



INSTITUTE FOR INTERNATIONAL LAW & HUMAN RIGHTS

IILHR Legislative Review of the Draft Law on Women's Care

**Prepared by the Institute for International Law and Human Rights
July, 2009**

EXECUTIVE SUMMARY

IILHR has compiled the following analysis for review and consideration of the current draft law in the Iraqi Council of Representatives on the Care of Women without Supporters. The main areas of concern and comment include:

- (1) The current draft law does not contain anti-discrimination provisions. International practice indicates that, where a law seeks to improve the social and economic standing of women, it typically includes provisions prohibiting discrimination and harassment;
- (2) the goals of the draft law are not linked to the Iraqi Constitution and are not clearly aligned with the content of the law itself. The law may be more broadly constructed to combat discrimination in all its forms and ensure social, economic and cultural equality for women;
- (3) as the current draft law provides benefits for women rather than benefits for individuals of either sex , it may violate Article 14 of the Iraqi Constitution. Article 14 could be interpreted as providing equal protection for all Iraqis under the law and therefore legislation that purports to treat some individuals differently from others on the basis of sex could be seen as unconstitutional;
- (4) the draft law assigns to the Council of Women the task of establishing training and rehabilitation programs for women but provides no guidance as to the substance of such programs, their objectives, funding, or other details. Without such guidelines, the draft law does not ensure that these programs will be aligned with or seek to further the purposes of the law;
- (5) the current draft law does not contain any provisions relating to remuneration for Council of Women members, Committee members, or staff;
- (6) the draft does not specify the degree of independence or autonomy that will be enjoyed by the Council of Women in either funding or in pursuing its functions under the Act;
- (7) the draft does not contain provisions relating to criminal or civil consequences for violations of the law and does not provide a means for reporting or investigating such violations;

Please contact IILHR for further discussion, information and clarification.

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III. STATEMENT OF PURPOSE

The Iraqi Constitution declares that all Iraqis are equal under the law. It prohibits discrimination, guarantees equal opportunity, protects the right to work, assures access to education and healthcare, and secures liberty and dignity. Despite these guarantees however, many Iraqi women face economic, social, and cultural hardships. Legislation designed to enhance the status of women in Iraq and reinforce their constitutional rights could help to alleviate the many challenges they face. The objective of the current Women's Care draft law is to improve the economic and social status of women who are without supporters and to ensure their social and psychological security. While providing material support to women will help to lessen their poverty, and establishing of support programs will provide supplementary assistance, additional provisions and protections are necessary to achieve the law's objectives.

Comprehensive legislation that prohibits discrimination, ensures equality between men and women, and enhances the protections enumerated in the Constitution is the most effective means to achieve the aims of the current law. Securing the rights of women by enacting a comprehensive women's care law that addresses the above issues would not only more efficiently aid women, it would also strengthen democracy in Iraq.

This paper analyzes existing provisions of the Women's Care draft law and examines international practice to suggest additional provisions that the Council of Representatives may wish to consider in order to achieve economic, social, and cultural equality for women in Iraq.

IV. POSSIBLE CONSTITUTIONAL CONFLICTS AND REMEDIES

The current draft law focuses exclusively on benefits for women. It does not authorize economic or other benefits for individuals of either gender meeting certain specifications. As such, it may violate Article 14 of the Iraqi Constitution, which states:

Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.

Nearly all democratic countries, from Canada to India, have enshrined the concept of Equal Protection into their Constitutions and, as a result, legislation is often applied generally, without regard to race, gender, religion or other characteristic. As such, the wording of Article 14 can be interpreted as providing equal protection for Iraqis under the law. If so, **legislation that purports to treat some individuals differently from their fellow Iraqis on the basis of one or more of the characteristics enumerated in the Article risks violating the Constitution. However, legislation tailored to protect women's rights where a need is recognized, can overcome this obstacle.**

In the **United States**, for example, the Supreme Court has held that, where a law categorizes people on the basis of gender, the question of its constitutionality examines whether the classification serves an important state interest and whether the classification is substantially related to furthering that interest.¹

Similarly, in **South Africa**, section 9 of the Constitution, entitled "Equality," states

*(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*²

The South African Constitutional court has also affirmed the constitutional conception of Equal Protection in several key cases³ but has passed legislation protecting women's reproductive rights, affirming that domestic violence is a crime against society, and mandating the maintenance be paid to dependants.⁴

The current draft law under review seeks to promote the economic, social, and cultural equality of women but, at the same time, legislates monetary payments to women only without stating clearly how such payments either will further the goal of promoting equality between the sexes or how such payments are not, in fact, discriminatory. The problem with laws that categorize according to gender is that, even where they seek to remedy a past discrimination or assist a group that is otherwise disadvantaged, such laws may actually add to the stigmatization of the identified group by highlighting the fact of the perceived inequality.

