



INSTITUTE FOR INTERNATIONAL LAW & HUMAN RIGHTS

**CRITERIA FOR SELECTING
COMMISSIONERS
OF
THE HIGH COMMISSION FOR HUMAN RIGHTS
OF IRAQ**

COMPOSITION and MECHANISM OF SECRETARIAT

Prepared by the Institute for International Law and Human Rights

JUNE, 2009

CONTENTS

I. Introduction	3
II. Criteria for Selection of Committee of Experts	3
III. Selection Criteria for HCHR Commissioners	3
A. Language Requirements	4
B. Educational Requirement	4
C. Human Rights Experience	5
IV. Composition of the HCHR	5
V. Appendix 1—Country Examples for Selection Criteria of HCHR Commissioners	
Canada	7
A. Afghanistan	8
B. New Zealand	8
C. Kenya	9
VI. Appendix 2—Country Examples for Composition of the HCHR	
Australia	10
D. Afghanistan	10
E. Canada	11
F. Kenya	11

I. INTRODUCTION

The establishment of the High Commission for Human Rights (HCHR) in Iraq can strengthen democracy and guarantee the protection of the civil, political, economic and social rights of all Iraqis. The process of establishing the High Commission must therefore be expeditious, efficacious, and conscious of best practices. IILHR has developed the following criteria to assist the Committee of Experts in selecting Commissioners for the HCHR and in establishing the composition of the Commission. Suggested criteria are based on international practice.

Please note that this is only an overview of basic criteria, and that IILHR staff are available to answer any questions or discuss pertinent issues relating to this paper in much more detail.

II. CRITERIA FOR SELECTION OF COMMITTEE OF EXPERTS

Article 7 of the Law on the High Commission for Human Rights (HCHR) calls for the Council of Representatives (CoR) to “form a committee of experts not to exceed 15 members including representatives from CoR; Council of Ministers (CoM); Higher Judicial Council (HJC); Civil Society Organizations (CSOs); and the UN Office for Human Rights in Iraq of UNAMI, to select commissioners by means of a national communique’.”¹

In a draft on the Nomination and Selection of Members of the HR Commission of November 23, 2008, Sheik Al-Haidary, Chair of the Human Rights Committee at CoRsuggests that each of the entities mentioned in Article 7 nominate three representatives, with CoR nominating two members from its Human Rights Committee and one member from its Legal Committee. The 15 members of the committee of experts shall then be responsible for selecting the nominees for the HCHR.

As the Committee of Experts will be tasked with examining the qualifications of those nominated to serve as HCHR commissioners, **it may be desirable for Selection Committee members to possess, where possible, professional experience in the fields of law, human rights, or social sciences.** Such experience is consistent with international practice regarding the qualifications of human rights commissioners themselves. Additionally, it may also be desirable for members of the Committee of Experts to represent different political parties as much as is possible.

In South Africa, for example, though subsequently repealed by the later Constitution, ² section 115(3) of the Constitution of 1993 states that commissioners for the human rights commission shall be “nominated by a joint committee of the Houses of Parliament

¹ Law on the High Commission for Human Rights (HCHR), art. 7, No. 35 (2008) (Iraq).

² Constitution of the Republic of South Africa, No. 108 (1996), <http://www.info.gov.za/documents/constitution/1996/index.htm>.

composed of one member of each party represented in Parliament and willing to participate in the committee.”³

III. SELECTION CRITERIA FOR HCHR COMMISSIONERS

Article 8 of the HCHR Law states that” the Council shall be composed of 11 permanent and 3 backup members selected from those previously nominated by the Committee” and that conditions for Council membership shall include:

- Iraqi citizenship with permanent residency in Iraq;
- age not less than 35 years;
- holding at the minimum a bachelor’s degree;
- experience and competence in human rights;
- no affiliation with any political organizations or be prohibited from Council membership in accordance with provisions of the law of Accountability and Justice;
- being of good moral character and not previously charged with breach of ethics.⁴

Article 8 also requires that women compose not less than one-third of the number of members and that there shall be at least one permanent and one back-up member of the Council who is a member of a minority group.

