, all documents are confidential, and all meeting participants, even invited guests, are sworn to secrecy,⁵⁵⁵ though information is released on a case by case basis. **Morocco** closely follows France, in that it has a rebuttable presumption in favor of non-disclosure.⁵⁵⁶

In addition to the above procedures for publishing minutes and other standard information, some NHRIs have developed additional mechanisms through which the public can seek specific information about Commission activities.

South Africa, for example, has designated “information officers” and has published a manual for those seeking information regarding Commission proceedings, orders, decisions, or reports.⁵⁵⁷

The **Northern Ireland** Commission operates on the basis of “openness and transparency”.⁵⁵⁸ In effect this ensures that any and all papers and reports prepared by the

⁵⁵¹ *Tanzanian Act*, *supra* note 65, § 18 (“Subject to section 19, proceedings during an inquiry before the Commission shall be conducted in public.”).

⁵⁵² *Id.*, § 19(1) (“The Commission may, on its own initiative, or on an application, take, appropriate measures and make any order it considers necessary to ensure the confidentiality of an inquiry or any part of it if, having considered all available alternative measures, the Commission is satisfied that- (a) there is a real and substantial risk that- (i) the disclosure would Prejudice the national security or sovereignty of the State, its defense or international relations; (ii) a confidential source of information in relation to the inquiry or to the enforcement of the criminal law would be identified or compromised; or (iii) the, fairness of the inquiry is such that the need to prevent disclosure outweighs the interests of having the inquiry or that pad of the, inquiry conducted in public; (b) there is a likelihood that the life, liberty or physical safety of a person or the interests of vulnerable persons, including children will be endangered.”).

⁵⁵³ *Northern Ireland Standing Orders*, *supra* note 57, at art. 6.

⁵⁵⁴ *Id.* at art. 20.

⁵⁵⁵ *France Regulations*, *supra* note 54, at art. 9 (“Les membres de la commission et les personnes invitées à participer à ses travaux sont tenus à un devoir de confidentialité qui couvre les débats, votes et documents internes de travail.”)

⁵⁵⁶ *Morocco Regulations*, *supra* note 41, at art. 21 (“Les réunions sont tenues à huis clos au siège du Conseil, à moins qu'il n'en soit décidé autrement.”).

⁵⁵⁷ *South African Complaints Handling Manual*, *supra* note 222.

Commission shall be published unless covered by an exception.⁵⁵⁹ However, the deliberations and the reasoning behind Commission decisions are not freely available. Instead, only that information made available in the minutes is released, and everything else is confidential.⁵⁶⁰

In **India**, petitioners or their representatives are allowed to request, and are furnished at no cost, copies of reports or orders finally disposing of a matter.⁵⁶¹ For other documents not classified as confidential, a petitioner can request a copy for the payment of the cost of reproduction.⁵⁶²

6(A)(vi) Record-Keeping

i. Overview

The Iraqi BoC should establish a Registrar under the Secretariat to maintain records of Commission actions, as well as a library and resources center such as those in **Tunisia** and **Denmark**. Such a Registrar could also maintain data from the Complaints Handling processes, or a separate Complaints Handling database may be established in coordination with the Registrar.

At the minimum, the BoC should specify an individual or sub-division responsible for keeping minutes during meetings (including guidelines outlining the type of documents to be kept, recordation of non-written materials, and the length of time to retain the

⁵⁵⁸ *Northern Standing Orders*, *supra* note 57, n. 28 (“The Commission operates on the basis of openness and transparency....”)

⁵⁵⁹ *Id.* (“All papers and reports, unless covered by an exemption under the Freedom of Information Act 2000 or other legislation, will be available for access by the public. All papers and reports prepared for the Commission by Commissioners, staff, or its consultants and advisers, will be the property of the Commission.”). Sect 1(1) of the Freedom of Information Act 2000 allows an individual to be informed in writing that the information they seek is in the hands of that Public Organization and to be provided with the information. This right is subject to various exemptions, such as; Information Accessible to the Applicant by Other Means (Part II, Sect 21), Information Related to National Security (Part III, Sect 24) and Information related to International Relations (Part III, Sect 27”).

⁵⁶⁰ *Northern Standing Orders*, *supra* note 57, n. 26 (“The nature of the deliberations of the Commission at its ordinary and special meetings will not be disclosed outside the Commission by Commissioners, staff or other participants, except for what is made available to the general public through the minutes of Commission meetings. All Commissioners, staff and other participants will adhere to the Commission’s Confidentiality Policy.”).

⁵⁶¹ *India Regulations*, *supra* note 48, § 13(2) (“Copies of enquiry reports or orders passed finally disposing of matters by the Commission shall be furnished free of cost to the petitioner or his representative.”).

⁵⁶² *Id.*, § 13(3) (“Unless any document is classified by the Commission as confidential, copy thereof would be available to the parties in the matter on payment of a reasonable fee raised to meet the cost. Every effort should be made to provide the copies with utmost expedition and, in any case, not later than one week of the date of request.”).

information). Procedures for approval and amendment of meeting minutes and other documents should also be developed.

Additionally, the BoC should establish guidelines regarding the publication of minutes, decisions, orders, and opinions on the Commission website. In addition to maintaining a protected record, publication of non-confidential meeting minutes can help maintain and ensure the transparent operations of the Commission, and provide the public with regular access to the Commission's progress.

Finally, the BoC should also consider developing rules to assess information that needs to be kept confidential. In doing this, they should consider national Freedom of Information legislation (draft or other), policies, and international best practices. The protection of witnesses should also be considered in this context.

ii. Law 53 Parameters

Record-keeping regulations govern the creation of documents, publication and archiving. Law 53 mandates functions that require record keeping, such as receiving complaints, but does not specify procedures for that record-keeping. Record keeping will be considered in three places. In this section it is considered as part of the HCHR's meetings. It is be considered as part of Financing and Budget regulations, and also under Quasi-Judicial functions.

iii. Comparative Models

Generally, bylaws assign the task of keeping minutes at meetings to one individual. For example, in **Morocco** the Executive Secretary is responsible for keeping minutes of board meetings.⁵⁶³

Northern Ireland gives the Chairperson the power to request a staff member to take minutes.⁵⁶⁴ Northern Ireland also specifies that the minutes should focus on decisions reached by the Commission as a whole, but gives each Commissioner the right to request that his or her or her individual comments be added to the minutes.⁵⁶⁵ Northern Ireland's bylaws also include rules governing the approval and amendment of minutes following

⁵⁶³ *Morocco Regulations*, *supra* note 41, at art. 24 ("Le Secrétaire général est chargé d'établir le procès-verbal des séances.").

⁵⁶⁴ *Northern Ireland Standing Orders*, *supra* note 57, n. 18 ("The Chief Commissioner will request a member of the Commission's staff to keep the minutes of Commission.").

⁵⁶⁵ *Id. at*, n. 19 ("The minutes of meetings will focus on the decisions reached at meetings and not on the discussions leading to those decisions. Exceptionally a Commissioner may require their particular view to be minuted.").

the meeting.⁵⁶⁶ Additionally, all papers and records are publicly accessible unless covered by an exemption under Northern Ireland's Freedom of Information Act of 2000.⁵⁶⁷

In **India**, the Secretary General or other officer (as directed) records the minutes of each meeting and must submit them to the Chairperson for approval. Upon approval by the Chair, the minutes are circulated to all members of the Commission "at the earliest and in any case, sufficiently before the commencement of the next meeting."⁵⁶⁸ Additionally, the decisions and conclusions reached by the Commission in every matter undertaken must be recorded, including dissenting opinions.⁵⁶⁹ In terms of record-keeping, a master copy of the minutes of every meeting, including Commissioner opinions, are authenticated by the Secretary General (upon approval by the Chairperson)) and maintained in a file for appropriate action, with copies of all sections "kept in guarded files."⁵⁷⁰

In **Greece**, NHRI rules mandate that both the majority and minority opinion must be recorded in the minutes for any decision taken by the Board.⁵⁷¹

As for archiving and accessibility, most NHRIs mandate modern, publicly accessible record keeping of minutes and other documents once created or received by the Commission.⁵⁷² Generally the Executive Secretary is tasked with:

- Retaining and monitoring the documents given to the Commission;
- Maintaining relations with other documentation centers such as libraries around the country;⁵⁷³

⁵⁶⁶ *Id.* at n. 20 ("Any amendments to the draft minutes of a meeting will be proposed at the next meeting of the body in question before the minutes are considered for adoption. Minutes of Commission meetings, once adopted, will be signed by the person chairing the meeting. Matters arising from the minutes, other than matters listed elsewhere on the agenda for the meeting, will be taken immediately after the minutes have been adopted.").

⁵⁶⁷ *Id.*, at n. 28. ("The Commission operates on the basis of openness and transparency. All papers and reports, unless covered by an exemption under the Freedom of Information Act 2000 or other legislation, will be available for access by the public. All papers and reports prepared for the Commission by Commissioners, staff, or its consultants and advisers, will be the property of the Commission.").

⁵⁶⁸ *India Regulations*, *supra* note 48, at art.9,

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.* at art. 10.

⁵⁷¹ *Greece Regulations*, *supra* note 94, at art. 1.4.4.

⁵⁷² See, e.g., *Act governing the Establishment of the Danish Centre for International Studies and Human Rights* No. 411 of 6 June 2002, § 2, Subsection 2 (6) (The Institute shall "ensure modern publicly accessible library and documentation facilities relating to human rights."), [hereinafter *Danish Act* (2002)],

⁵⁷³ [Règlement intérieur](http://csdh.org/reglement.html) du e Comité Sénégalais des Droits de l'Homme [*Intenal regulations of the Senegalese Committee on Human Rights*], art. 7 ("Il comprend : - un chef du secrétariat ; - une secrétaire dactylographe ; - un agent de service ; - un chauffeur. Le chef du secrétariat est responsable de la saisie de toutes les correspondances du Comité. Il assure la photocopie, le classement, la conservation de tous les documents et leur distribution à tous les responsables concernés. Il est également chargé du suivi de tous les documents et du matériel affectés au secrétariat."), accessed at <http://csdh.org/reglement.html>, [hereinafter *Senegal Internal Regulations*]

- Photocopying and filing relevant documents; and
- Distributing documents to relevant officials.⁵⁷⁴

In **Tunisia**, the Secretariat is specifically charged with creating a center of Documentation and Research at the headquarters.⁵⁷⁵

India, as addressed above, specifies that a master copy of the meeting minutes and the opinions of the Commissioners be preserved by the Executive Secretary after authentication.⁵⁷⁶ In **Australia**, regulations provide a detailed example of record-keeping requirements, including instructions for preserving non-written material.⁵⁷⁷

⁵⁷⁴ *Id.*

⁵⁷⁵ *Tunisia Regulations*, *supra* note 65, at art. 5 (“Le montant de l’indemnité accordée aux membres du comité supérieur pour chaque séance de présence aux réunions des assemblées générales du comité supérieur ou des commissions ou groupes de travail, est fixé conformément aux dispositions législatives et réglementaires en vigueur. Art. 6 - Il est créé au sein du comité supérieur : - un centre d’information de documentation et de recherches sur les droits de l’Homme et les libertés fondamentales. - des unités, - et un bureau d’ordre.”).

⁵⁷⁶ *India Regulations*, *supra* note 48, at art. 10.

⁵⁷⁷ *Australian Human Rights Act*, *supra* note 212, § 22(4) (“Where documents are produced to the Commission in accordance with a requirement under subsection (1), the Commission: (a) may take possession of, and may make copies of, or take extracts from, the documents; (b) may retain possession of the documents for such period as is necessary for the purposes of the examination or inquiry to which the documents relate; and (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commission to inspect at all reasonable times such of the documents as that person would be so entitled to inspect. 49A If information is recorded or stored by means of a mechanical, electronic or other device, any duty imposed by this Act to produce the document recording that information is to be construed as a duty to provide a document containing a clear reproduction in writing of the information.”).

Appendix V: Potential HCHR Meetings, Agendas, and Minutes Rules

I. Frequency of Meetings

1. Usual Meetings

- (a) The BoC shall meet at least once per month as required under Article 10(1) of Law 53 according to a schedule established in [January] of each year.⁵⁷⁸
- (b) The BoC shall normally have these meetings during the [first] week of every month, excepting holidays, where the meeting shall be rescheduled for an appropriate time within the month.⁵⁷⁹
- (c) Meetings shall normally be held during office hours to demonstrate the Commission's commitment to work / life balance considerations. Reasonable adjustments shall be made to enable Commissioners to fully participate in meetings.
- (d) Meetings shall normally take place at HCHR headquarters in Baghdad, though adjustments in location can be made as necessary or for special events.⁵⁸⁰
- (e) The Commission shall hold at least one meeting per year outside of Baghdad.⁵⁸¹

2. Extraordinary Meetings

- (a) The Chairperson may, when necessary, call for an extraordinary meeting.⁵⁸²
- (b) Extraordinary meetings will normally be arranged during a usual meeting, but may be called at any time by the Chairperson or if the Chairperson receives a request for a special meeting from a simple majority of the other Commissioners.⁵⁸³

⁵⁷⁸ See Iraqi Independent High Electoral Commission, *Rules of Procedure for the Board of Commissioners* (No. 1 of 2007), Section Four (1) ("Usual meetings are held according to a structured schedule"); *Northern Ireland Standing Orders*, *supra* note 57, at art. 9 states that "[t]he Commission will normally decide in October of each year the dates and times for its formal meetings in the next calendar year.").

⁵⁷⁹ *India Regulations*, *supra* note 48.

⁵⁸⁰ *Northern Ireland Standing Orders*, *supra* note 57, n. 12.

⁵⁸¹ *Id.*

⁵⁸² *Iraqi Law No. 53* (2008), art. 10(1) ("The Chairperson may, when necessary, call for an extraordinary meeting." See also Australian Human Rights Commission Act of 1986 (stating that "[t]he Minister or the President may, at any time, convene a meeting of the Commission.").

⁵⁸³ While Law 53 does not expressly authorize a simple majority of Commissioners to call an extraordinary meeting, this article is intended to provide the Commissioners with the option. However, the final decision to call an extraordinary meeting will be at the discretion of the Chairperson. *Northern Ireland Standing Orders*, *supra* note 57, n. 11 ("[S]pecial meetings...may be called at any time by the Chief Commissioner or if the Chief Commissioner receives a request to that end from a majority of the other Commissioners."); *New Zealand Act*, *supra* note 43 contains a similar provision, though it requires only 3 out of 6 Commissioners and does not require those 3 Commissioners to send a request to the Chairman.

- (c) Dates, times, and locations for extraordinary meetings will be established in coordination with the Secretariat to enable the participation of as many Commissioners as possible. Reasonable notification must be provided to all Commissioners.

II. Agenda

1. The Secretary General shall, in consultation with the Chairperson, prepare the agenda for each meeting of the Commission.⁵⁸⁴
2. The agenda shall normally be circulated to all Commissioners, together with other relevant documents, at least [three] days in advance of normally scheduled meetings and, to the extent possible, [three] days in advance of extraordinary meetings.⁵⁸⁵
3. Commissioners should notify the Chairperson at least [six] days before a meeting if they would like to include matters in the agenda but late or urgent matters may be raised at the meeting provided there is a consensus of members present at the meeting that the matter should be discussed therein.⁵⁸⁶

III. Attendance

1. The Secretary General shall, unless otherwise directed in writing by the Commission, attend all meetings of the Commission but shall have no vote.⁵⁸⁷
2. All Commissioners should attend all of the meetings of the BoC. Vote by proxy representatives is prohibited.⁵⁸⁸
3. The BoC may invite representatives of state departments, public, mixed and private sectors, as well as civil society organizations to attend meetings as observers or to present information.⁵⁸⁹ The Secretary General shall, in coordination with the BoC, facilitate invitations and notifications to invited representatives.
4. Attendance is defined as attending for more than one-half of a meeting.⁵⁹⁰
5. Attendance will be recorded in the Minutes of each meeting and each Commissioner's attendance record will be published in the Commission's Annual Report.⁵⁹¹

⁵⁸⁴ *India Regulations*, *supra* note 48, at art. 7 ("The Secretary-General shall, in consultation with the Chairperson[,] prepare the agenda for each meeting of the Commission and shall cause notes thereon to be prepared by the Secretariat."); *Northern Ireland Standing Orders*, *supra* note 57, n. 14 ("The agenda for Commission meetings, and reports and discussion papers, will be prepared by, or at the request of the Chief Commissioner....").

⁵⁸⁵ *Northern Ireland Standing Orders*, *supra* note 57, n. 14.

⁵⁸⁶ *Id.*

⁵⁸⁷ *Tanzania Act*, *supra* note 65, at art. 11(4).

⁵⁸⁸ Iraqi Independent High Electoral Commission, Rules of Procedure for the Board of Commissioners (No. 1 of 2007), Section Four (7).