If the Council of Representatives can demonstrate that women without supporters (i.e. unmarried women of the type described in Article 3) are, in fact, a historically disadvantaged group, then a law aimed at assisting them to achieve economic, social, and cultural equality could pass Constitutional muster. As the holdings from the constitutional courts of South Africa and the United States demonstrate, however, laws that employ constitutionally prohibited categorizations—such as gender—must do so in a manner that is substantially related to furthering an important state interest. Remedying existing economic, social, and

¹ Craig v. Boren, 429 U.S. 190, 197 (1976).

² South African Constitution, sec. 9.

³ *See generally* Brink v. Kitshoff NO 1996 (4) 197 (CC), Carmichele v. Minister of Safety and Security 2003 (1) SA 389 (SCA), and Daniels v. Campell 2003 (9) BCLR 969 (C).

⁴ *See generally* for South Africa The Choice on Termination of Pregnancy Act of 1996, The Domestic Violence Act of 1998, and the Maintenance Act of 1998, *available at* <http://www.constitutionalcourt.org.za/site/yourrights/knowyourrights-womenrights.htm>.

cultural inequalities may be a legitimate interest of the Iraqi authorities, but the state should be prepared to demonstrate that providing funds to only those women identified in Article 3 is substantially related to this interest.

If the Iraqi Legislature does determine that the categorization which the draft law employs is substantially related to a legitimate state interest, the draft law should include language about this finding. Such an argument is supported by Article 30 of the Constitution, which guarantees, especially to women and children, social and health security, the basic requirements for living a free and decent life, a suitable income, appropriate housing, and the right to live free of fear and poverty. Should the Legislature determine that women without supports are being deprived of the protections guaranteed under Article 30 or other provisions of the Constitution, the legitimacy of its interest in passing a law which targets women as a group, would be strengthened.

For example, the Council of Representatives may wish to include the following provisions at the beginning of the law:

Findings and Purposes—

(a) Findings—the Council of Representatives finds that—

- (1) (scientifically determined number) of Iraqi women live in poverty. Among them, (number) of these women are widowed, divorced, have never married, or have been declared to have no supporter by judicial decree;*
- (2) historically, women in Iraqi society have faced discrimination in the fields of [for example] employment, education, property ownership, access to health care, access to federal or private loans, housing, public accommodation, political representation, and access to public services;*
- (3) (census data, studies by Iraqi and/or international groups, etc) have documented that women, as a group, occupy an inferior status in society, are severely disadvantaged socially, vocationally, economically, and educationally;*
- (4) Under the Constitution, Iraq's goals regarding women are to assure equal of opportunity, full participation, economic self-sufficiency, the eradication of discrimination, and ensuring, to the best of its ability, that men and women are equal.*

(b) Purpose—it is the purpose of this Act—

- (1) [see analysis of Article 1 below]*

V. THE ROLE OF THE CONSTITUTION AND INTERNATIONAL TREATIES

A. The Role of the Iraqi Constitution

Article 14 of the Iraqi Constitution states that “Iraqi’s are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.”⁵ Article 16 states that “[e]qual opportunities shall be guaranteed to all Iraqis and the state shall ensure that the necessary measures to achieve this are taken.”⁶

While equality of rights for men and women are guaranteed in many state constitutions,⁷ specific prohibitions on discrimination and specific protections of health, economic, social, cultural, and political rights are often established in legislation in order to secure the democratic values such Constitutional provisions espouse.⁸

The current Women’s Care draft law may be too limited in form to fulfill the goals such legislation often engenders in promoting the protection of women. The Women’s Care Law would be more effective, more efficient, and more straightforward if it sought to clarify the gender equality provisions of the Iraqi Constitution. Specifically, the drafters may consider addressing following provisions of the Constitution in the current law:

- Article 14—prohibition on discrimination;
- Article 16—guarantee of equal opportunities and the state’s obligation to achieve such opportunities;
- Article 20 – guarantee to participate in public affairs and enjoy political rights
- Article 22—guarantee of the right to work;
- Article 23—protection of the right to own property
- Article 24/44- freedom of movement
- Article 29- prohibition of violence in family
- Article 30—guarantee—especially for women and children—of social and health security, suitable income, appropriate housing, and the right to live free of fear;
- Article 31—guarantee of the right to health care;
- Article 34—protection of the right to education;
- Article 36—right to practice sport; and

⁵ Iraqi Constitution, art. 14.