Though Article 8 enumerates many characteristics an HCHR commissioner must possess, several criteria may be expounded. **According to international practice, advanced degrees in law or related fields are considered an asset, as is a working knowledge of official state languages. Knowledge of one or more of the languages of international diplomacy, such as English or French, may also be useful. Additionally, experience in the field of human rights is a necessity. Experience should be such that it has provided a nominee with an understanding of Iraqi law; international human rights treaties to which Iraq is a party; the racial, ethnic, and cultural situation within the country; and leadership skills. Commissioner selection criteria also typically require that the nominee have no past record of ethical or other violations and that he or she resign from other public offices held to avoid conflict and ensure the independence of the Commission.**

IILHR examined the qualifications of human rights commissioners from Kenya, South Africa, Afghanistan, Bosnia and Herzegovina, Canada, Australia, New Zealand, Uganda, and Morocco, for trends in the areas of language skills, education, and professional experience. Those trends are enumerated below for the consideration of the Committee of Experts.

³ Constitution of the Republic of South Africa, sec. 115(3), No. 200 (1993), <http://www.info.gov.za/documents/constitution/93cons.htm#SECTION115>.

⁴ *Id* at art. 8.

A. Language Requirements

The Committee of Experts may wish to consider **adding a language requirement to its selection criteria**. Canada, for example, suggests that knowledge of both official languages of the state (English and French) is an asset for selection. Members of the committee of experts may wish to require nominees for the position of commissioner to be competent in both Kurdish and Arabic and one or more other languages including, but not limited to English or French. Knowledge of multiple languages would facilitate relations with non-governmental human rights groups operating within Iraq and international human rights organizations.

B. Educational Requirements

According to international practice, the following educational experience among human rights commissioners is desirable:

- An advanced degree in law (such as an LLM, JD, or MA) is the most common degree held by human rights commissioners in the countries examined;
- An advanced degree (such as an MA, PhD, MD or D. Phil) in Political Science, Gender and Development, Public Policy, International Relations, Medicine, Health, Education, and Post-War Recovery are also common;
- Lesser degrees (such as a BA or LLB) in the fields of law and international relations are also present, though not as common as post-graduate degrees.

C. Human Rights Experience

According to international practice, the following professional experience among human rights commissioners is desirable:

A minimum of five to ten years experience in the following fields:

- Human rights law;
- Judge or magistrate
- Senior position in a government ministry or council related to human rights, such as the Ministry of Women's Affairs, the Ministry of Child and Family Services, the Ministry of Education, or the National Council for People with Disabilities;
- Senior position in a national or international human rights or legal organization such as UNICEF, Global Rights, Center for Law and Research International (CLARION), the Cooperation Center for Afghanistan, or the Institute for Education and Democracy;
- Professor of law, women's studies, or politics;
- Elections monitoring
- Senior position

Many human rights commissioners for the countries examined had also published research papers on human rights, politics, employment, or property rights in peer-reviewed journals.

IV. COMPOSITION OF THE HCHR

According to international practice, human rights commissions typically consist of:

- a chairperson, chief commissioner, or president;
- a deputy chair, chief, or vice president;
- a secretary; and
- other specified commissioners or members (such as an advisory body).

In some countries, like Kenya, Bosnia-Herzegovina, and Canada, commissioners who are not in leadership positions may be tasked to head various committees established under the authority of the Commission. In other countries, like Australia, each commissioner is specially designated. Australia's Human Rights Commission, for example, consists of:

- a President;
- a Human Rights Commissioner;
- the Race Discrimination Commissioner;
- the Aboriginal and Torres Strait Islander Social Justice Commissioner;
- the Sex Discrimination Commissioner; and
- the Disability Discrimination Commissioner.⁵

Based on the diversity of Iraq's population, the committee of experts may wish to consider adopting a model similar to that of Australia and designate, for example, a Commissioner of Sex Discrimination, a Commissioner of Disability Discrimination, a Minority Social Justice Commissioner, and so on.

⁵ Human Rights and Equal Opportunity Commission Act, art. 8, No. 125 (1986) (Austl.), <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/frameLodgmentattachments/C5903F3A68E87093CA257140001ACE6A>.