⁵⁸⁹ *Iraqi Law No. 53 92008*, art. 10(2).

⁵⁹⁰ *Northern Ireland Standing Orders*, *supra* note 57, at art. 7.

6. Attendance, contributions, and performance at meetings will be regularly reviewed by the Chairperson.⁵⁹²

IV. Decision-Making

1. The Chairperson will normally chair the meetings.⁵⁹³ In the absence of the Chairperson, the Deputy Chairperson will chair the meeting. In the absence of both the Chairperson and Deputy Chairperson, the members present are to elect one of their number to preside at the meeting.⁵⁹⁴
2. Decisions and recommendations shall be made by a majority vote of the present members of the BoC when sufficient members are present to form a quorum.
3. A quorum shall be defined as [an absolute majority of members of the BoC (6 Commissioners)].⁵⁹⁵
4. In the case of an equal number of votes, the vote of the presiding member shall be the deciding vote.
5. All decisions of the Board should be issued unanimously.
6. Where a quorum is not reached, the Chairperson should reconvene the meeting again within [eight] days. If a valid quorum cannot be formed at the second meeting, the meeting shall continue regardless and a vote of an absolute majority of present members shall be valid.⁵⁹⁶
7. BoC Members shall vote in public unless at least [two] present members request voting by secret ballot, and then the Chairperson shall count the ballots in front of the attendees.⁵⁹⁷

⁵⁹¹ *Id.*

⁵⁹² *Id.*

⁵⁹³ *Australian Human Rights Act*, *supra* note 213, Part II, Div. 5, art. 44(4); *New Zealand Human Rights Commission Act 1977*, Part I, Art. 10(4).

⁵⁹⁴ *Id.* at Part II, Div. 5, Art. 44(5); *New Zealand Act*, *supra* note 43, Part I, art. 10(4); *South Africa Act*, *supra* note 59, at art. 12(2) (If both the Chairperson and the Deputy Chairperson are absent, "the members present shall elect one from among their number to preside at that meeting.").

⁵⁹⁵ See *Constitution of Iraq (2005)*, art. 59(1), which defines a quorum for the Council of Representatives as an absolute majority of its members; the *Iraqi Independent High Electoral Commission, Rules of Procedure*, Section Four (4) of which states that Meetings of the Board will be valid with the absolute majority of its members; *Northern Ireland Standing Orders*, *supra* note 57, n. 13 ("A minimum of 50% + one of Commissioners will be present for the Commission meeting to be deemed quorate."). *But see Australian Human Rights Act*, *supra* note 213, Part II, Div. 5, art. 44(3) ("At a meeting of the Commission a quorum is constituted by a number of members that is not less than one-half of the number of members...."); *New Zealand Act*, *supra* note 43, Part I, Art. 10(3) ("At any meeting of the Commission the quorum necessary for the transaction of business shall be 3 [out of 6] Commissioners.").

⁵⁹⁶ *Algeria Regulations*, *supra* note 26, Part II, art. 15 ("Si le quorum n'est pas atteint, le président de la commission renvoie la session de l'assemblée plénière à 24 heures. Dans ce cas, les délibérations de l'assemblée plénière sur les points inscrits à l'ordre du jour sont valables quel que soit le nombre des membres présents.").

⁵⁹⁷ *Iraqi Independent High Electoral Commission, Rules of Procedure for the Board of Commissioners (No. 1 of 2007)*, Section Four (6).

V. Minutes

1. The Secretary General shall be responsible for ensuring that the Minutes of the meetings are recorded.
2. Minutes shall focus on the decisions reached at meetings and not on general discussions leading up to those decisions⁵⁹⁸ unless Commissioners request that their comments be included.
3. Any amendments to the draft minutes of a meeting will be proposed of the next meeting of the BoC before the present members of the BoC consider the minutes for adoption.⁵⁹⁹
4. Meeting minutes, once adopted, shall be signed by the Chairperson.⁶⁰⁰
5. Once adopted and signed, meeting minutes shall be published on the Commission's website, except for information considered confidential, which shall be excluded from the publically available minutes if the Commission so decides.⁶⁰¹

⁵⁹⁸ *Northern Ireland Standing Orders*, *supra* note 57, at art. 18.

⁵⁹⁹ *Id.* at art. 19.

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.* at art. 20.

6(B) Staffing

i. Overview

The efficient operation of any NHRI requires staff with expertise in human rights, law, public advocacy, administration, and other skills. Staffing regulations facilitate the protection of human rights, avoid discrimination in hiring and remuneration, and ensure diverse representation. NHRI's are often tasked with issuing human rights-compliant guidelines for hiring, remunerating, and terminating staff for use by private business owners. Such guidelines also inform potential employees of their rights in the hiring and termination process.

Given this duty, NHRIs must themselves be a model for effective and non-discriminatory human resource practices and must therefore develop and follow comprehensive staffing guidelines. Generally, Staffing Regulations include consideration of gender, race and ethnicity diversity requirements and remuneration, as well as travel, leave, misconduct, and other relevant issues

6(B)(i) Staff Recruitment

i. Overview

The HCHR should conduct a capacity needs assessment to identify staffing and resource needs, including positions that should be filled. These positions may include Directors, Managers, Administrators, Accountants and others with Financing expertise, IT (Information Technology) skills, Media Relations specialists, Secretaries, and other office personnel. Individuals with human rights expertise should also be sought out to support programmatic activities and to staff the Commissions directorates, working units, and sub-committees.

Specifically, the BoC should consider:

- Developing a general policy on recruitment and retention;
- Conducting a needs-assessment to determine current and future requirements of the HCHR;
- Developing job descriptions, as well as means of evaluating job performance;
- Assessment of budgetary needs for remuneration and benefits within a defined period; and
- Identification and documentation of the actual process of recruitment and selection to ensure equity and adherence to laws.⁶⁰²

⁶⁰² Margaret A. Richardson, *Recruitment Strategies: Managing/Effecting the Recruitment Process*. Government of the Republic of Trinidad and Tobago, available at <http://unpani.un.org/intradoc/groups/public/documents/un/unpano21814.pdf>; See also UNDESA/DPADM,

The development of such practices *ex ante* would not only allow for efficiency and non-discrimination in recruitment, but would also create a hiring methodology from which best practices could be evaluated and therefore altered if needed.

ii. Law 53 Parameters

Under Law 53, the BoC must formulate and issue special service and recruitment rules during its first month of operation.⁶⁰³ Law 53 also specifies women and minority representation on the Board of Commissioners.⁶⁰⁴ The BoC may consider replicating this positive discrimination within its staffing policies to ensure diverse representation and correct past employment discrimination historically leveled against these groups. The BoC is also required to appoint “experienced and competent executive directors to the HCHR offices in the regions and governorates, and accept their resignations or discharge them in accordance with the law.”⁶⁰⁵

iii. Comparative Models

Afghanistan's NHRI establishment law provides that the Executive Secretary and staff members be chosen in line with the already existing Labor Law and Civil Servant Recruitment Law.⁶⁰⁶ In addition, **in choosing candidates, the Afghan Commission must pay due regard to a person's professionalism, competency and expertise, while at the same time considering the gender, ethnic and linguistic make up of the Commission.**⁶⁰⁷

Unlike Iraq, some NHRI's that exercise less independence must cooperate with the government when hiring staff. In **England**, the Commission chooses staff but must seek ministerial approval for any appointment.⁶⁰⁸ **Ireland** adopts a similar approach, requiring any staff to be approved by the Minister for Justice and the Minister for Finance.⁶⁰⁹ In

Human Resource Recruitment and Best Talent Retention Took Kit for Public Sector (New York 2005), available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpano21814.pdf>.

⁶⁰³ *Iraqi Law No. 53* (2008), art. 13(1).

⁶⁰⁴ *Id.* at art. 8(4)–(5) (“Women representation in the BoC shall be no less than one third of the members.(5)The representation of minorities in the BoC shall be no less than one original member and one reserve.”).

⁶⁰⁵ *Id.* at art. 12(6).

⁶⁰⁶ *Law on the Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission*, art. 19(2) (“The Executive Director and staff members shall be recruited in accordance with the Labor Law and Civil Servant Recruitment Law, with due consideration to their professionalism, competency, personal expertise, commitment to human rights and a fair ethic, gender and linguistic composition.”), [hereinafter *Afghanistan Human rights Commission Law*]

⁶⁰⁷ *Id.*

⁶⁰⁸ *England Act*, *supra* note 114, § 7(1)–(2).

⁶⁰⁹ *Ireland Act*, *supra* note 47, § 17(1).

Tanzania, the Commission is responsible for the appointment of its officers in consultation with the Tanzanian Civil Service Department.⁶¹⁰

However, as Iraq's HCHR is an independent body, staffing hiring, termination, and remuneration procedures must be developed entirely by the BoC, in accordance with the Accountability and Justice Law and all labor and employment laws currently in effect. **Approvals by ministries or other governmental bodies for individual staff hiring would compromise the Constitutionally-mandated independence of the Commission.**

6(B)(ii) Secondment Policies

i. Overview

Staff from government offices, such as the Council of Representative's Human Rights Committee, may prove a useful resource to the HCHR during transition or when additional staffing is necessary. Such individuals possess expertise and experience that would benefit the HCHR. The BoC may want to consider developing a secondment policy, particularly in fields where the number of experts in the country is limited.

ii. Law 53 Parameters

Secondment, or the moving of civil service employees from one department to another, is used by some NHRIs to staff the organization. Iraqi Law 53 does not expressly set out a secondment policy.⁶¹¹ However, a secondment policy may save the Commission time and money in recruitment and hiring and enhance coordination with other government departments, but could also reduce independence and loyalty to the NHRI.

iii. Comparative Models

In **Kenya**, the Commission may conscript employees from other parts of the government for the purpose of conducting an investigation or service of the commission where that employee is underutilized in his or her current government position.⁶¹² Similarly, **Tanzania** allows its Commission to second employees from other government

⁶¹⁰ *Tanzanian Act*, *supra* note 65, § 11(6).

⁶¹¹ *Iraqi Law No. 53* (2008), art. (13)(1) ("The BoC shall issue special service and recruitment rules for HCHR employees during its first month of operation.").

⁶¹² *Kenya Act*, *supra* note 38, § 20-(1) ("The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilize the services of any public servant or investigation agency of the Government and where a public servant is so utilized under this subsection, the Commission shall pay such public servant or agency for the service rendered.").

departments.⁶¹³ **Indonesia** also makes use of civil servants to perform important management functions in its Commission.

In **India** the central government is charged with providing staff for the Commission. The government must provide necessary staff, such as police officers, to perform investigations.⁶¹⁴ Additionally, the NHRI is given the power to appoint other administrative staff should the need arise.⁶¹⁵ **Namibia's** NHRI also uses a secondment policy to staff its Ombudsman Office.⁶¹⁶

6(B)(iii) Staff Remuneration

i. Overview

In deciding the remuneration levels of HCHR staff, the BoC may wish to establish a remuneration schedule for employees in different roles, with different skill levels, education, and years of experience. The BoC may also wish to consider bonuses or additional compensation for such things as educational achievement or trainings completed.

Any remuneration schedule should be:

- Simple to understand and easy to administer;
- Fair to both the employer and the employee;
- Representative of aligned employer and employee interests and priorities;
- Finalized before employer resources are committed;
- Recorded in a ratified contract;
- Flexible enough to accommodate future changes;
- Involve clear stewardship;
- Capable of standing the test of time; and
- Based on agreed and understood terms and definitions.⁶¹⁷

⁶¹³ *Tanzania Act*, *supra* note 65, § 11-(7): *Public officers may, at the request of the Commission, be seconded to the service of the Commission.*

⁶¹⁴ *India Human Rights Act*, *supra* note 28, at art. 11 ("The Central Government shall make available to the Commission: (a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.")

⁶¹⁵ *Id.* at art.11(2) ("Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.")

⁶¹⁶ *Namibia Ombudsman Act of 1990*, *supra* note 203, § (7)₁ ("The Ombudsman shall in the performance of his or her functions under this Act be assisted by officers in the public service made available for such purpose.")

⁶¹⁷ *Agency Remuneration: A Best Practice Guide on How to Pay Agencies*, IPA, ISBA. MAA, PRCA (2012), available at <http://www.ipa.co.uk/Document/Agency-Remuneration-best-practice-guide>.

The remuneration agreement should also specify tracking and review dates to see when employees should move up the schedule and to assess performance.

ii. Law 53 Parameters

The BoC is given a wide-ranging power to decide the remuneration levels of employees *ex ante* and is obligated to do so under Law 53.⁶¹⁸ The BoC must submit service rules to the Council of Representatives for approval, but the CoR should not have authority over individual staffing choices. The BoC must also submit its yearly budget to the Council of Representatives for approval, so budgetary considerations should play a strong role in the development of remuneration policies.

iii. Comparative Models

Some NHRIs subject remuneration schedules for governmental approval. In **Kenya**, for example, the Commission sets the salary received by Commissioners and staff with the help of the Treasury.⁶¹⁹ Differently, in **Ireland**, remuneration of staff takes place within a civil service structure in which remuneration levels for all civil servants are established.⁶²⁰ In **England** however, the Commission decides remuneration for staff, but remuneration to Commissioners is subject to Ministerial approval.⁶²¹

6(B)(iv) Personnel Policies

i. Overview

In order to fulfill its obligations under the law, mitigate corruption and patronage, and ensure the transparent operations of the HCHR, the BoC should establish employment and remuneration policies that consider:

⁶¹⁸ *Iraqi Law No. 53* (2008), art. 12(7) ("Determine the remunerations of the HCHR employees and the conditions for granting them.").

⁶¹⁹ *Kenya Act*, *supra* note 38, § 5 10.1.

⁶²⁰ *Ireland Act*, *supra* note 47, § 18 ("The Commission, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant and to Government policy concerning remuneration and conditions of employment which is so extant and, in addition to the foregoing, the Commission shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Commission with the consent of the Minister for Finance."),

⁶²¹ *England Act*, *supra* note 114, § 35.1 ("(1)The Commission may pay to the Chairman, a deputy Chairman or another Commissioner— (a)such remuneration as the [F1Minister] may determine, and (b)such travelling and other allowances as the [F1Minister] may determine. (2)The Commission may pay to or in respect of the Chairman, a deputy Chairman or another Commissioner such sums as the [F1Minister] may determine by way of, or in respect of, pensions, allowances or gratuities.").

- Salaries;
- Appointment;
- Evaluation and advancement;
- Expectations and job descriptions;
- Training and capacity-building;
- Remuneration;
- Pensions;
- Medical and health care (including maternity and sick leave);
- Misconduct and termination;
- The creation of new posts;
- Conflict of interest disclosure procedures;
- Codes of conduct and ethics; and
- Any matter which is reasonably necessary for the regulation of the terms and conditions of service of members of staff.⁶²²

ii. Law 53 Parameters

Article 12 of Law 53 mandates the Board of Commissioners to “determine the remunerations of the HCHR employees and the conditions for granting them.”

⁶²² *South Africa Act*, *supra* note 59, at art. 19 (“(1) The President may, after the Commission has made a recommendation, make regulations regarding the following matters in relation to the staff of the Commission: (a) (i) The different categories of salaries and scales of salaries which shall be applicable to the different categories of members of staff; (ii) the requirements for appointment and the appointment, promotion, discharge and disciplinary steps (iii) the recognition of appropriate qualifications and experience for the purposes of the determination of salaries; (iv) the procedure and manner of and criteria for evaluation, and the conditions or requirements for the purposes of promotion (b) the powers, duties, conduct, discipline, hours of attendance and leave of absence, including leave gratuity, and any other condition of service; (c) the creation of posts on the establishment of the Commission; (d) the training of staff, including financial assistance for such training; (e) a code of conduct to be complied with by staff; (f) the provision of official transport; (g) the conditions on which and the circumstances under which remuneration for overtime duty, and travel, subsistence, climatic, local and other allowances, may be paid; (h) subject to section 17, the legal liability of any member of staff in respect of any act done in terms of this Act or any other law and the legal liability emanating from the use of official transport; (i) the circumstances under which and the conditions and manner in which a member of staff may be found to be guilty of misconduct, or to be suffering from continued ill health, or of incapacity to carry out his or her duties of office efficiently; (j) the procedure for dealing with complaints and grievances of members of staff and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such members of staff shall be submitted; (k) the membership or conditions of membership of a particular pension fund and the contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a pension fund; (l) the membership or conditions of membership of a particular medical aid scheme or medical aid society and the manner in and the conditions on which membership fees and other moneys which are payable or owing by or in respect of members of staff or their dependants, to a medical aid scheme or medical aid society, may be recovered from the salaries of such members of staff and paid to such medical aid scheme or medical aid society; (m) the contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a medical aid scheme or medical aid society; (n) in general, any matter which is not in conflict with this Act or the Constitution and which is reasonably necessary for the regulation of the terms and conditions of service of members of staff.”).

