

IILHR MEMO ON AN INDEPENDENT COMMISSION FOR CIVIL SOCIETY

In an effort to assist and support the Committee on Civil Society of the Iraqi Council of Representatives and their work on the NGO law, IILHR has compiled this short memorandum. The question for debate is whether a future independent commission for civil society can be called for and/or referred to as part of the draft NGO law. After many conversations and research, this memo outlines options to further this debate.

Other civil legal systems (for example, legal systems in France, Egypt, and Lebanon, as opposed to common law systems found in the places such as the United Kingdom, Australia, and Sub-Saharan Africa) allow laws to reference the later establishment of institutions or mechanism which would change the current law upon the later entering into force of a future institution. Typically, it is up to the legislature to decide on this and there are no requirements to explain its decision. The most common reason for incorporating such clauses/articles is financing, such as when an institution is not provided for in the current budget, its creation will be delayed until after its funding can be incorporated into the next year's budget.

After consultations with members of the Council of Representatives' Legal Committee, IILHR has been told that members agree that reference to a future institution is allowed to be written in laws. The Provincial Council Law, for example, states that Councils are connected to the Council of Representatives but this connection will be transferred to the Federation Council upon its creation.

There are three options to consider:

- 1) **Add a separate chapter to the NGO law** which creates an Independent Commission for Civil Society and attaches a time frame for actually creating it; and prescribe its roles, functions, and duties (including but not limited to NGO registration) to this Independent Commission;
- 2) **Include an article within the NGO law** which specifies that the department called for to implement the NGO law will be transferred to the Independent Commission upon its creation;
- 3) Before passing the NGO law, **pass a separate law** creating an Independent Commission of Civil Society and task this Independent Commission with the role of implementing the NGO law, which would be subsequently passed.

1. Separate Chapter Creating an Independent Commission

If this option is chosen, it would be advisable to structure a separate chapter with several different elements (including but not limited to scope, objectives, responsibilities, organizational structure, etc). For financial reasons (because this commission was not appropriated for in the 2009 budget), the commission would enter into force starting with the approval of the 2010 budget. Benchmarks and/or a timetable to implement the NGO law could be drawn up and written into the chapter, so that the provisions of the timetable can be enforced. Possible benchmarks and timetable could include:

- a. Maintaining the existing NGO office as it is until the end of 2009;
- b. Establishing the Commission by the end of 2010; and
- c. Transferring all powers from the proposed registration office and records obtained to the newly functioning Commission by January 1st 2011.

The advantage of this option is that it is all-encompassing. In one law, the registration process would be outlined, the requirements of the NGO would be prescribed and the Independent Commission to implement and enforce this law would be established. This would immediately remove the Executive from excessive interference in civil society and provide for an independent institution that could expertly and independently adjudicate NGO-related issues.

The disadvantages of this option are political and financial. Some members of the Council do not have a good understanding of the role of independent commissions. Commissions are unfortunately viewed by some as a drain on resources, and as being weak and susceptible to corruption. Therefore, objections to the creation of the commission could delay the passage of the NGO law. Additionally, and especially if no enforceable timeline and benchmarks are included, there is the prospect that the commission could never come into existence. This would leave the NGOs connected to the Executive indefinitely.

2. Article Transferring Powers to the Independent Commission upon its Creation

As with Option 1, if this option is chosen it is advisable to also incorporate a timeline and benchmarks in which this Independent Commission must be created, as well as mechanisms and designation of the responsible public entity in order to enforce these implementation requirements.

The advantages of this option is that it creates a softer basis for establishing the commission than Option 1, which may not face as much objection from member of the Council. However, until the commission may be established, this option leaves the process connected to the Executive, which could unnecessarily politicize how the Government of Iraq addresses NGO issues.

3. **Passage of a Law that Establishes the Independent Commission before Passing the NGO Law**

The advantage to this option is that the independent body to register, monitor and deal with civil society would be created before the NGO law. Passage of this separate law before the passage of NGO law would resolve the issue of it being tied to the Executive for any longer than necessary.

The disadvantage to this route again is misunderstanding among some members about the role and functions of independent commissions, and apprehensions among some members about financial considerations. If the Council did not vote to establish this commission, the committee could move to other options (a Chapter or Article inserted into the legislation as discussed).

This memorandum provides only the briefest of outlines on options, IILHR staff is ready to assist committee members and staff as needed to answer questions and provide further useful information on approaches.