APPENDIX 1

Selection Criteria for HCHR Commissioners

Country Examples

The following country examples provide excerpts from the human rights commission enabling legislation of several countries which relate to the selection criteria for commissioners and may be considered by the committee of experts when selecting nominees for the HCHR:

A. CANADA

Education

- A degree from a recognized university in a relevant field of study or an acceptable combination of education, job-related training and/or experience;
- A law degree would be an asset;

Experience

- Minimum of five years professional experience:
- as a decision maker in a quasi-judicial administrative tribunal; or
 - in presenting cases before a quasi-judicial administrative tribunal; or
 - in the field of human rights or research and writing in social sciences or law, or an acceptable combination of relevant experience in other fields;
- Experience in developing and maintaining effective liaison with a broad range of stakeholders, such as non-governmental organizations, the media, the public at large and policy makers at all levels, in the fields of human rights, social sciences, law or other fields;

Knowledge

- Knowledge of the mandate, mission, vision and values of the CHRC as well as the role of Members;
- Knowledge of human rights issues and principles of natural justice;
- Knowledge of social issues that have potential human rights implications; and
- Knowledge of the issues and challenges arising from the diversity of Canadian society;

Behavioral Competencies

- Engagement;
- Communication and conceptual thinking;
- Decision making;
- Cooperative problem solving;
- Judgment/analytical thinking; and
- Organizational skills.

Personal Suitability

- Strong ethical standards and integrity;
- Respect, fairness and reliability;
- Tact and discretion;
- Adaptability and flexibility;
- Team player; and

-
- Intellectual rigor;

Working Conditions

- Candidates must be willing to travel to [the location of the seat of the Commission] on an average [x number of days per month], and elsewhere in [Iraq] occasionally;

Language Requirements

- Proficiency in both official languages would be an asset.⁶

B. AFGHANISTAN

Members of the Commission and the Board of Professional Advisors shall have the following qualifications:

1. Afghan Citizenship;
2. Twenty five years of age;
3. Not being deprived of political and civil rights by a competent court;
4. Higher educational background in law, human rights law Islamic Jurisprudence or an academic background in other fields of study with practical experiences in the field of human rights;
5. Not being accused of national treason or crimes against humanity;
6. Shall have a good reputation, be independent, hold popular trust and a commitment to human rights;
7. Shall not be a member of any political party during their term of office at the Commission.⁷

Commissioners shall not hold any other offices or run any other organizations during their term of office. Teaching at educational institutions is not subject to this provision.⁸

C. NEW ZEALAND

In recommending persons for appointment as Commissioners or alternate Commissioners, Commissioners and alternate Commissioners appointed must have among them:

- knowledge of, or experience in:
 - different aspects of matters likely to come before the Commission:
 - New Zealand law, or the law of another country, or international law, on human rights:
 - [relevant human rights treaties] and rights of indigenous peoples:

⁶ Canadian Human Rights Commission, Part-Time Members Selection Criteria, available at http://www.chrc-ccdp.ca/about/criteria_selection_critere-en.asp?lang=en&url=%2Fabout%2Fcriteria_selection_critere-en.asp (last visited June 23, 2009) (Can.)

⁷ Law in the Structure, Duties, and Mandate of the Afghanistan Independent Human Rights Commission, art. 11, No. 3471 (2005) http://www.aihrc.org.af/law_of_aihrc.pdf (Afghanistan).

⁸ *Id* at art. 12.

-
- current economic, employment, or social issues:
 - cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society:
 - (b) skills in, or experience in:
 - advocacy or public education:
 - business, commerce, economics, industry, or financial or personnel management:
 - community affairs:
 - public administration, or the law relating to public administration.⁹

D. KENYA

Among the nine current commissioners on the Kenya National Commission on Human Rights, four hold advanced law degrees and four hold advanced degrees in fields ranging from Gender and Development, Agricultural Expansion, and health planning. All commissioners have extensive experience working in the human rights field as part of both Kenyan and international human rights organizations.¹⁰

A person shall be qualified for appointment as a Commissioner if such person:

- is a citizen of Kenya;
- is a person of high moral character and proven integrity and has knowledge and experience in matters relating to human rights; and
- in the case of the chairperson, is qualified to hold office as a Judge of the High Court of Kenya.

No person shall be qualified for appointment as a commissioner if such person:

- is a member of Parliament;
- is a member of a local authority; or
- is a member of the executive body of a political party.¹¹

⁹ Human Rights Act, art. 11, No. 82 (1993) (N.Z.), <http://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304402.html#DLM304402>.

¹⁰ Kenya National Commission on Human Rights, http://www.knchr.org/index.php?option=com_content&task=view&id=5&Itemid=37.

¹¹ The Kenya National Commission on Human Rights Act, art. 5, No. 9 (2002) http://www.knchr.org/dmdocuments/knhcr_Act.pdf.