Additionally, Article 13(1) obligates the BoC to “issue special service and recruitment rules for HCHR employees during the first month of its operation.”

Together, these articles obligate the BoC to develop robust staffing regulations for the HCHR, but also place a strict timeline on the establishment of such rules. In addition to the types of staffing regulations listed in the Overview section above, **the BoC will also need to consider the internal organizational structure and the needs of the various directorates for staff with specific skills and talents.**

iii. Comparative Models

South Africa is the only commission studied whose available regulations mention personnel policies – the others leave space for such policies to be developed by the Executive Secretary responsible for administration.

In South Africa, the Chairperson may, upon recommendation of the commission enact staffing regulations regarding:

- Salaries and bonuses,
- Appointment and advancement,
- Evaluation and assessment,
- Expectations and job descriptions,
- Training and capacity-building,
- Remuneration,
- Pensions,
- Medical and health care (including maternity and sick leave),
- Misconduct and termination,
- The creation of new posts,
- Codes of conduct and ethics, and
- any matter which is reasonably necessary for the regulation of the terms and conditions of service of members of staff.⁶²³

⁶²³ *Id.*, at art. 19 (“(1) The President may, after the Commission has made a recommendation, make regulations regarding the following matters in relation to the staff of the Commission: (a) (i) The different categories of salaries and scales of salaries which shall be applicable to the different categories of members of staff; (ii) the requirements for appointment and the appointment, promotion, discharge and disciplinary steps (iii) the recognition of appropriate qualifications and experience for the purposes of the determination of salaries; (iv) the procedure and manner of and criteria for evaluation, and the conditions or requirements for the purposes of promotion (b) the powers, duties, conduct, discipline, hours of attendance and leave of absence, including leave gratuity, and any other condition of service; (c) the creation of posts on the establishment of the Commission; (d) the training of staff, including financial assistance for such training; (e) a code of conduct to be complied with by staff; (f) the provision of official transport; (g) the conditions on which and the circumstances under which remuneration for overtime duty, and travel, subsistence, climatic, local and other allowances, may be paid; (h) subject to section 17, the legal liability of any member of staff in respect of any act done in terms of this Act or any other law and the legal liability emanating from the use of official transport; (i) the circumstances under which and the conditions and manner in which a member of staff may be found to be guilty of misconduct, or to be

Furthermore, the South African Commission has the power to contract “for the services of persons having technical or specialized knowledge of any matter relating to the work of the Commission” for specific projects.⁶²⁴

suffering from continued ill health, or of incapacity to carry out his or her duties of office efficiently; (j) the procedure for dealing with complaints and grievances of members of staff and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such members of staff shall be submitted; (k) the membership or conditions of membership of a particular pension fund and the contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a pension fund; (l) the membership or conditions of membership of a particular medical aid scheme or medical aid society and the manner in and the conditions on which membership fees and other moneys which are payable or owing by or in respect of members of staff or their dependants, to a medical aid scheme or medical aid society, may be recovered from the salaries of such members of staff and paid to such medical aid scheme or medical aid society; (m) the contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a medical aid scheme or medical aid society; (n) in general, any matter which is not in conflict with this Act or the Constitution and which is reasonably necessary for the regulation of the terms and conditions of service of members of staff.”).

⁶²⁴ *Id. at art. 16(6).*

Appendix VI: Potential HCHR Staffing and Remuneration Regulations

Recruitment

1. Executive Director Recruitment
 - a. The Board of Commissioners (BoC) shall recruit executive directors in accordance with national employment laws where applicable.⁶²⁵ When making hiring decisions, the BoC shall consider professionalism, competency, personal expertise, commitment to human rights.⁶²⁶
 - b. During the hiring process, in order to ensure that the executive directors reflect the cultural, geographic, and social diversity of Iraq, the BOC shall consider the ethnicity, gender, religion, and language spoken by candidates to ensure diverse representation where possible and where all other skills and competencies requirements are met.⁶²⁷
 - c. Executive directors are highly qualified and recognized experts. They are independent of technical supervision and only answer to members of the BoC on substantive policy issues.
 - d. Executive director positions within the HCHR shall include the Inspector General, the Secretary General, and Directors of all Programmatic Departments.
2. Staff Recruitment (Professional Programmatic)
 - a. The BoC shall recruit professional programmatic staff members in accordance with national employment laws where applicable.⁶²⁸ When making hiring decisions, the employment board shall consider professionalism, competency, personal expertise, and commitment to human rights.⁶²⁹
 - b. During the hiring process, in order to ensure that the staff's composition reflects diversity of the cultural, geographic, and social diversity of Iraq, the employment BoC should consider the ethnicity, gender, religion, and

⁶²⁵ *Iraqi Law No. 53 (2008)*, art. 12(6) (Stating that the BOC shall "[a]ppoint experienced and competent executive directors to the HCHR offices in the regions and governorates, and accept their resignations or discharge them in accordance with the law."). See, e.g., *Canadian Human Rights Act*, *supra* note 244, para. 32(1) ("Such officers and employees as are necessary for the proper conduct of the work of the Commission shall be appointed in accordance with the *Public Service Employment Act*."); *Australian Human Rights Act*, *supra* note 213, Part II, Div.5, art. 43(1) ("The staff necessary to assist the Commission shall be persons engaged under the *Public Service Act 1999*.").

⁶²⁶ *Afghanistan Human Rights Commission Law*, *supra* note 606, at art. 19(2).

⁶²⁷ *Id*; *Paris Principles*, *supra* note 1, ("The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights....").

⁶²⁸ See, e.g., *Canadian Human Rights Act*, *supra* note 244; *Australian Human Rights Act*, *supra* note 213.

⁶²⁹ *Afghanistan Human Rights Commission Act*, *supra* note 606, at art. 19(2).

language spoken by candidates to ensure diverse representation where possible and where all other skills and competencies requirements are met.⁶³⁰

- c. Professional programmatic staff ranges from senior researchers, to legal advisors, to reference librarians, and others, all of whom are involved in fact finding, research, analysis, and other substantive human rights work.
 - d. Professional non-programmatic positions within the HCHR shall include officers in charge of programs in the following issue areas, among others: Human Rights Education; Rights of Women and Children; Rights of the Disabled; Minority Rights; Legal; Detention; Outreach; and Regional Offices.
3. Staff Recruitment (Professional Non-Programmatic)
- a. The BoC shall recruit professional non-programmatic staff members in accordance with national employment laws where applicable.⁶³¹ When making hiring decisions, the employment board shall consider professionalism, competency, personal expertise, and commitment to human rights.⁶³²
 - b. During the hiring process, in order to ensure that the make-up of the staff reflects the diversity of the cultural, geographic, and social society as a whole, the BOC shall consider the ethnicity, gender, religion, and language spoken by candidates to ensure diverse representation where possible and where all other skills and competencies requirements are met.⁶³³
 - c. Professional non-programmatic staff engages in technical, clerical, administrative, and other non-substantive human rights work.
 - d. Professional non-programmatic positions within the HCHR shall include, among others: Information Technology Officer; Human Resources Office⁶³⁴; Financial Officer⁶³⁵; Procurement Officer⁶³⁶; Community Relations Officer⁶³⁷; Civil Society Officer⁶³⁸; Webmaster⁶³⁹; and Media Relations Officer⁶⁴⁰.
4. Staff recruitment (Temporary and Contract)

⁶³⁰ *Id*; Paris Principles, *supra* note 1.

⁶³¹ *See, e.g., Canadian Human Rights Act, supra* note 2244; Australian Human Rights Act, *supra* note 213.

⁶³² *Afghanistan Human Rights Commission Law, supra* note 606, at art. 19(2).

⁶³³ *Id*; Paris Principles, *supra* note 1.

⁶³⁴ *Id*.

⁶³⁵ *Id*.

⁶³⁶ *Id*.

⁶³⁷ *See* IILHR's *Public Information Strategy* for a description of this position.

⁶³⁸ *Id*.

⁶³⁹ *Id*.

⁶⁴⁰ *Id*.

- a. The BOC shall recruit professional non-programmatic staff members in accordance with national employment laws where applicable.⁶⁴¹ When making hiring decisions, the employment board shall consider professionalism, competency, personal expertise, and commitment to human rights.⁶⁴²
 - b. During the hiring process, in order to ensure that the make-up of the staff reflects the diversity of the cultural, geographic, and social society as a whole, the BOC shall consider the ethnicity, gender, religion, and language spoken by candidates to ensure diverse representation where possible and where all other skills and competencies requirements are met.
5. Public Notification
 - a. All notices for openings at the HCHR shall be placed in large, widely available national and regional media outlets, including, but not limited to, newspapers and website. Notices of openings must be run for at least two weeks.
 - b. In order that all qualified candidates are able to apply, the application deadline for staff positions must be, at a minimum, four weeks after the first notification was published.
 - i. If a staffing position needs to be filled immediately and the normal schedule cannot be filed, the BoC must be notified in writing of the reason for the urgency.
 - c. Notifications shall include job requirements, specialization if applicable, and include information about the remuneration schedule.
6. Nepotism
 - a. All candidates must disclose if they are related, even distantly, to a current member of staff or of the BoC. If a candidate is related to a staff member or member of the BoC, he or she must disclose that relationship and the staff member or board member must recuse him or herself from the hiring process.
7. Secondment
 - a. Public officers may, at the request of the BOC, be seconded to the service of the HCHR.⁶⁴³
 - b. If a staff member is seconded to the HCHR from another agency, then the secondee shall be treated as an employee of HCHR for all code of conduct and code of ethics issues.
8. Remuneration

⁶⁴¹ See, e.g., *Canadian Human Rights Act*, *supra* note 244; *Australian Human Rights Act*, *supra* note 213.

⁶⁴² *Afghanistan Human Rights Commission Act*, *supra* note 606, at art. 19(2).

⁶⁴³ See, e.g., *Tanzania Act*, *supra* note 65, at art. 11(7).

- a. The BOC, in establishing the remuneration and expense allowances for staff members, shall follow established government guidelines and comply with the remuneration schedule developed by the BoC.
 - b. When the BoC creates a staff position, it must be assigned a remuneration level set out in the remuneration schedule. The BoC shall approve each grade assignment.
 - c. If staff is to be hired temporarily or on contract, the terms of the remuneration must be set out in advance of hiring and approved by the BoC.
 - d. All staff, other than temporary and contract staff, shall be offered a salary package that includes health insurance, leave, retirement, and pension.
9. Human Resources
- a. The Office of Human Resources shall:
 - i. Oversee personnel matters excepting where the regulations require BoC approval.
 - ii. Implement and enforce the policies set out in the HCHR's regulations, including staff remuneration, benefits, disability, sexual harassment, annual leave, maternity leave, and insurance.
 - iii. Set up regular trainings for professional and administrative staff to improve capacity and skills.
 - iv. Write procedures and regulations setting forth Commission policy on sexual harassment and discrimination. These regulations shall be submitted to the BoC for approval.
 - v. Write procedures and regulations setting forth Commission policy on vacation and annual leave. These regulations shall be submitted to the BoC for approval.
 - vi. Write procedures and regulations setting forth Commission policy on maternity leave. These regulations shall be submitted to the BoC for approval.
 - vii. Set up business hours and a flex-time system.
10. Termination requires the agreement of three-quarters of the Executive Directors. Staff members shall be terminated for reasons not limited to, but including:
- a. Stealing
 - b. Commission of a felony
 - c. Conviction for domestic violence
 - d. Violation of human right
 - e. Violation of HCHR Codes of Conduct and Ethics or Confidentiality policies.
- If the reason for termination is not included on this list, the staff member may be put on paid administrative leave while the dispute is settled by the BOC.
11. Staff member termination requires approval of the Executive Directors and the BoC.

- a. If a staff member feels he or she has been wrongly terminated, then an appeal of the termination may be submitted to the BOC.
 - b. All termination decisions are to be initially approved by a panel of Executive Directors.
 - c. Existing Iraqi employment law, as applicable, shall apply.
12. Administrative staff have the right to collective bargaining.
13. In places where candidates are equal, then the BOC should give preference to candidates whose presence will diversify the staff. Any action taken for the equality should be considered in furtherance of Article 14 of the Constitution.
15. The BOC reserves the right to amend or adjust hiring policies.

Appendix VII: Potential HCHR Pay Grade Level Guide

The general employment grade levels presented below are structured to serve as a guide in determining the grade levels of positions for the Iraqi High Commission for Human Rights. The guide defines the level of work appropriate to each grade, indicates the language, education, and experience desired or required of incumbents of positions at that grade, and highlights the occupations for which standards have been prepared at each grade.

It should be noted, however, that the guide below serves only to establish basic parameters for employment gradation within the Iraqi High Commission for Human Rights and does not necessarily provide exacting or rigid rules for employment competencies. Indeed, one may find that education, skill levels, and experience combined cross over into multiple levels. In such situations, it is at the discretion of the Commission's Hiring Board to decide at which level an individual should be placed.

Level I

This is the entrance level for routine, unskilled types of work. It includes most routine custodial and manual positions. Level I positions may include Janitor/Janitress and Laborer, among others.⁶⁴⁴

Level II

This level includes positions the duties of which are to perform entrance level trade or craft tasks and manual positions involving routine maintenance of any sort. Level II also includes entry level clerical positions in which an employee may perform simple filing, record keeping, and mail sorting. Up to six months of experience is desirable for Level II positions. Most non-clerical positions require little formal education. Some secondary school education is desirable for the clerical positions. Classification standards depicting the Level II positions may include, among others: File Clerk; Gardener; Guard; Janitor Supervisor; and Mail Clerk.⁶⁴⁵

Level III

This level is characterized by the performance of semi-skilled trade duties and routine clerical duties. It is the intermediate level (between the entrance level and full performance or skilled level) for trade-type positions. Clerical positions involve routine clerical duties such as records maintenance, working at a telephone switchboard, and/or typing a variety of narrative and tabular material. Secondary school education is desirable for clerical positions. Up to one year of experience is required for both manual and clerical positions at this level. Level III positions may include, among others: Chauffeur;

⁶⁴⁴ Local Compensation Plan/Medical Benefits. U.S. Mission Baghdad (Iraq). Salary Scale for Locally Engaged Staff (LES). General Grade Level Guides, 1 (2009).

⁶⁴⁵ *Id.*

Clerk; Typist; Distribution Clerk; Operator; Guard; Mail Clerk; Maintenance Man; Mechanic; Receptionist; and Telephone Operator.⁶⁴⁶

Level IV

This is the full performance or skilled level for trade positions. Employees at this level must be able to perform the full scope of their positions with minimum supervisory guidance. Positions require familiarity with office practices and procedures and the ability to follow through in order to obtain the required results. They also must exercise judgment and apply pertinent regulations. Completion of secondary school, one to one and one-half years of experience, and Level III (good working knowledge) of an operating language of the Commission is required for clerical positions at this level. Positions at this level may include, but are not limited to: Clerk; Clerk Stenographer; Clerk Typist; Dispatcher; Distribution Clerk; Benefits Clerk; Receptionist; Mail Clerk; Citizenship Clerk; Procurement Clerk; Supply Clerk; Telephone Operator; etc.⁶⁴⁷

Level V

Positions at this level involve the performance of responsible work requiring the exercise of judgment, knowledge of a specialized subject matter and the regulations pertaining thereto. Journeyman level clerical positions in various program areas are at this level. Level III. One and one-half to two years of experience are required for most positions. Classification standards for such positions include, but are not limited to: Accounts Maintenance Clerk; Cashier (Consular); Clerk Stenographer; Commission Investigations Clerk; Distribution Clerk; Benefits Clerk; Library Clerk; Mail Supervisor; Participant Training Clerk; Payroll Clerk; Personnel Clerk; Program Clerk; Purchasing Agent; Receptionist; Secretary; Security Clerk; Supply Clerk; Telephone Supervisor; Teletype Operator; Travel Clerk; etc.⁶⁴⁸

Level VI

This is the senior or top clerical level involving the performance of the most difficult clerical work requiring the exercise of judgment, knowledge of a specialized subject matter, and the application of extensive rules and regulations. Included also in this class are supervisors of clerical positions and secretaries to officials performing major functions. Clerical positions require completion of secondary school and two to two and one-half years of experience. Positions at this level include, but are not limited to: Accounts Maintenance Clerk; Distribution Record System Clerk; Clerk Stenographer; Language Instructor (Circulation/Reference); Library Assistant (Technical Services); Library Clerk; Participant Training Clerk; Payroll Clerk; Payroll Liaison Clerk; Personnel Clerk; Program Clerk; Secretary; Telephone Supervisor; Teletype Supervisor; etc.⁶⁴⁹

⁶⁴⁶ *Id.* at 2

⁶⁴⁷ *Id.*

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.* at 3.

Level VII

This level includes junior assistant positions in administrative, technical, and program areas and other associated Commission program areas. Such positions require a good general knowledge and application of the policies and procedures, rules and regulations of a particular subject matter area, or substantive knowledge of that area, and work under general instructions with work reviewed for accuracy of results. This level also includes supervisors of clerical functions of substantial size. The secretary to the ranking official of the Commission is also placed in this level when the official has no secretary. In addition to completion of secondary school, some additional technical or collegiate education is desirable. From one to three years of experience is required. Positions at this level may include, among others: Accounting Technician; Arts and Graphics Assistant; Audio Visual Technician; Budget Analyst; Cashier; Commercial Assistant; Cultural Affairs Assistant; Distribution Assistant; Economic Assistant; Benefits Assistant; Information Assistant; Language Instructor; Librarian; Passport and Citizenship Assistant; Payroll Supervisor; Personnel Assistant; Political Assistant; Protocol Assistant; Reference Librarian; Secretary; Technical Services Librarian; Translator; and Travel Assistant.⁶⁵⁰

Level VIII

This is the fully qualified level for assistant positions in administrative, technical, and program areas. The difficulty of the work performed requires considerable experience and training and a thorough knowledge of policies, procedures, rules and regulations, and/or extensive subject matter knowledge in a particular field. Employees are expected to resolve most problems and execute assignments with supervision limited primarily to the review of end product results. The secretary to the ranking officer is also placed in this level when the official has no secretary. These positions require completion of secondary school, and some collegiate or technical training is desirable. Two to four years of experience is necessary. Classification standards may include: Accounting Technician; Art and Graphics Assistant; Distribution Record System Assistant; Budget Analyst; Cashier; Commercial Assistant; Cultural Affairs Assistant; Development Loan Assistant; Distribution Assistant; Economic Assistant; Benefits Assistant; Information Assistant; Librarian; Training Assistant; Payroll Supervisor; Personnel Assistant; Procurement Agent; Program Assistant; Protocol Assistant; Reference Librarian; Security Investigator; Supervisory Audio Visual Technician; Supervisory Language Instructor; Technical Services Librarian; and Travel Assistant.⁶⁵¹

Level IX

This is the senior assistant level for technical and administrative management positions. No supervisory technical positions at this level involve fact finding, research, analysis, and interpretation of factual data in the field of the employee's expertise. Administrative management positions are supervisory and typically involve management of a function

⁶⁵⁰ *Id.*

⁶⁵¹ *Id.*

and personal performance of the most difficult work of the function, including evaluation of complex facts and the interpretation of laws, regulations, and instructions in their application to specific situations. Incumbents of positions at this level are expected to complete assignments with a minimum of supervision. These positions require completion of secondary school, and some collegiate or technical education is desirable. Three to five years of progressively responsible experience is required. Classification standards for Level IX may include, among others, complaints and investigations.⁶⁵²

Level X

This is the lowest of three levels of professional or specialist positions. Incumbents of positions at this level personally perform, and in some cases supervise other employees engaged in, a major segment of a professional, technical or program area. Incumbents of such positions must understand and apply a highly technical body of knowledge usually obtained through collegiate study, as well as applicable laws and Commission regulations and instructions. This level also includes supervisory positions in the administrative management area with equivalent requirements. Incumbents of positions at this level are expected to perform difficult duties with a minimum of supervision. A collegiate education with the equivalent of an A.B. or B.S. degree is required, with only rare exceptions. Four to six years of progressively responsible experience in the professional, technical, or administrative management area is required. Jobs within this category may include: Financial Administrative and Auditing positions, Resource Center jobs, Human Rights/Education/Women and Children/Disabled/Legal Rights Specialists, and Outreach and Donor Liaison and/or Regional Office Liaison, among others.⁶⁵³

Level XI

This is the middle of three levels of professional or specialist positions; however, it is the highest level usually attainable in a professional, technical, program, or administrative management area, even in a large international body. Under the direction of a Commission official, but with wide latitude for planning, organizing, and executing assigned responsibilities, a Level XI official supervises the accomplishment of or personally performs the most difficult and complex work involved in a professional, technical, or program area, and other associated Commission program areas. Incumbents of such positions must understand and apply a highly technical body of knowledge usually obtained through collegiate study, as well as applicable laws and agency regulations and instructions. This level also includes supervisory positions in the administrative management area with equivalent requirements. Guidance received from the Commission supervisory official is almost wholly related to policy, program objectives, and priorities. Within such guidelines, incumbents of positions at this level plan and undertake important projects and carry them to completion without significant supervision. Demands are heavy on initiative, resourcefulness, and sound judgment. Typically, incumbents of positions at this level have important contacts with senior

⁶⁵² *Id.* at 4.

⁶⁵³ *Id.*

business, government, and community officials. A collegiate education with the equivalent of an A.B. or B.S. degree and from five to seven years of progressively responsible experience in the professional, technical, or administrative management area is required. Positions within this category may include: Human Resources, Procurement Specialist, Technology/IT Specialist, and Public Affairs Coordinator, among others.⁶⁵⁴

Level XII

This is the highest of three levels of professional or specialist positions and the highest grade within the Iraqi High Commission for Human Rights outside of appointed positions. Positions at this level are generally composed of Directors. Positions at this level are those of highly qualified and recognized experts. Incumbents of such positions apply a highly technical body of knowledge of applicable laws and agency regulations and instructions. These positions often call for originality of ideas and creative thinking in dealing with problems or matters for which there is little precedent, and usually require that the employee be able to interrelate the pertinent subject matter with a broader spectrum, as would be the case in considering the impact of important political developments on domestic and international economic developments. Where the emphasis is on reporting covering a broad spectrum of complex subject matter and requiring the exercise of independent judgment in projecting future developments or trends, substantial reliance is placed upon the employee's professional acumen and judgment, and his/her advice is sought on important and at times on extremely sensitive matters; in functional programs that involve comprehensive program planning, the employee participates actively in the planning process. Positions at this level are largely independent of technical supervision; guidance from Commission supervisors is primarily with regard to policy, priorities, results to be achieved, basic approaches to be followed, and in the case of positions involving reporting, the nature and basic content of reports. Employees at this level develop and maintain an extensive range of important contacts with senior level business and government officials and with community leaders for the purpose of obtaining or verifying information that is not otherwise available. Incumbents of these positions normally possess the equivalent of an A.B. or B.S. collegiate degree in a field of study closely related to their assigned responsibilities; in many instances, postgraduate education is needed. A minimum of six to eight years of progressively responsible experience in the area of their assignment is needed. Supervision over others is not normally a significant factor in justifying the classification of a position at this level.

⁶⁵⁴ *Id.*

6(C) Commissioners

i. Overview

The Board of Commissioners, as nominated by the Committee of Experts under the requirements of Law 53, should have extensive experience in the field of human rights and demonstrate a detachment from political and other interests. Specifically, Commissioners should demonstrate integrity and leadership and demonstrate a commitment to human rights in professional, personal and/or academic pursuits. Broadly, the Board of Commissioners should be representative of Iraqi society, but each Commissioner should understand, respect and seek to protect and promote the human rights of all of Iraq's components.

Commissioners named to the first Board of Commissioners also have the challenging task of developing regulations and procedures that will define the work of the Commission into the future. In addition to organizing the infrastructure of the HCHR, staffing procedures, complaints handling, financial regulations, and other procedures, **the BoC must also develop regulations to guide its own work and lay out the scope and limits of its own authority, as well as the authorities and limits of individual Commissioners.**

6(C)(i) Terms of Service

i. Overview

Though Law 53 lays out basic terms of service for Commissioners, including criteria for selection, resignation, removal, and duration of term, the details of benefits, codes of conduct, and number of terms that may be served are not elucidated. The Board of Commissioners, in establishing bylaws for the HCHR, should consider clarifying terms of service for Commissioners. Such efforts would further legitimize the office of Commissioner, clarify the regular changing of Commissioners at the end of term limits, and mitigate the possibility of any one Commissioner amassing inappropriate levels of influence.

ii. Law 53 Parameters

Law 53 sets out the terms of service for Commissioners,⁶⁵⁵ including term limits and termination policy, but does not specify other benefits, leave policies, codes of conduct,

⁶⁵⁵ *Iraqi Law No. 53 (2008)*, art. 8(2) ("A member of the BoC must meet the following conditions: (a)An Iraqi national who is a permanent resident of Iraq. (b) At least 35 years of age. (c)Has a primary university degree, as a minimum. (d)Has experience in the field of human rights. (e)Not affiliated with any political

or other key issues. The Board of Commissioners should therefore consider developing such policies to clarify the terms of service for Commissioners.

iii. Comparative Models

Australia's bylaws include a policy for leaves of absence granted by the Chairperson at his or her discretion.⁶⁵⁶

The **Northern Ireland's** commission has established rules of conduct for Commissioners to ensure that conflicts of interest are identified and appropriately resolved. To facilitate the effective implementation of the rules of conduct, the NHRI maintains a Register of interests which is open to the public and in which Commissioners must register pecuniary and non-pecuniary interests related to Commission activities.⁶⁵⁷

Regarding number of terms that may be served, **Thailand's** Commission establishment Act limits commissioners to a single term of six years.⁶⁵⁸ In **Tanzania**, Commissioners hold office for a term of three years and are eligible for reappointment for no more than a second term not exceeding three years.⁶⁵⁹

6(C)(ii) Independence from Government

i. Overview

Independence from government is a central tenet of the Paris Principles upon which Article 102 of the Constitution and Law 53 were founded. As such, in pursuing the tasks mandated under Law 53, Commissioners should demonstrate independence from government and actively seek to mitigate or eliminate political, personal, financial, and other influences on his or her job as a Commissioner.

Additionally, terms for removal of Commissioners should be elaborated in bylaws, meaning reasons for submitting a request for discharge to the Council of Representatives should be elaborated to protect against removal for personal or political disagreements. Protection against arbitrary discharge will improve the independence of Commissioners.

organization, and not banned from becoming a member of the BoC in accordance with the Accountability and Justice Law. (f) Of good reputation and conduct, and was not convicted of a dishonorable crime.”).

⁶⁵⁶ *Australian Human Rights Act*, *supra* note 213, at art. 39 (“(1) A person appointed as a full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal. (1A) The Minister may grant a person appointed as a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines. (2) The Minister may grant to a person appointed as a part-time member leave of absence from a meeting of the Commission.”).

⁶⁵⁷ *Northern Ireland Human Rights Commission Code of Governance* (2005), § 12, [hereinafter *Northern Ireland Code of Governance*].

⁶⁵⁸ *Thailand Human Rights Commission Act*, *supra* note 537, § 10.

⁶⁵⁹ *Tanzania Act*, *supra* note 65, art. 8(1).

ii. Law 53 Parameters

Article 2 of Law 53 states that the HCHR shall enjoy financial and administrative independence. This is consistent with article 102 of the Iraqi Constitution. In addition to these guarantees of independence for the institution, Commissioner independence is protected in several articles of Law 53 addressing relations with the Council of Representatives.

Article 15(3) of Law 53 dictates that “[t]he Chairperson shall be discharged from his or her position through a decision taken by the Council of Representatives by absolute majority upon the request of the BoC for one of the reasons mentioned in Article 15(1) of this Law.” However, reasons considered appropriate for such discharge are not enumerated in the Law. Additionally, Article 15(f4) states that “[t]he Council of Representatives has the right to question the Chairperson of the BoC in accordance with to the procedures followed with the questioning of ministers as set out in the Constitution.”

iii. Comparative Models

New Zealand’s regulations impose a duty upon the Commission to act independently.⁶⁶⁰ **Northern Ireland’s** NHRI Standing Orders require Commissioners to work in the best interests of the Commission “regardless of age, religious belief, political opinion, race, sex, marital status, colour, ethnic origin, sexual orientation, or disability.”⁶⁶¹ Other Commissions impose a code of conduct and/or ethics to ensure that Commissioners avoid or publicize conflicts of interest and always act in the interest of achieving the HCHR’s mandate. Codes of Conduct and Ethics are addressed at length below.

Regarding termination or removal of Commissioners from office, **Northern Ireland** is again instructive, limiting removal of Commissioners to situations wherein a Commissioner is “unable or unfit to discharge the functions of a Commissioner... [including] failing to perform the duties required of a Commissioner to the standards expected of persons who hold public office and failing to meet their obligations and responsibilities as described [in bylaws].”⁶⁶²

Additional Paris Principles-compliant terms for dismissal would include, for example, wrongdoing of a serious nature—such as conviction for a criminal offence punishable by imprisonment of some minimum term, such as one year, or inappropriate conduct and conflict of interest, such as engaging in decision-making regarding investigations into a company owned by a relative. Additional violations may include:

⁶⁶⁰ *New Zealand Act*, *supra* note 43, at art. 19 (“Except as expressly provided otherwise in this or another Act, the Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers....”).

⁶⁶¹ *Northern Ireland Standing Orders*, *supra* note 57, at art. 2.

⁶⁶² *Northern Ireland Code of Governance*, *supra* note 666, § 20(3).

- Conduct that is contrary to the HCHR Code of Conduct;
- Engaging in other paid employment or position or activity that is incompatible with the HCHR's work.
- Activity in a political party.
- Supporting groups or positions that are clearly incompatible with the vision and mandate of the HCHR, e.g., racist organizations, anti-immigrant policies, etc.
- Incapacity:
- Mental incapacity as declared by a competent authority.
- Physical infirmity that makes it impossible to undertake the duties of the job.
- Incompetence or failure to discharge the functions of the office, e.g., not attending commission meetings over a prolonged period.⁶⁶³

6(D) Financing and Budget Management

i. Overview

In providing accounts to the Iraqi Board of Supreme Audit each year, and in developing the annual estimated budget and submitting it to the CoR, HCHR activities should be subject to a time limit. Three months prior to the start of the new fiscal year meets with international average practices. It should be noted that, in addition to review by the Inspector General, the books and accounts of the Commission should also be subject to external audits by a certified auditor/public accountant at least once after each financial year. Law 53's requirement that accounts be monitored by the Iraqi Board of Supreme Audit may fill this requirement.

With regard to record keeping, the Commission should keep full and detailed records for all revenues, expenditures, assets, liabilities, and financial transactions. The Records should be archived in a durable medium and stored in a manner so that the documents will be well preserved and accessible for later retrieval. Moreover, the Records should be kept in accordance with sound principles⁶⁶⁴ and in conformity with the laws and regulations of Iraq.

⁶⁶³ UNDP-OHCHR Toolkit, *supra* note 12, 248; *See also*, Asia Pacific Forum, *Compliance with the Paris Principles, Principle 3: Independence*.

⁶⁶⁴ The Commission should consider adopting a recognized standard accounting principle, such as [GRAP](#) (International Standard utilized in South Africa and elsewhere) or those promulgated by the London-based [International Accounting Standards Board](#) if existing regulations in Iraq do not require the adoption of a particular standard or practice. It may be prudent in the long-term to adopt International Accounting Standards as they continue to gain international acceptance, though significant training and/or expertise is required for any standard. This section, as written, is consistent with (and, indeed, anticipates) the use of multiple accounts; such as using one account to record all transactions and one account to prepare for appropriations and other matters of public finance.)

What is more, the Commission may, on its own initiative, or by request, take appropriate measures to ensure the confidentiality of financial data if, having considered all available alternative measures, the Commission is satisfied that:

- There is a real and substantial risk that disclosure would reasonably likely jeopardize the life or physical safety of an individual or individuals; or
- Disclosure would prejudice the national security or sovereignty of the State, its defense or international relations; or
- Disclosure would undermine the enforcement of the criminal law or criminal investigation; or
- The balance of equity is such that the need to prevent disclosure outweighs the public interest in disclosure.⁶⁶⁵

In terms of reporting, **the Commission should publish an annual financial report.** The Commission's financial report should include a detailed statement of accounts, a balance sheet, and the reports of internal and external auditors. The Commission should also make the annual financial report available to the general public without restrictions.

With respect to procurement, the HCHR should be responsible for procuring all goods, commodities, and services which are necessary for its operation. Specifically, the HCHR should take care to assess its needs and plan procurement, depending on such needs and on available funds.⁶⁶⁶ In so doing, the HCHR should abide by the applicable laws of Iraq with regard to public procurement.

Regarding expenditures by Commissioners, officers, and staff, the HCHR should consider following the **Tunisian** model and establish threshold levels for Commissioner expenditures that do and do not require prior approval, as well as a Market Commission composed of Commissioners and other officers, which makes certain decisions about expenditures and finances. Establishing expenditure guidelines will prevent the misappropriation of funds and support accountability within the Commission.

6(D)(i) Budgeting/ Financial Policies

i. Overview

Determining the value and use of the HCHR budget, adhering to the allocated budget, and maintaining appropriate records, audits, and inspections are not only mandated under Law 53, but are also invaluable tasks that will enable the HCHR to effectively engage its mandate.

⁶⁶⁵ See [Tanzania Act, supra note 65, at art. 19](#).