APPENDIX 2

Composition of the HCHR Country Examples

The following country examples provide excerpts from the human rights commission enabling legislation of several countries which relate to the composition of commissions and may be considered by the committee of experts when organizing the structure of the HCHR:

A. AUSTRALIA¹²

Constitution of Commission

(1) The Commission shall consist of:

- (a) a President; and
- (b) a Human Rights Commissioner; and
- (c) the Race Discrimination Commissioner; and
- (ca) the Aboriginal and Torres Strait Islander Social Justice Commissioner;

and

- (d) the Sex Discrimination Commissioner; and
- (f) the Disability Discrimination Commissioner.

The President

(1) The President is to be appointed by the Governor-General as a full-time member or a

part-time member.

(2) The President is the senior member of the Commission.

(3) The President is responsible for managing the administrative affairs of the Commission.

The Human Rights Commissioner

(1) The Human Rights Commissioner is to be appointed by the Governor-General as a full-time member.

(2) A person is not qualified to be appointed as the Human Rights Commissioner unless the Governor General is satisfied that the person has appropriate qualifications, knowledge or experience.

B. AFGHANISTAN¹³

Composition

Article 7:

¹² Human Rights and Equal Opportunity Commission Act, art. 8, No. 125 (1986) (Austl.), <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/framelodgmentattachments/C5903F3A68E87093CA257140001ACE6A>.

¹³ Law in the Structure, Duties, and Mandate of the Afghanistan Independent Human Rights Commission, art. 7, 9, 10, No. 3471 (2005) http://www.aihrc.org.af/law_of_aihrc.pdf (Afghanistan).

-
- 1- The Commission shall be consist of nine members, female and male, who are appointed by the President for a period of five years.
 - 2- The President shall appoint the Chairperson of the Commission from among the members.

Election of the Deputy

Article 9:

1. The Commission shall have a Deputy Chair who will be elected from among the members of the Commission.
2. The terms of reference and the mandate of the Deputy Chair shall be determined by the Chairperson of the Commission.

Board of Professional Advisors

Article 10:

The Commission may create a Board of Professional Advisors to support the performance of the duties of the Commission. The number of this board shall not exceed 10 persons.

C. CANADA¹⁴

Commission established

26. (1) ... the Canadian Human Rights Commission ... consisting of a Chief Commissioner, a Deputy Chief Commissioner and not less than three or more than six other members, to be appointed by the Governor in Council.

Members

- (2) The Chief Commissioner and Deputy Chief Commissioner are full-time members of the Commission and the other members may be appointed as full-time or part-time members of the Commission.

Note: the Chief Commissioner and Deputy Chief Commissioner are appointed by the Minister of Justice and Attorney General of Canada.¹⁵

D. KENYA

The commission shall consist of:

- o a chairperson appointed from amongst the commissioners ...
- o nine commissioners nominated by the National Assembly and appointed by the President ...¹⁶

¹⁴ Canadian Human Rights Act, 1976-77, c. 33, s. 1, art. 26, http://laws.justice.gc.ca/en/showdoc/cs/H-6/bo-ga:l_II/20090623/en#anchorbo-ga:l_II.

¹⁵ See Press Release, Department of Justice, Minister of Justice Appoints Chief Commissioner of the Canadian Human Rights Commission (March 6, 2007), http://justice.gc.ca/eng/news-nouv/nr-cp/2007/doc_31985.html; Press Release, Department of Justice, Minister of Justice Appoints Deputy Commissioner of the Canadian Human Rights Commission (August 3, 2007), http://www.section15.gc.ca/eng/news-nouv/ja-nj/2007/doc_32052.html.

¹⁶ *Id* at art. 4.

The Attorney-General shall, within fifteen days of the appointment of the commissioners, convene the first meeting of the Commission at which the commissioners shall elect from amongst their number –

- a chairperson; and
 - a vice-chairperson,
- who shall be of opposite gender.

The chairperson and the commissioners shall, upon appointment, hold office on a full time basis ...¹⁷

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 ...

- Subject to the general control of the Commission, the Secretary shall –
 - be responsible for the carrying out of the policy decisions of the Commission and the day-to-day administration and management of the affairs of the Commission and the control of the other staff of the Commission; and
 - perform such other function as may be assigned by the Commission.
- 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.
- The Secretary may be removed by the Commission only for –
 - inability to perform the functions of his office arising out of physical or mental incapacity; or
 - misbehavior or misconduct; or
 - incompetence.¹⁸

¹⁷ *Id* at art. 6(9).

¹⁸ *Id* at art. 7(1-4).