⁶⁶⁶ OECD, *Integrity in Public Procurement, Good Practice from A to Z* (2007), 53-55, [hereinafter OECD *Integrity in Public Procurement*].

Iraq struggles to combat corruption and patronage networks in many of its public service sectors and insufficiently transparent accounting practices are endemic within many governmental organizations. **By developing robust accounting practices, and requiring strict adherence to budgeting and financial policies, the HCHR will become a model for other Iraqi institutions, and support the state's efforts to mitigate the problems of corruption in other sectors.**

ii. Law 53 Parameters

Article 12(5) of Law 53 indicates that the BoC must “Propose the HCHR budget and submit it to the Council of Representatives for approval.”⁶⁶⁷ Law 53 does not delineate any timelines or other requirements for the development of the HCHR budget or other financial policies. To ensure the effective use of funds and the timely submission of the budget, the BoC should develop financial regulations, including mechanisms for capacity needs assessment, timelines, and submission protocols.

iii. Comparative Models

In **Mauritius**, the Commission prepares the budget for the forthcoming year and submits it to the appropriate Minister three months before the commencement of the financial year.⁶⁶⁸ In **Tanzania**, the Commission prepares the budget and submits it to the Finance Minister, who examines it and tables it before the National Assembly.⁶⁶⁹ The Commission can ask the Finance Minister for advice on budgeting.⁶⁷⁰

Kenya's establishment law has detailed record keeping requirements related to expenses and budgeting.⁶⁷¹ The Kenyan NHRI must, at least three months before the commencement of each financial year, prepare estimates of the revenue and expenditure for the Commission for that year. Such estimates must provide for:

- Payment of salaries, allowances and other charges in respect of the staff of the Commission;
- Payment of pensions, gratuities and other charges in respect of the staff of the Commission;
- Proper maintenance of the buildings and grounds of the Commission; and
- Maintenance, repair and replacement of the equipment and other property of the Commission.⁶⁷²

Regarding timelines, within four months from the end of each financial year, the Commission must submit to the Controller and Auditor-General the accounts of the

⁶⁶⁷ *Iraqi Law No. 53 (2008)*, art. 12.

⁶⁶⁸ See *Mauritius Human Rights Commission Act*, *supra* note 143, § 12(1).

⁶⁶⁹ *Tanzania Act*, *supra* note 65, § 31.-(1).

⁶⁷⁰ *Id.* at § 31.-(2).

⁶⁷¹ *Kenya Act*, *supra* note 38, § 26-30.

⁶⁷² *Id.*, at art. 30(2).

NHRI along with a statement of income and expenditure for that year and a statement of assets and liabilities.⁶⁷³

Additionally, the Commission can open and maintain as many accounts as necessary for its functions.⁶⁷⁴ Additionally they can invest surplus money in government securities and deposit money not immediately required.⁶⁷⁵

Algeria's NHRI allows the Chairperson to direct expenditure and management actions related to finances.⁶⁷⁶ Generally, sub-committees are authorized to call on the services of any expert, but when requiring funds they must get the approval of the Secretariat.⁶⁷⁷

In **Ireland**, the accounting requirements are well developed. The Commission must keep "...all usual accounts of money received or expended....including an income and expenditure account and balance sheet."⁶⁷⁸ Within three months of the end of the financial year, the accounts must be submitted to the Comptroller and Auditor General for auditing, before being sent to the Minister.⁶⁷⁹ A notable addition to the accounting provisions is the ability of Parliament to call the Chief Executive to testify before Committee on the accounts and the report of the Auditor General.⁶⁸⁰

In **Tanzania**, the Commission is responsible to Parliament for its revenues and expenditures.⁶⁸¹ This entails a number of different responsibilities including keeping "full

⁶⁷³ *Id.* at art. 31(2).

⁶⁷⁴ *Id.* at § 27.

⁶⁷⁵ *Id.* at § 28.

⁶⁷⁶ See *Algeria Regulations*, *supra* note 26, at art. 21.5 ("Le président de la Commission a pour attributions de . . . ordonner les dépenses de la Commission et tous actes de gestion liés à son objet.").

⁶⁷⁷ *Id.* at art.25 ("Chaque sous-commission permanente est chargée d'élaborer son programme de travail, de veiller à son exécution et d'en évaluer périodiquement la mise en oeuvre. A cet effet, elle met en place autant de groupes de travail que nécessaire. En outre, chaque sous-commission permanente peut faire appel à toute personne ou expert susceptible de l'éclairer sur une question donnée. Dans ce cadre et au cas où cette consultation comporte une incidence financière, la sous-commission permanente devra solliciter l'accord préalable du bureau de la Commission. Chaque sous-commission permanente élabore son rapport annuel et contribue à l'élaboration du rapport annuel de la Commission.").

⁶⁷⁸ *Ireland Act*, *supra* note 47, § 16.

⁶⁷⁹ *Id.* at § 16(2).

⁶⁸⁰ *Id.* at § 14(1) ("(1) The chief executive shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on— (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Commission is required by this Act to prepare, (b) the economy and efficiency of the Commission in the use of its resources, (c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and (d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993 , or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann")

⁶⁸¹ *Tanzania Act*, *supra* note 65, § 30.

and proper records”⁶⁸² and ensuring that all resources used are “safeguarded and utilized in the most economical fashion.”⁶⁸³ The Commission is also required to prepare appropriation accounts and compile an annual report.⁶⁸⁴

Regarding Commissioner expenditures, in **Tunisia**, NHRI regulations allow for expenditures by the Commissioners under 50,000 Tunisian dinars for goods, and 20,000 dinars for studies.⁶⁸⁵ Expenses above these amounts must be submitted to a Market Commission for approval.⁶⁸⁶ The Market Commission is composed of the NHRI Chairperson, four Commission members selected by the general assembly and a representative of the Executive Secretary. A quorum is formed with three members, including the Chairperson.⁶⁸⁷ A simple majority wins any votes taken.⁶⁸⁸

6(D)(ii) Funding

i. Overview

Some NHRIs are funded by entirely by their national governments. In these cases, the Government provides the NHRI any funds required to carry out its functions, after due appropriation by Parliament. Other NHRIs, like that of Iraq, receive funds from both the national government and other sources. In these cases, the NHRI must develop mechanisms through which it can pursue donor support and comply with donor requirements.

In the *Toolkit for Collaboration with National Human Rights Institutions*, UNDP and OHCHR note that:

⁶⁸² *Id.*

⁶⁸³ *Id.*

⁶⁸⁴ *See Id.*

⁶⁸⁵ *Tunisian Regulations*, *supra* note 44, at art. 14 (“Les marchés du comité supérieur ne sont pas soumis aux dispositions réglementaires relatives aux marchés publics. Ces marchés sont conclus par écrit et de gré à gré pour les commandes ou la fourniture de biens qui ne dépassent pas le montant de cinquante mille dinars (50.000 d) ou pour un montant qui ne dépasse pas vingt mille dinars (20.000 d) pour les études. Si le montant des travaux dépasse les montants susvisés, il est procédé à un appel d’offres et les plis seront ouverts par la commission des marchés créée à cet effet au sein du comité supérieur.”).

⁶⁸⁶ *Id.* at art 14

⁶⁸⁷ *Id.* at art. 15 – (“La commission des marchés est composée : - du président du comité supérieur : président, - de 4 membres du comité supérieur nommés par l’assemblée générale ordinaire du comité supérieur. Un service du secrétariat général du comité supérieur assure le secretariat permanent de la commission des marchés. La commission des marchés se réunit sur convocation de son président en présence d’au moins trois membres, dont le président. Ses décisions sont prises à la majorité des voix. Ses délibérations sont consignées dans un procès-verbal de réunion signé par tous les membres présents.”).

⁶⁸⁸ *Id.*

NHRIs can find themselves the “targets” of multiple donors looking to develop programmes and build capacity. Sometimes, NHRIs are fragile, institutionally or financially: this may make it difficult to raise funds or in some cases refuse donor money or to meet the demands imposed by technical assistance projects (integrating consultants into work processes, finding time for training, fulfilling reporting requirements, etc.) of various projects. It is not unusual to find NHRIs faced with various training and technical assistance projects that they cannot absorb, or which are duplicative, or which operate at cross purposes.⁶⁸⁹

Given the potential challenges a new NHRI may face when dealing with outside donors, regulations and structural considerations related to donor coordination is advisable.

The BoC should consider the experiences of the **Afghanistan** human rights commission and establish a working unit or sub-committee focused on donor relations, in collaboration with finance and administration departments. Overseeing donor relations, monitoring and evaluating progress on donor projects, and protecting against saturation requires specialization and coordination with the United Nations. As such, the HCHR should build a donor relations unit into its organogram, and develop protocols for the functioning of such a unit and its relationship to other bodies within the Commission.

ii. Law 53 Parameters

Article 14(1) of Law 53 states; “[t]he financial resources of the HCHR shall consist of: the HCHR allocations in the state budget; (and) the resources provided to it from inside and outside Iraq provided that the provision of such resources is not in conflict with the Iraqi laws and does not affect the independence of the HCHR.”⁶⁹⁰ Law 53 also specifies that the HCHR shall receive the resources mentioned above after obtaining the approval of the CoR. The precise mechanisms by which funding is received and the organizations that may contribute may be described in the Bylaws.

iii. Comparative Models

In **Afghanistan**, where the NHRI is completely donor dependent and receives no financial support from the national government, the Commission’s structural organization includes a Report and Donor Liaison unit headed by a Report and Donor Relations Coordinator.

In **India**, at the opposite end of the spectrum, parliament appropriates such funds as the Commission may require for the performance of its functions.⁶⁹¹ The Commission may

⁶⁸⁹ UNDP-OHCHR Toolkit, *supra* note 12, x.

⁶⁹⁰ *Iraqi Law No. 53 (2008)*, art. 14.

⁶⁹¹ See *India Human Rights Act*, *supra* note 28, § 32. *Grants by the Central Government* (i) The Central Government shall after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the

spend funds as they are awarded.⁶⁹² In **Ireland**, funding is also provided by the Government, through funds appropriated by Parliament.⁶⁹³ In Ireland, the Finance Minister is given the power to decide the appropriate amount to be paid to the Commission.⁶⁹⁴ In **Nepal**, like Iraq, funding is provided by the national government but may also be obtained from private donors.⁶⁹⁵ Any funds received by the Commission from private donors, however, must be spent in a manner agreed with the donor.⁶⁹⁶

6(D)(iii) Accounting Practices

i. Overview

In developing bylaws governing the auditing of HCHR accounts, the BoC should consider the approaches taken by other NHRIs, and adopt international recognized accounting practices (such as the Generally Recognized Accounting Practice (GRAP) used in **South Africa** and elsewhere) in alignment with existing Iraqi law.

Additionally, the BoC should develop publication practices like those employed by the **South African Human Rights Commission**, the **Northern Ireland Commission**, and others and publish financial assessment data on the Commission's website. Such practices would help to curb corruption and demonstrate the fiscal responsibility of the HCHR.

ii. Law 53 Parameters

The HCHR must develop and submit an annual budget for approval by the Council of Representatives, maintain funds in special accounts in an Iraqi bank, and submit

purposes of this Act. (2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).").

⁶⁹² *Id.*, § 32.

⁶⁹³ See *Ireland Act*, *supra* note 47, § 22 ("The Minister may, in each financial year of the Commission, pay to the Commission, out of moneys provided by the Oireachtas, a grant of such amount as he or she, with the consent of the Minister for Finance, determines towards the expenses of the Commission in the performance of its functions.").

⁶⁹⁴ See *Id.*, § 22

⁶⁹⁵ See *Nepal Act*, *supra* note 47, § 15 Financial Management ("(1) The Commission may obtain such means and resources from different agencies by way of grants as are required for the performance of its functions. (2) The Commission may receive financial assistance with a view to enable itself to carry out the functions mentioned in Section 9. (3) The amount of financial assistance received pursuant to Sub-section (2) shall be expended in accordance with the terms agreed upon between the donor agency and the Commission. (4) The Commission shall maintain accounts of its income and expenditure and other relevant records in accordance with the prevailing law. (5) The accounts of the Commission shall be audited by the Auditor General. (6) Other matters concerning the financial management of the Commission shall be as prescribed.").

⁶⁹⁶ *Id.*

accounts for auditing to the Iraqi Board of Supreme Audit.⁶⁹⁷ Additionally, the Office of Inspector General established under Law 53 has access to review financial accounts and conduct internal audits. As such, the BoC is advised to develop and adopt standard accounting and financial record-keeping procedures based on Iraqi law and international best practices.

iii. Comparative Models

The **South African** human rights commission utilizes standards set out in the Generally Recognized Accounting Practice (GRAP),⁶⁹⁸ which is the public sector equivalent of the private sector accounting standards known as the Generally Accepted Accounting Practice (GAAP). In employing these internationally recognized standards, South Africa ensures that its accounting practices align with international best practices, and allow for ease of interpretation and assessment. Policies include issues related to revenue recognition; finance costs; irregular, fruitless and wasteful expenditure; property, plant and equipment; intangible assets; impairment of assets; financial instruments; leases; inventories; prior period errors, related parties, unauthorized expenditures; commitments; contingent liabilities; employee benefit costs; and requirements of donor-funded projects. In **South Africa**, the Commission also publicizes annual reports detailing expenditures on its website.

In **Tunisia** the Commission must separately account for governmental and other donations. The Chairperson authorizes any expenditure related to governmental funds.⁶⁹⁹ The Chair is also charged with presenting a draft annual budget to the General Assembly for approval.⁷⁰⁰ The Court of Auditors manages donations from civil society, community or international organizations.⁷⁰¹

In **India**, the Comptroller and Auditor General are responsible for auditing the accounts of the NHRI.⁷⁰² They are also given the authority to nominate any person to act on their

⁶⁹⁷ See *Iraqi Law No. 53* (2008), art. 14(5) ("The HCHR accounts shall be audited and monitored by the Iraqi Board of Supreme Audit.").

⁶⁹⁸ South African Human Rights Commission, 14th Annual Report 2009/2010, Financials, 108, http://www.sahrc.org.za/home/21/files/Reports/Annual%20Report%2009_10%20Financials.pdf.

⁶⁹⁹ *Tunisia Regulations*, *supra* note 44, art. 11 ("Le président du comité supérieur ordonne les dépenses et autorise la perception des recettes inscrites au budget. Sous son autorité, sont exécutées les opérations financières sur le compte ouvert à cet effet.")

⁷⁰⁰ *Id.* at art 11.

⁷⁰¹ *Id.* at art. 12 "Le président du comité supérieur présente le projet de budget annuel à l'approbation de l'assemblée générale ordinaire. Les subventions attribuées par l'Etat doivent obéir aux procédures d'approbation en vigueur et doivent faire l'objet d'un programme d'emploi qui leur est propre.").

⁷⁰² *India Human Rights Act*, *supra* note 28, § 34(Accounts and Audit - (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. (2) The Accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General. (3) The Comptroller and

behalf in an auditing capacity.⁷⁰³ Once the Comptroller or Auditor General has approved the accounts, they are forwarded to the Central Government, who present them to parliament at the earliest possible opportunity.⁷⁰⁴

Like India, **Tanzania** also allows its Comptroller and Auditor General to perform an audit of accounts.⁷⁰⁵ Additionally, the Commission must follow good governance ideas including keeping details of any expenditures, revenues, assets and liabilities.⁷⁰⁶ The Commission should satisfy itself that resources have been spent judiciously, as outlined above.⁷⁰⁷ As a final responsibility, the Commission must submit annual accounts, prepared in line with generally accepted accounting practices.⁷⁰⁸

Ireland also utilizes a Comptroller and Auditor General to audit NHRI accounts. Here, the Commission must keep accounts in "...such form and in respect of such accounting periods as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by it, including an income and expenditure account and a balance sheet."⁷⁰⁹ A further check is provided by the ability of Parliamentary Committees to question the Chief Executive.⁷¹⁰

Auditor-General or any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission. (4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Commission and the Central Government shall cause the audit report to be laid as soon as may be after it is received before each House of Parliament.").

⁷⁰³ *Id.*

⁷⁰⁴ *Id.*

⁷⁰⁵ *Tanzania Act, supra* note 65, § 32. ("(1) The accounts of the Commission shall be audited, once in every financial year, by the Controller and Auditor-General. (2) Upon the completion of his examination of the accounts, the Controller and Auditor-General shall certify those accounts and submit his report to the Commission.").

⁷⁰⁶ *Id.* at § 30 ("(1) The Commission shall be responsible to the National Assembly in accounting for all its revenue and expenditure (2) The commission shall - (a) keep full and proper records of all its revenue and expenditure and of all the assets; liabilities and financial transactions; (b) satisfy itself that all reasonable management measures have been taken to ensure that resources, which are necessary for achieving its objectives are as far as possible, obtained, safeguarded and utilized in the most economic, efficient and effective manner; (c) prepare appropriation accounts in accordance with the Public Finance Act; and (d) prepare annual accounting accordance with generally accepted Accounting practice covering all its transactions.").

⁷⁰⁷ *Id.*

⁷⁰⁸ *Id.*, § 30

⁷⁰⁹ *Ireland Act, supra* note 47, at art. 16(1).

⁷¹⁰ *Id.* at art. 15(2)..

Appendix VIII: Potential HCHR Financing, Procurement, and Budget Management Regulations

Definitions

1. *The Commission* means the Iraqi High Commission for Human Rights as established under Law 53 of 2008.
2. *The Records* means Accounting Records of the Commission
3. *A durable medium* may refer to any material, device or technology currently in existence or yet undeveloped that is sufficiently permanent and stable to ensure that the Records will be faithfully preserved so that the information may be used in future years.

Accounting Policies

1. The Commission shall prepare financial statements in Iraqi Dinar
2. Annual Financial Statements shall be prepared in accordance with effective standards of Generally Recognized Accounting Practices (GRAP), including any interpretations and directives issued by the Ministry of Finance or as set out in national legislation, regulations, or policies.
3. Financial Statements shall describe practices related to and account for, at a minimum:
 - a. Revenue recognition;
 - b. Finance costs;
 - c. Irregular, fruitless and wasteful expenditure;
 - d. Property, plant and equipment;
 - e. Intangible assets;
 - f. Impairment of assets;
 - g. Financial instruments;
 - h. Leases;
 - i. Inventories;
 - j. Prior period errors, related parties, unauthorized expenditures;
 - k. Commitments;
 - l. Contingent liabilities;
 - m. Employee benefit costs; and
 - n. Requirements of donor-funded projects.

Budget

1. The Commission shall prepare an annual budget detailing all expected expenditures including, but not limited to: personnel salaries, traveling expenses, funding for external projects, procurement, and operational costs such as utilities, rent, and office materials.
2. The Budget shall detail expected expenditure for the upcoming financial year and include projections for the following two years.
3. The Financial Unit shall compile a Draft Budget based upon the requests of all of the units and submit the Draft Budget to the Head of the Secretariat.
4. Head of the Secretariat shall present the Draft Budget to the Board of Commissioners.
5. The BoC shall approve the budget with a simple majority vote. The BoC shall also have the power to amend the Draft Budget before approving it.
6. Once approved, the Chairperson of the Commission shall present the Commission's budget to the Council of Representatives at least three months before the beginning of financial year for which the budget has been prepared

Record Keeping

1. The Commission shall keep full and detailed records for all revenues, expenditures, assets, liabilities, and financial transactions.
2. The Records shall be archived in a *durable medium* and stored in a manner so that the documents will be well preserved and accessible for later retrieval.
3. The Records shall be kept in accordance with standard accounting principles⁷¹ and in conformity with the laws and regulations of Iraq.
4. The Commission may, on its own initiative, or by request, take appropriate measures to ensure the confidentiality of financial data if, having considered all available alternative measures, the Commission is satisfied that there is a real and substantial risk that:
 - a. disclosure would reasonably likely jeopardize the life or physical safety of an individual or individuals, or;
 - b. disclosure would prejudice the national security or sovereignty of the State, its defense or international relations, or;

⁷¹ See, e.g. United States Federal Accounting Standards Advisory Board; or those promulgated by the London-based [International Accounting Standards Board](#) if existing regulations in Iraq do not require the adoption of a particular standard or practice. It may be prudent in the long-term to adopt International Accounting Standards as they continue to gain international acceptance, though significant training and/or expertise is required for any standard. This section, as written, is consistent with (and, indeed, anticipates) the use of multiple accounts; such as using one account to record all transactions and one account to prepare for appropriations and other matters of public finance.
See, e.g., [Tanzania Act, supra note 65, at art 5\(30\)](#)

- c. disclosure would undermine the enforcement of the criminal law or criminal investigation, or;
- d. the balance of equity is such that the need to prevent disclosure outweighs the public interest in disclosure.⁷¹²

Auditing

1. The books and accounts of the Commission shall be subject to audit by the Office of the Inspector General at any time without restriction or notice. The Office of the Inspector General shall perform an audit at least once after each financial year.⁷¹³
2. The books and accounts of the Commission shall also be subject to external audits by a certified auditor/public accountant at least once after each financial year.

Financial Reporting

1. The Commission shall publish an annual financial report.
2. The Commission's financial report shall include a detailed statement of accounts, a balance sheet, and the reports of internal and external auditors [as mentioned under the auditing section above]
3. The Commission shall submit the annual financial report to the Council of Representatives, the President, and the Prime Minister of Iraq within three months after the end of the relevant financial year.⁷¹⁴
4. The Commission shall make the annual financial report available to the general public without restrictions.

Procurement

1. The High Commission for Human Rights shall be responsible for procuring all goods, commodities, and services, which are necessary for its operation.
 - a. The High Commission for Human Rights shall take care to assess its needs and plan procurement, depending on such needs and on available funds.⁷¹⁵
 - b. The High Commission for Human Rights shall abide by the applicable laws of Iraq with regard to public procurement. All terms herein shall be applied and interpreted in light of such laws.

⁷¹² See *Tanzania Act*, *supra* note 65, art 3(19).

⁷¹³ An annual audit is a reasonable minimum procedure in international practice. For more detailed guidance, see the UK [National Audit Office](#).

⁷¹⁴ See e.g. *Mauritius Act*, *supra* note 143, § 12(1) (the budget must be submitted no less than 3 months before the commencement of the next financial year); *Kenya Act*, *supra* note 38, § 30 (the budget will be prepared at least 3 months before the relevant fiscal year); *Tanzania Act*, *supra* note 65, Part V, § 33(c) (providing a 3 month deadline for submitting information to the financial minister), *Ireland* Sec. 16(2) (accounts must be submitted within 3 months after the end of the relevant financial year)

⁷¹⁵ OECD, *Integrity in Public Procurement*, *supra* note 675, 21, 53-55.

- c. All employees, officers and agents of the High Commission for Human Rights shall strictly abide by the Code of Ethics of the Commission during the procurement procedure.⁷¹⁶
2. The Head of the Secretariat shall be competent to authorize the procurement of goods and services costing up to [1,250,000 (1.25 million) Iraqi dinar].
3. For any procurement above [1,250,000 (1.25 million) Iraqi dinar], authorization shall be granted by the Board of Commissioners.
4. The Board of Commissioners may create a Selection Committee for any procurement in order to assist the Board of Commissioners in awarding procurements.
 - a. The Selection Committee shall consist of qualified employees of the High Commission of Human Rights, with knowledge and experience in the field of procurement.⁷¹⁷
 - b. The Selection Committee shall be allowed to invite external advisors to provide expertise on procurement issues as necessary. Such external advisors shall be bound to abide by the Code of Ethics of the Commission.
5. The Board of Commissioners shall authorize procurements above [1,250,000 (1.25 million) Iraqi dinar] through a fair and transparent process in strict adherence to the Code of Ethics and in a manner that secures the best value for money.
 - a. The Selection Committee shall publicize in advance the criteria for the award of the procurement. Amendments to the award criteria shall not be allowed after the publication of the announcement.⁷¹⁸
 - b. The Selection Committee shall publish its decision to award procurement. Such publication shall include the name of the bidder, the details of his/her bid and the reasons for which it was selected.
 - c. The Selection Committee shall inform, in reasonable time, all non-successful bidders for the reasons their bid was rejected.⁷¹⁹
 - d. Each bidder shall have the right of protection of his/her commercial and trade secrets. The Selection Committee shall not disclose to any third party and shall not publish details of the bid that are trade secrets.⁷²⁰
6. For any such procurement requiring approval by the Board of Commissioners, notice shall be published on the website and in generally-accessible local media inviting proposals. Such publications shall take place for at least thirty days prior to the deadline for submitting procurement applications/proposals.

⁷¹⁶ *Id.*, at 23, 71 ff.

⁷¹⁷ *See Id.*, at 93.

⁷¹⁸ *Id.* at 36-38.

⁷¹⁹ *Id.* at 38-40.

⁷²⁰ *Id.* at 29, 38.

- a. The Commission shall publish in at least two (2) national newspapers and on its website all tenders for procurement.
 - b. Each announcement of procurement shall describe the specifications of the goods or services to be procured in detail.
 - c. After the publication of the announcement it shall not be amended. Minor corrections regarding typographic errors shall be allowed.
 - d. In case the specifications that have been published are insufficient or wrong and the Selection Committee verifies that the mistake is material, then the announcement shall be retracted, the procedure shall be nullified and a new announcement shall be published.
 - e. All bidders or potential bidders shall be able to request clarifications from the Selection Committee regarding the specifications of the procurement. The reply of the Selection Committee shall be published in its website and shall be communicated to all bidders at the same time.⁷²¹
7. Procurement applications/proposals shall be accepted without discrimination. The applications/proposals shall be submitted in a sealed container that shall remain sealed until the end of the deadline.
- a. There shall be no discrimination or unreasonable limitations on who will be able to submit a bid, as required under Articles 14, 16, and 24 of the Constitution of Iraq.
 - b. All bids shall be submitted sealed. They shall remain sealed until after the deadline of submission has expired.
 - c. The Selection Committee shall not disclose the names of the bidders before the expiration of the deadline.⁷²²
8. The Selection Committee shall open the container in an open meeting after the deadline for submissions has expired. The Selection Committee shall evaluate all proposals/applications and submit detailed recommendations to the Board of Commissioners.
- a. The Selection Committee shall keep written records of the entire procurement procedure.
 - b. These records shall include minutes of all meetings of the Selection Committee, copies of the bids, copies of correspondence with bidders and any other information relevant to the procedure.
 - c. These records shall be kept for at least five (5) years or until any possible litigation has been concluded.
 - d. These records shall be open to the public, to the extent that they do not compromise the integrity of the procedure and/or the trade and commercial secrets of the bidders.⁷²³

⁷²¹ *Id.* at 36.

⁷²² *Id.* at 30.

⁷²³ *Id.* at 89 ff.

9. Following the award of a contract, a Performance Committee⁷²⁴ shall be responsible to oversee the execution of the contract.
 - a. The Performance Committee shall make sure that the High Commission for Human Rights shall not pay the full price of the contract until the latter has been fully executed and the contractor has fulfilled all his/her obligations.
 - b. The Performance Committee shall agree with the Contractor a schedule of partial payments that shall be connected to the performance of the contractor. However, if partial payments are not appropriate for the specific contract due to its price or duration, the Performance Committee shall be responsible to agree any other procedure for payment.
 - c. The High Commission for Human Rights shall make sure that the agreed payments shall be made on time, unless there are exigent circumstances.
 - d. The Performance Committee shall have the obligations of record keeping.⁷²⁵
10. No procurements shall be split to circumvent the procurement process.
 - a. The High Commission for Human Rights shall be able to utilize restricted procurement procedures, such as direct awards, invitation to specific bidders, limitation to specific class of bidders etc.
 - b. These restricted procedures may be used for procurement for amounts less than [xx] and for other reasonable reasons.
 - c. The Selection Committee when deciding to use restricted procedures shall always justify the selection of restricted procedures.⁷²⁶
 - d. The Selection Committee shall apply reasonable and objective criteria for the selection of bidders in the case of restricted procedures.
 - e. The Selection Committee shall not split procurement in smaller parts in order to be able to apply restrictive procedures.

⁷²⁴ The Performance Committee plays a key role in monitoring progress in public procurement reforms, particularly in aid recipient countries. As seen with the OECD Development Assistance Committee Joint Venture such Performance Committees have the ability to work with multilateral and bilateral donor members and partner countries to access the performance and quality of public procurement systems in developing countries. Mechanisms such as baseline indicators, in addition to compliance and performance indicators, allow for Performance Committees to employ a consistent methodology. Fairness, transparency, and accountability are the central aims of such Performance Committees.

⁷²⁵ *Id.* at 41 ff.

⁷²⁶ *Id.* at 45-46.

SECTION 7: CONFLICT OF INTEREST AND CODES OF CONDUCT AND ETHICS

7.1 Overview

- The HCHR should develop procedures for declaring potential conflicts of interest among Commissioners and staff, including processes for recusal from decision-making.
- The HCHR should adopt Codes of Conduct and Ethics to be followed by Commissioners and HCHR staff, which provide guidelines for behaviors and sets out a culture of independence, transparency, and accountability within the Commission.

Conflict of Interest Declarations, along with Codes of Conduct and Ethics are tools that assist in broadening accountability, mitigating self-interest, and inspiring professional and ethical behavior among members of governmental and non-governmental organizations.⁷²⁷ Many governmental bodies, as well as corporations, independent commissions, and even universities utilize Codes of Conduct and Ethics, and many of the same organizations require Declarations of Conflicts of Interest.

A central reason that Declarations of Conflicts of Interest and Codes of Ethics and Conduct are important is that they lead to accountability.⁷²⁸ The development and inclusion of such codes and declarations in an organization augments public employees' awareness of ethical behaviors and practices⁷²⁹, which leads to an ethical climate.⁷³⁰

Codes of conduct, in contrast to codes of ethics, are prescriptive, providing guidance to members of government bodies and establishing sanctions for violations of the code. They contain a list of different types of behavior required in different circumstances. As such, codes of conduct are also more specific and practical than codes of ethics. When properly designed, codes of conduct play an important role in the establishment of integrity in organizations,⁷³¹ such as NHRIs. Clear and

⁷²⁷ Jeremy F. Plant, *Codes of Ethics*, in *Handbook of Administrative Ethics*, in *HANDBOOK OF ADMINISTRATIVE ETHICS* 309, 309 (Terry L. Cooper ed., 2000), [hereinafter Plant, *Codes of Ethics*].

⁷²⁸ Marry Ann Feldheim & Xiao Hu Wang, *Accountability through Ethics Enhancement Strategies: Empirical Evidence from American Cities*, 7 *INT. REV. OF PUB. ADMIN.* 77, 83 (2002) (“[E]thics enhancement strategies”, such as codes of conduct, “appear to significantly increase accountability in government.”), [hereinafter Feldheim & Wang, *Accountability through Ethics Enhancement Strategies*].

⁷²⁹ *Id.* at 79.

⁷³⁰ *Id.* at 83.

⁷³¹ James B. Bowman & Russell L. Williams, *Ethics in Government: From a Winter of Despair to a Spring of Hope*, 57 *PUB. ADMIN. REV.* 517, 525 (1997), [hereinafter Bowman & Williams, *Ethics in Government*].

unanimously agreed upon rules for proper conduct are the “ground on which successful ethics regimes can be built.”⁷³²

7.2 Key Recommendations

(A) Conflict of Interest Procedures

- The HCHR should develop procedures for declaring potential conflicts of interest among Commissioners and staff, as well as a standardized form for such declarations. The HCHR should consider publicizing such declarations on the Commission’s website in order to enhance transparency and accountability.
- The Office of Inspector General may be charged with monitoring and overseeing potential conflicts of interest and conducting regular inquiries, as necessary, among Commissioners and staff.
- The HCHR should also develop procedures for recusal from decision-making when a potential conflict arises, as well as steps to take if recusal within the BoC breaks quorum rules.
- Conflict of Interest declarations should consider personal, financial, political, and other interests that may harm the independence of the Commission, interfere with HCHR work, or create bias within the HCHR’s decision-making apparatus.

(B) Codes of Conduct and Ethics

- The HCHR should follow the trend set by other NHRIs and develop Codes of Conduct and Ethics to be followed by Commissioners and HCHR staff, which provides guidelines for behaviors and sets out a culture of independence, transparency, and accountability within the Commission.
- Codes of Conduct should consider, among other issues:
 - Conflicts of interest and recusal procedures;
 - Protocols relating to gifts and favors that may bias a member of the HCHR;
 - Use of HCHR property; and
 - Use of the HCHR reputation or authority for personal gain.
- Codes of Ethics should clarify that the primary commitment of Commissioners and HCHR staff is to advance human rights and fulfill the mandate of the Commission; that members of the HCHR shall respect human dignity and the principles of non-discrimination; that members will refrain from abusing authority or position; that they will stay informed about development in international human rights standards; and that HCHR members are duty-bound to respond to actual and impending human rights violations.

⁷³² Rick Stapenhurst & Riccardo Pelizzo, *Legislative Ethics and Codes of Conduct*, World Bank Institute Working Papers (2004), p. 18, [hereinafter Stapenhurst & Pelizzo, *Legislative Ethics and Codes of Conduct*].

7 (A) Conflicts of Interest Procedures

i. Overview

The BoC should consider developing a Declaration of Conflicts of Interest form and procedures for noting potential conflicts of interest as they arise. **Such procedures would require Commissioners to declare any interest in topics relating to the work of the Commission—including financial, political, and other interests—and make these declarations public.** Such an effort by the Commissioners would enhance public faith in the legitimacy of the institution, demonstrate the independence and commitment of the Commissioners, and protect against bias in Commission operations. The Office of Inspector General may be charged with monitoring and overseeing potential conflicts of interest and conducting regular inquiries, as necessary, among Commissioners and staff.

Conflict of Interest declarations should consider personal, financial, political, and other interests that may harm the independence of the Commission, interfere with HCHR work, or create bias within the HCHR's decision-making apparatus.

Furthermore, the BoC should consider procedures for recusal when a conflict arises in a meeting, and what steps to take if a recusal breaks quorum. The BoC may also wish to consider clearly outlining the personal, financial, political, social, and other interests that may harm the independence of the Commission, interfere with HCHR work, or create bias within the HCHR's decision-making apparatus. In developing such a policy, the approach adopted in **Ontario, Canada** is helpful, particularly for defining various types of conflicts of interest.

For example, a pecuniary conflict of interest may be said to exist where a member has a financial interest that may be affected by the resolution or treatment of a matter before the Commission. The financial interest may be that of the member, or of a family member or other person with whom the member has a close personal or professional relationship. Moreover, the Commission may wish to declare a monetary value, which, once exceeded, reporting and/or approval of receipt of cash or gifts is required. On the other hand, a non-pecuniary conflict of interest may be said to exist where a member has an association, relationship, or non-financial interest or activity that is incompatible with his/her responsibilities as an impartial decision-maker and as a member of the Commission. The relationships, interests, or activities of a close family member or close associate may raise a potential conflict for a member if they will be affected beneficially or detrimentally by the determinations of the Commission.

Further, the link between Commissioners' work and the financial or personal interests of their families and close associates is something the BoC may consider. Additionally giving primary responsibility to the Commissioners themselves may also be useful. In doing this,

the Commissioners will set a good example for other staff members. Finally, the consequences of any violation should be defined at the earliest possible opportunity. In deciding how to punish Commissioners, the BoC may wish to follow procedures used in other Iraqi Government departments.

ii. Law 53 Parameters

Conflict of interest regulations may include guidelines for what Commissioners do in conjunction with their service and public disclosure of any private interests they may have in the HCHR's decisions or activities. Iraq's Law 53 currently has no Conflict of Interest provisions apart from the general list of reasons for termination of a Commissioner's service.

iii. Comparative Models

Northern Ireland has perhaps the most detailed provisions relating to Conflicts of Interest. The Northern Ireland NHRI maintains a Register of Member Interests, which is updated annually.⁷³³ This Register is publicly available and lists the interests of all the Commissioners.⁷³⁴ Northern Ireland's attention to conflicts of interest also considers rules governing meetings where Commissioners have conflicts. If this situation arises, the Commissioner in question must declare his or her interest, and normally take no further part in proceedings and leave the room, if necessary.⁷³⁵ Should the Chairperson suffer a conflict he or she resigns for that discussion, and another member acts as Chairperson.⁷³⁶

The **Ontario Human Rights Commission** Code of Conduct also deals with Conflicts of Interest. The code defines conflicts broadly, covering both "pecuniary and non-pecuniary conflicts."⁷³⁷ A pecuniary interest is one in which a member "has a financial interest that may be affected by the resolution or treatment of a matter before the Tribunal."⁷³⁸ A non-pecuniary interest is one in which a member "has an association, relationship, or non-financial interest or activity that is incompatible with his/her responsibilities as an impartial decision-maker and as a member of the Tribunal."⁷³⁹ The Code also recognizes

⁷³³ See Northern Ireland Human Rights Commission, *Register of Interests of Commissioners and Senior Managers*, available at:

http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/78/Register_of_interests_2010-11_%28revised_February_2011%29.pdf.

⁷³⁴ *Northern Ireland Standing Orders*, *supra* note 57, at n. 29 ("The Commission will maintain a register, available for inspection by the general public, of the interests of Commissioners. The register will be updated annually, although Commissioners are obliged to notify the Commission of significant changes in their interests as soon as they occur.").

⁷³⁵ *Northern Ireland Standing Orders*, *supra* note 57, at n. 30.

⁷³⁶ *Id.* at n. 31.

⁷³⁷ Human Rights Tribunal of Ontario, *Code of Professional and Ethical Responsibilities* (R.S.O. 1990, c. H.19), art. 9, [hereinafter: *Ontario Code of Professional and Ethical Responsibilities*].

⁷³⁸ *Id.* at art. 10.

⁷³⁹ *Id.* at art. 11.

that a conflict can exist if a family member or close associate is the holder of a pecuniary or non-pecuniary interest.⁷⁴⁰ If this happens, the Commissioner is required to recuse or withdraw him or herself from any decision regarding the matter.⁷⁴¹ The code also sets out the requirements related to gifts, noting that generally they are not allowed.⁷⁴² The procedures to be followed should a member become aware of a conflict are also clearly set out.⁷⁴³

The primary responsibility for the identification of a conflict rests with the member.⁷⁴⁴ If the member realizes a conflict exists, they must report the conflict to the Chair.⁷⁴⁵ The Chair makes the decision whether to exclude the member from decision-making.⁷⁴⁶ If the member is not involved in making a decision on the matter, he or she must take no further part in any discussions of the matter.⁷⁴⁷ If a pecuniary conflict arises it must be reported to the Minister by the Chair.⁷⁴⁸ The code also describes the process should a conflict arise during a hearing.⁷⁴⁹ The member has a range of options including:

⁷⁴⁰ *Id.*

⁷⁴¹ *Id.* at art. 16-19 (“A member shall not mediate or adjudicate in any proceeding, or participate in Tribunal discussions of any matter in which the adjudicator, a family member or a close associate, has a financial interest. 17. A member shall not mediate or adjudicate in any proceeding, or participate in Tribunal discussions with respect to any matter, if s/he believes that a reasonable person could believe that his/her impartiality may be affected by a personal interest or by a relationship with one of the parties, a witness, or a representative.”).

18. *Id.* at art. 18 (“A member will not normally be eligible to conduct a mediation or adjudication involving a party or representative with whom s/he was formerly in a significant professional relationship until a period of one year has elapsed from the termination of the relationship.”).

19. *Id.* at art. 19 (“A member will not normally be eligible to conduct a mediation or adjudication involving a party or representative with whom s/he has a close personal or professional relationship. The appropriate response will vary depending on the facts, but in every case, the particular circumstances of the relationship, and the position of the other parties, should be considered carefully. If a member is in any doubt as to whether this rule applies, he or she should disclose the friendship or relationship to the parties, and invite submissions on whether to continue.”).

⁷⁴² *Id.* at 23 (“A member shall not accept money, awards or gifts from persons who may be, or have been affected by a Tribunal decision. Where a gift is, or may be perceived to be offered because of membership in the Tribunal, the Tribunal Chair must be advised forthwith. A member will normally be allowed to accept a small token gift offered as an honorarium for a speaking engagement. Other gifts should be returned immediately or delivered to the Chair for prompt action.”).

⁷⁴³ *Id.* at 28 (“It is the responsibility of each member to consider and actively inquire into any circumstance which might suggest a possible conflict of interest, or raise a perception of bias, in respect of any of his/her responsibilities. The member may at first be the only person in a position to recognize a possible conflict of interest or an issue of bias. As soon as identified, a member should take appropriate steps as outlined below.”).

⁷⁴⁴ *Id.*

⁷⁴⁵ *Id.* at 29.

⁷⁴⁶ *Id.*

⁷⁴⁷ *Id.*

⁷⁴⁸ *Id.* at 31.

⁷⁴⁹ *Id.* at 32-36 (“Where the member becomes aware during a proceeding of a possible conflict of interest, or of facts which may give rise to an apprehension of bias, and the related circumstances are unknown to the parties, the member may: advise the parties immediately of the possible conflict, or bias, and hear submissions on the issue; or recess the adjudication to consider the seriousness of the possible conflict, or

informing the parties, recusing him or herself, or making a determination on the issue.⁷⁵⁰ Finally, if a member fails to disclose a conflict, he or she may be subject to dismissal.⁷⁵¹

In many NHRIs, the Commissioners are prohibited from performing remunerative work of any kind while serving in their positions, as this may lead to conflicts over time.⁷⁵² In **Tanzania**, on appointment, a Commissioner who holds one of a preordained list of positions must vacate the position.⁷⁵³ A person appointed as a Commissioner is not allowed to perform professional business while serving as a Commissioner.⁷⁵⁴ In **Australia**, Commissioners “must not, except with the approval of the Minister, engage in paid employment outside the duties of the office of Commissioner.”⁷⁵⁵

7(B) Codes of Conduct and Ethics

i. Overview

A **Code of Conduct** may consist of standards such as:

- (a) A member shall not mediate or adjudicate in any proceeding, or participate in Commission discussions of any matter in which the adjudicator, a family member or a close associate, has a financial interest.

bias, and whether it is appropriate to inform the parties of the circumstances and hear submissions. 33. Circumstances, which may raise a conflict of interest, or a perception of bias, should be disclosed to parties and representatives as soon as known unless the member determines, upon reflection, that the potential issue is trivial and of no significance. A member should consult Counsel to the Chair or the Chair, before making this determination, and in any event shall add a note to the file indicating the issue and its resolution. 34. Once a mediation or the adjudicative process has begun, determinations on issues of conflict or bias are for the member to make. However, given that allegations of conflict and bias affect the credibility and integrity of the Tribunal as a whole, a member whose neutrality is challenged should inform the Chair of the nature of the allegations made. 35. Where an allegation of conflict of interest, or bias, is raised by a party during an adjudication or mediation, the member may: resign from the proceeding immediately; hear submissions from the parties with respect to the alleged conflict, or bias, and reserve to consider the submissions; or schedule a time for submissions on the allegation of conflict or bias. 36. Where a member has heard submissions with respect to an issue of conflict or bias it will be advisable, in most cases, for the member to release a written decision determining the issue.”).

⁷⁵⁰ *Id.*

⁷⁵¹ *Id.* at 37.

⁷⁵² See, e.g., *Namibia Ombudsman Act*, *supra* note 203, at § (2)4 (“The Ombudsman or his or her deputy shall not perform or commit himself or herself to perform remunerative work outside his or her official duties without the permission of the President.”).

⁷⁵³ *Tanzania Act*, *supra* note 65, at § 9(1) (... “a person appointed a Commissioner is required to vacate, on appointment as a Commissioner- a person holding any of the following offices shall forthwith vacate that office...:Member of Parliament, member of House of Representatives, speaker of national assembly, office of speaker of house, judge or judicial office, civil service, electoral commission, local government authority or office in service of local government authority, other public office.”).

⁷⁵⁴ *Id.* at § 3(3).

⁷⁵⁵ *Australia Human Rights Act*, *supra* note 213, at art. 46(g).

- (b) A member shall not mediate or adjudicate in any proceeding, or participate in Commission discussions with respect to any matter, if she or he believes that a reasonable person could believe that his or her impartiality may be affected by a personal interest or by a relationship with one of the parties, a witness, or a representative.
- (c) A member shall not adjudicate in any proceeding in which the outcome may have an impact on any other legal proceeding in which the member has a significant legal interest.
- (d) A member shall not accept money, awards or gifts from persons who may be, or have been affected by a Commission decision. Where a gift is, or may be perceived to be offered because of membership in the Commission, the Commission Chair must be advised forthwith. A member will normally be allowed to accept a small token gift offered as an honorarium for a speaking engagement. Other gifts should be returned immediately or delivered to the Chair for prompt action.
- (e) A member shall not appear before the Commission as an expert witness or as an agent, or representative, for a party.
- (f) A member must not take improper advantage or seek personal benefit from information obtained through his or her official duties, and not generally available to the public.
- (g) A member shall ensure that government property is used only for officially approved activities and shall not use Commission letterhead for personal purposes.

Likewise, **Code of Ethics** adopted by the HCHR may resemble the following:

- (a) The primary commitment of the Iraqi High Commission for Human Rights (The Commission) and the members of the Commission is to the human rights of the individuals, communities and peoples of Iraq; in cases of professional dilemma or uncertainty, this commitment shall be the fundamental consideration
- (b) The members of the Commission are obliged to respect and promote the fundamental dignity of every human being based on the principles of equality and nondiscrimination on the grounds of race, color, gender, sexual orientation, language, religion, opinion, national or social origin, disability, age, property, birth or other status.
- (c) The members of the Commission have a duty to respond to actual and impending human rights violations that they confront and to alert relevant organizations and, where appropriate, government authorities and other potential actors.

- (d) The members of the Commission shall be aware of any power or privilege that their position commands and refrain from abusing their status, especially in relations with members of the local community.
- (e) The members of the Commission are obliged to stay informed about recent developments in international human rights standards, and to practice the profession accordingly.

It should be noted that the suggested rules above apply to all members of the Commission: the Chair, Deputy Chair, all Commissioners, and all officers, staff and individuals tasked as agents of the High Commission for Human Rights. The above would govern the conduct of members from the commencement of their term of appointment and their continuing responsibilities as members after completion of their term. However, the above may be amended to reflect the developing experience of the Commission and its members.

ii. Law 53 Parameters

Law 53 requires Commissioners to take an oath of office⁷⁵⁶ and sets out the reasons for which a Commissioner may be terminated.⁷⁵⁷ Law 53 does not provide a code of conduct that offers more specificity regarding ethical and behavioral responsibilities during tenure.

iii. Comparative Models

Tanzania's Code of Conduct requires Commissioners to take a number of different oaths, including an oath of allegiance.⁷⁵⁸ The oaths are sworn in addition to requirements under

⁷⁵⁶ *Iraqi Law No. 53*, art. 9 ("The Chairperson and the members of the BoC shall take the following oath before the Council of Representatives: 'I swear by God Almighty to honestly, devotionally and sincerely perform my legal and professional responsibilities and accomplish the functions assigned to me independently and neutrally and Allah is witness over what I say'").

⁷⁵⁷ *Id.* at art. 8 (15)(1) ("The membership of the Chairperson and members of the BoC shall end for one of the following reasons: 1. Resignation., 2. Death, 3. Retirement., 4 Removal from office. 5. Proven incompetence., 6. Absence from three consecutive meetings without reasonable excuse., 7. It is proved that the information he provided upon assuming office was false., 8. It is proved that he is unable to perform the functions of his job due to mental or physical disability., 9. Conviction of a dishonorable crime."); art. 15(2) ("The chairperson shall submit the recommendation to terminate membership to the Council of Representatives. The recommendation shall be approved by absolute majority as per the cases set out in Article 15/First of this Law."); art. 15(3) ("The Chairperson shall be discharged from his position through a decision taken by the Council of Representatives by absolute majority upon the request of the BoC for one of the reasons mentioned in Article 15/First of this Law."); art. 15(4) ("The Council of Representatives has the right to question the Chairperson of the BoC in accordance with to the procedures followed with the questioning of ministers as set out in the Constitution.").

⁷⁵⁸ *Tanzania Act*, *supra* note 65, at § 12 ("(1) Every Commissioner and the secretary of the Commission shall, before entering upon the duties of his office, take and subscribe the oath of allegiance and the oath for the due discharge of the functions of his office set out in the Schedule to this Act, which oaths shall be administered by the President. (2) Every person appointed to an office under the Commission shall before

the Tanzanian Code of Ethics and Conduct for the Public Service, which sets out the standards to which all public servants are held.

Algeria requires that Commissioners show solidarity to implement the NHRI's recommendations, make an effective contribution to the commission's work, maintain confidentiality, perform their obligation of reserve duty, respect the bylaws of the NHRI, and not use membership in the commission for ends incompatible with the mission's goals.⁷⁵⁹

Ontario's human rights commission Code of Conduct has a useful provision related to the use of NHRI property for personal matters. Commissioners must use such property for "officially approved activities" and must not use official letterhead for personal purposes.⁷⁶⁰

entering upon the duties of his office, take and subscribe the oath of secrecy set out in the Schedule to this Act, which oath shall be administered by a Commissioner.”).

⁷⁵⁹ *Algeria Regulations*, *supra* note 26, at art. 5 (“Le membre de la Commission est astreint aux obligations suivantes : engagement à défendre et à promouvoir les droits de l'Homme, solidarité dans la mise en oeuvre des recommandations de la Commission, contribution effective à l'application du programme d'action de la Commission, préservation du secret des délibérations et des dossiers examinés, observation du devoir de réserve, — respect des dispositions du règlement intérieur, — non-utilisation de la qualité de membre à des fins incompatibles avec les missions de la Commission.”).

⁷⁶⁰ *Ontario Code of Professional and Ethical Responsibilities*, *supra* note 737, at art. 27.

Appendix IX: Conflict of Interest and Confidentiality Certification

I. Confidentiality

I agree not to discuss the inter-workings of the Iraqi High Commission for Human Rights. I understand that confidentiality extends to conversations, meetings, phone calls, e-mails, deliberations, decisions, and the like and that such confidentiality is not limited to the above situations. Confidentiality shall exist even upon termination, removal, and/or voluntary leave from the High Commission for Human Rights. Information ascertained while serving on the Iraqi High Commission for Human Rights is protected and shall not be used for personal gain at any time whether separated or still affiliated with the Iraqi High Commission for Human Rights.

II. Conflicts of Interest

I hereby certify that, to the best of my knowledge, I do not have a conflict of interest and that my particular circumstances are not likely to raise the appearance of a conflict of interest, impropriety, or the appearance of impairment of objectivity with respect to any matter I am asked to review or comment on. For the purposes of this agreement, I understand that a financial interest may include, although is not limited to, employment, gifts, investments, real property, stock ownership, a creditor or debtor relationship, or prospective employment with one who may appear before the Iraqi High Commission for Human Rights. An appearance of impairment of objectivity could result from, and organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from a non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

I also recognize that I will be considered to have a financial or other interest, and therefore a conflict of interest, if any of the following are somehow involved in financial matters that related to or can be linked to the Iraqi High Commission for Human Rights:

- (1) I, my spouse, minor child, or general partner;
- (2) A profit or non-profit organization in which I serve as an officer, director, trustee, general partner, or employee; or
- (3) Any person or organization with which I am negotiating or having a relationship concerning employment, including consultantship, or a part employer (within the last year).

I recognize that this certification is a continuing representation. I acknowledge that it is in effect at all times until I have completed all of the work performed by me under this agreement.

If I discover that I might have a conflict of interest, might present a conflict of interest, or might have an appearance of impairment of objectivity, I will immediately inform the relevant official and refrain from further work until authorized to continue.

I also understand that my views as a Commissioner will be protected from disclosure to the extent permitted by law.

Printed Name	Signature	Date	
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Appendix X: Conflict of Interest Disclosure Form

Name (please print)

Date

Rank/Position

It is the policy of the Iraqi High Commission for Human Rights to address how issues of actual, potential and perceived conflicts of interest involving trustees, officers, and employees of the Commission should be identified, disclosed and managed. This form is designed to identify and disclose known conflicts in an effort to properly manage them.

I have read the Iraqi High Commission for Human Rights Conflict of Interest policy and understand that as an affiliate of the Commission it is my obligation to act in a manner which promotes the best interests of the Commission and the wellbeing of Iraqi citizens and to avoid conflicts of interest when making decisions and taking actions on behalf of the Commission and/or the people of Iraq.

My answers to this disclosure form are correctly stated to the best of my knowledge and belief. Should a possible conflict of interest arise in my responsibilities to the Commission, I recognize that I have the obligation to notify, based on my position, the appropriate designated individual, and to abstain from any participation in the matter until the Commission can determine whether a conflict exists and how that conflict shall be resolved. If any relevant changes occur in my affiliations, duties, or financial circumstances, I recognize that I have a continuing obligation to file an amended "Conflict of Interest Disclosure Form" with the appropriate designated office.

I understand that the information on this form is solely for use by the Commission and is considered confidential information. Release of this information within the Commission will be on a need-to-know basis only. Release to external parties will be only when required by law and/or national regulations.

Signature

Date

Please complete the following questions, and submit this form to the appropriate designated individual.

1. Are you or a member of your immediate family an officer, director, trustee, partner (general or limited), employee or regularly retained consultant of any company, firm or organization that presently has dealings with the Commission or which might reasonably be expected to have dealings with the Commission in the coming year?

_____Yes _____No

If yes, please list the name of the company, firm or organization, the position held, and the nature of the business which is currently being conducted with the Commission or which may reasonably be expected to be conducted with the Commission in the coming year:

2. Do you or does any member of your immediate family have a financial interest, direct or indirect, in a company, firm or organization which currently has dealings with the Commission or which may reasonably be expected to have such business dealings with the Commission in the coming year?

_____Yes _____No

If yes, please list the name of the company, firm or organization, the nature of the interest and the name of the person holding the interest, and the nature of the business which is currently being conducted with the Commission or which may reasonably be expected to be conducted with the Commission in the coming year:

3. Do you or does any member of your immediate family have a financial or personal interest in an entity in which the Commission has a financial or other vested interest.

_____Yes _____No

If yes, please provide details below:

4. Have you or an immediate family member accepted gifts, gratuities, lodging, dining, or entertainment that might reasonably appear to influence your judgment or actions concerning the business of the Commission? _____Yes _____No

If yes, please provide details below:

5. Do you have any other interest or role in a firm or organization, where that interest or relationship might reasonably be expected to create an impression or suspicion among the public having knowledge of your acts that you engaged in conduct in violation of your trust as an affiliate of the Commission? _____Yes _____No

If yes, please provide details below:

Appendix XI: Possible HCHR Code of Conduct and Ethics⁷⁶¹ and Conflict of Interest

I. Introduction

1. The Code of Conduct and Ethics (The *Code*) shall govern the professional and ethical responsibilities of members of the Iraqi High Commission for Human Rights, including Commissioners, Permanent Staff, Seconded Staff, Temporary and Contract Staff.
2. The rules cover the primary areas of member responsibility, including: the conduct of mediations, adjudications and decision-making, as well as the institutional responsibilities of members to colleagues, to the Chairperson, and to the Commission itself.
3. The *Code* has been developed to elaborate the responsibilities of the Oath under Article 9 of the HCHR Law and advance the integrity, competence, and effectiveness of the Commission.
4. The rules contained in this *Code* are intended to assist members of the Commission by establishing appropriate standards of conduct in typical circumstances. However, the Code cannot anticipate all possible circumstances in which members may be called upon to exercise judgment as to the appropriate standard of conduct and ethics. It remains the responsibility of the member to consider the appropriate ethical standard and to conduct him/herself in an ethical and professional manner. A member who wishes to discuss a particular circumstance may do so with the Chairperson of the Commission.

II. Application of this Code

1. The rules in this *Code* apply to all members of the Commission: the Chair, Deputy Chair, all members, and all staff and individuals tasked as agents of the High Commission for Human Rights.
2. The *Code* governs the conduct of members from the commencement of their term of appointment and their continuing responsibilities as members after completion of their term.
3. The *Code* may be amended to reflect the developing experience of the Commission and its members.

III. Guiding Principles⁷⁶²

⁷⁶¹ Modified from the Human Rights Tribunal of Ontario, *Human Rights Code*, (R.S.O. 1990, c. H.19) *Code of Professional and Ethical Responsibilities*.

⁷⁶² Consolidating the Profession: The Human Rights Field Officer, the report from which these guiding principles were taken, is an international, inter-institutional project led by Management Board members The University of Nottingham Human Rights Law Centre; the Office of the United Nations High Commissioner for Human Rights; the European Inter-University Centre for Human Rights and

1. The primary commitment of the Iraqi High Commission for Human Rights (The *Commission*) and the members of the Commission is to the human rights of the individuals, communities and peoples of Iraq; in cases of professional dilemma or uncertainty, this commitment shall be the fundamental consideration.
2. The members of the Commission are obliged to respect and promote the fundamental dignity of every human being based on the principles of equality and nondiscrimination on the grounds of race, color, gender, sexual orientation, language, religion, opinion, national or social origin, disability, age, property, birth or other status.
3. The members of the Commission have a duty to respond to actual and impending human rights violations that they confront and to alert relevant organizations and, where appropriate, government authorities and other potential actors.
4. The members of the Commission shall be aware of any power or privilege that their position commands and refrain from abusing their status, especially in relations with members of the local community.
5. The members of the Commission are obliged to stay informed about recent developments in international human rights standards, and to practice the profession accordingly.

CONFLICT OF INTEREST

IV. Definitions

1. A 'conflict of interest' is any interest, relationship, association or activity that is incompatible with the member's obligations to the Commission.
2. A 'conflict of interest' is defined for the purpose of this Code to include both pecuniary and non-pecuniary conflicts.⁷⁶³
3. A '**pecuniary conflict of interest**' will exist where a member has a financial interest that may be affected by the resolution or treatment of a matter before the Commission. The financial interest may be that of the member, or of a family member or other person with whom the member has a close personal or professional relationship. Moreover, the

Democratisation; the University of Pretoria Human Rights Centre; the Scuola Superiore Sant'Anna; Mr. Roberto Garretón; and Professor Vitit Muntarbhorn. See http://www.humanrightsprofessionals.org/images/statement%20of%20ethical%20comments_nov%2028%202007_website.pdf.

⁷⁶³ See UNHCR Regulations 1.2 (e) (f) (g) (h) (k) (m) (n) (q), 1.3 (b) Rule 101.2 (i) (j) (k) (m) (p) (q), paras 8, 12, 21, 22, 41-47

Commission may wish to declare a monetary value, which, once exceeded, reporting and/or approval of receipt of cash or gifts is required.⁷⁶⁴

4. A '**non-pecuniary conflict of interest**' will exist where a member has an association, relationship, or non-financial interest or activity that is incompatible with his/her responsibilities as an impartial decision-maker and as a member of the Commission. The relationships, interests or activities of a close family member or close associate may raise a potential conflict for a member if they will be affected beneficially or detrimentally by the determinations of the Commission.
5. A 'conflict of interest', as defined above, is incompatible with neutral mediation or adjudication of issues that arise before the Commission. The test as to whether or not the member should be disqualified, or disqualify him or herself from mediating or adjudicating in a matter is whether or not the facts could give rise to a reasonable apprehension of conflict of interest, or bias, in the mind of a reasonable and informed person. A conflict of interest is and shall be viewed as an injury to the integrity of the Commission.⁷⁶⁵
6. A close professional relationship includes, but is not limited to: employment, solicitor/client, and partnership/association or employment in a law firm.

V. Rules of Conduct

1. To minimize the likelihood of conflict of interest situations arising, each member is required to complete an undertaking⁷⁶⁶.
2. A member shall not mediate or adjudicate in any proceeding, or participate in Commission discussions of any matter in which the adjudicator, a family member or a close associate, has a financial interest.
3. A member shall not mediate or adjudicate in any proceeding, or participate in Commission discussions with respect to any matter, if s/he believes that a reasonable person could believe that his/her impartiality may be affected

⁷⁶⁴ *OSCE Code of Conduct*. Appendix 1. "OSCE officials shall not use or attempt to use their position for private advantage and shall not accept any gratuity or gift which goes beyond simple courtesy. In connection with their appointment or assignment to the Secretariat, their respective Institution or Mission, staff/mission members shall not receive any honour, decoration, favour or gift greater in value than EUR 40 from any Government or from any source external to the OSCE without prior authorization of the Secretary General and their respective Head of Institution/Mission."

⁷⁶⁵ *Id.*

⁷⁶⁶ See the following for examples of sample undertakings forms:

<http://www.fppc.ca.gov/forms/700-10-11/Form700-10-11.pdf> and
http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/devo1_002569.pdf.

by a personal interest or by a relationship with one of the parties, a witness, or a representative.

4. A member shall not adjudicate in any proceeding in which the outcome may have an impact on any other legal proceeding in which the member has a significant legal interest.
5. A member shall not accept money, awards or gifts from persons who may be, or have been affected by a Commission decision. Where a gift is, or may be perceived to be offered because of membership in the Commission, the Commission Chair must be advised forthwith. A member will normally be allowed to accept a small token gift offered as an honorarium for a speaking engagement. Other gifts should be returned immediately or delivered to the Chair for prompt action.
6. A member shall not appear before the Commission as an expert witness or as an agent, or representative, for a party.
7. A member must not take improper advantage or seek personal benefit from information obtained through his or her official duties, and not generally available to the public.
8. A member shall ensure that government property is used only for officially approved activities and shall not use Commission letterhead for personal purposes.

VII. Procedural Protocol

1. It is the responsibility of each member to consider and actively inquire into any circumstance which might suggest a possible conflict of interest, or raise a perception of bias, in respect of any of his/her responsibilities. As soon as identified, a member should take appropriate steps as outlined below.
2. Where a member becomes aware, prior to accepting an assignment for a particular matter, or prior to commencing the assignment, that circumstances exist that suggest a possible conflict of interest on his or her part, or that may raise a perception of bias, s/he will inform the Chairperson. If the Chairperson determines that the circumstances would not prevent the member from performing his duties without bias, the member may continue to perform.
3. Where a member declares a pecuniary conflict of interest in respect of a matter before the Commission, the Chairperson is required to ensure the conflict is recorded and noted in the official records of the Commission.
4. Circumstances which may raise a conflict of interest, or a perception of bias, should be disclosed to parties and representatives as soon as known unless the member determines, upon reflection, that the potential issue is trivial and of no significance. A member should consult the Chair before making

this determination, and in any event shall add a note to the file indicating the issue and its resolution.

5. Failure to declare an actual conflict of interest (other than a bona fide error of judgment) may result in the Chair recommending revocation of a member's appointment.

VIII. Conduct of a Proceeding

1. A member shall show respect for the parties, representatives, witnesses, and for the processes of the High Commission for Human Rights itself, through his/her demeanour, timeliness, and conduct throughout the proceeding.
2. A member must demonstrate a high degree of sensitivity to issues of gender, ability, race, language, culture, religion, and analogous personal characteristics, which may affect the conduct of a proceeding. Such issues may, for example, affect the method of receiving evidence, the scheduling and time of proceedings, the attire of the participants, among other things. In considering the demeanour of a complainant or witness in the context of an assessment of credibility, the member should recognize that s/he might not be familiar with cultural norms affecting the manner of the witness.
3. A member shall endeavour to ensure that Commission processes are accessible and barrier-free for all parties.

IX. Collegial Responsibilities⁷⁶⁷

1. To Other Members
 - i. A member shall, through his/her conduct, endeavour to promote collegiality among Commission members and with Commission staff.
 - ii. A member will make him/herself available on a timely basis for consultation or discussions initiated by a member on any policy, legal, or procedural issue.
 - iii. In discussions and consultations with other Commission members, a member will conduct him/herself in a manner that demonstrates respect for the views and opinions of colleagues.
 - iv. A member will not comment publicly on a decision of a colleague, or on the manner in which another member has conducted him/herself during a proceeding.
2. To Commission Chair
 - i. Each member is responsible to the Chairperson for adherence to this *Code*. The interpretation and enforcement of the rules are matters within the authority of the Chairperson. It is recognized that failure

⁷⁶⁷ See also Code of Conduct for Alberta Human Rights & Citizenship Commissioners Panel Process.

to comply may result in the Chairperson recommending against reappointment of a member.

- ii. A member will make him/herself available to meet with the Chairperson on a timely basis when requested to do so.
- iii. A member will inform the Chair immediately of any basis on which an allegation of bias or conflict might be raised with respect to any activity, interest or relationship of the member.
- iv. When a member becomes aware of conduct of a colleague that may threaten the integrity of the Commission or its processes, it is the duty of the member to advise the Chairperson of the circumstances as soon as practicable.

3. To the Commission

- i. A member shall maintain a high level of expertise issues addressed by the Commission and mandated under the HCHR Law, as well as in the relevant law in the area of human rights.⁷⁶⁸
- ii. A member will make every effort to comply with the policies, procedures and standards established for the Commission. These will include, for example, rules regarding permissible expenditures, documentation of expenses, travel and accommodation, as well as procedural rules and practice directions governing the conduct of proceedings.
- iii. Upon appointment to the Commission, a member will review with the Chairperson all organizational memberships. Commission members' participation in organizations, either as regular members or in an executive or leadership role, must not raise issues of actual or perceived bias either personally or institutionally in respect of issues coming before the Commission or within its mandate. Commission members must not use their position on the Commission to the benefit of organizations of which they are a member.
- iv. A member will not publicly criticize the decisions procedures, or structures of the Commission.
- v. A member will make him/herself available to participate, as assigned, in Commission functions and activities, such as training, participating in committees, developing Commission procedures and policies.

⁷⁶⁸ See also UN HRC. Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council. Article 3: General Principles of Conduct.

- vi. A member shall not divulge confidential information unless legally required to do so, or appropriately authorized to release the information. A member shall not engage in conduct that exploits his/her position of authority.

X. Political Activities

- 1. Commission members may not be affiliated with a political party, as required under Article 8 of Law No. 53 of 2008. Affiliation with a political party is defined as any activity in support of or in opposition to a national or provincial political party, anything in support of or in opposition to a candidate in a national, provincial or district election, being or seeking to become a candidate in a national, provincial or district election; and commenting publicly and outside the scope of the duties of the member's position on matters that are directly related to those duties and that are dealt with in the positions or policies of a national or provincial political party or in the positions or policies publicly expressed by a candidate in a national, provincial or district municipal election.

XI. Post-Term Responsibilities⁷⁶⁹

- 1. A member shall not take improper advantage of past office after ceasing to be a member of a Commission.

⁷⁶⁹ See also *Code of Conduct for Members of the Canadian Human Rights Tribunal* ("Members shall not act, after their term has expired, in a way that takes improper advantage of their previous office. In particular, no former Member shall appear as counsel for a party before the Tribunal for one year following the later of (a) the end of the Member's term; (b) the discharging of the member's last adjudicative function under the Act. ").