⁶ *Id* at 16.

⁷ *See* Rwandan Constitution, Preamble Section 10 *at* http://www.google.com/#hl=en&q=rwandan+constitution&aq=0&oq=rwandan+const&aqi=g1&fp=1mZ_-PL2Zj (last visited June 9, 2009); South African Constitution, Chapter 2, sec. 9 *at* <http://www.info.gov.za/documents/constitution/1996/96cons2.htm> (last visited June 9, 2009).

⁸ *See generally* Sex Discrimination Act, No. 4 (1984 (Austl.)); Gender Equality (Consolidation) Act, No. 553 (2002) (Den.); Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 (2000) ch. 2, s. 1 (S. Afr.).

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- Article 37—protection of liberty and dignity.

B. The Role of International Treaties

Aside from the relevant equality provisions in the Constitution, the Council of Representatives may also consider relevant international treaties to which Iraq is a party of. Iraq has acceded to the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).⁹ Under Article 5 of the CEDAW, “states parties shall take all appropriate measures:

To modify the social and cultural patterns of Conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices with are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women...”¹⁰

Article 15 of the CEDAW requires that states grant to women equality with men before the law as well as legal capacity identical to that of men and the same opportunities to exercise that capacity.¹¹

In some countries, like **Australia** and **South Africa**, laws addressing the economic and social equality of women aim not only to clarify gender provisions in the constitution, but also to specifically give effect to certain provisions of the CEDAW. **The Women’s Care law could be strengthened by broadening it to include some of the above listed provisions in the Iraqi Constitution, and also by incorporating within its statement of purpose the goal of giving effect to specific provisions of the CEDAW.** For specific, article by article analysis of these comments, please see below

⁹Iraq ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on Sept. 12, 1986, *available at* <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited June 8, 2009).

¹⁰ UN CEDAW, art. 5, *at* <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article3> (last visited June 8, 2009).

¹¹ *Id* at art. 15.

VI. DRAFT LAW ANALYSIS

PART A: Scope of the Draft Law

COMMENT 1: To conform to international standards¹² and advance the letter and the spirit of the Iraqi Constitution,¹³ the Council of Representatives may wish to expand the scope of the law and include:

- **provisions promoting women’s rights, promoting equal opportunities, and prohibiting discrimination and harassment on the basis of sex and gender-related status;**
- **chapters on specific rights and means of ensuring their protection;**
- **provisions outlining the role of the federal and provincial governments**
- **provision defining burden of proof and the availability of civil or criminal remedies for violations of the law;**
- **the establishment of an institutional framework for regulating and overseeing the implementation of the law;**
- **and provisions on budget and funding.**

*No. () for the year 2009
Law
(Care of Woman without Supporter)*

¹² See generally Sex Discrimination Act, No. 4 (1984) (Austl.) available at <http://www.wcwonline.org/pdf/lawcompilation/Australia-SexDiscriminationAct.pdf> ; Gender Equality (Consolidation) Act, No. 553 (2002) (Den.) available at <http://www.legislationonline.org/documents/action/popup/id/6520>; Promotion of Equality and

Prevention of Unfair Discrimination Act, No. 4 (2000) ch. 2, s. 1 (S. Afr.) available at http://www.acts.co.za/prom_of_equality/index.htm; Law on Gender Equality, No 73 (2001) (Vietnam) available at <http://www.wcwonline.org/pdf/lawcompilation/VIETNAMLawGenderEquality.pdf>; Act on the Equal Status and Equal Rights of Women and Men, 2000 (Ice.) available at <http://www.wcwonline.org/pdf/lawcompilation/Iceland-genderequality.pdf>; Gender Equality Act, 2004 (Est.) available at <http://www.iknowpolitics.org/en/node/9692>.

¹³ See generally Iraqi Constitution, art. 14, 15, 16, 20, 22, 23, 29, 30, 31, 34, 36, 37, 41, 42, 44, & 46.

Chapter One
Goals and means

PART B:

COMMENT 1:

The title of this law, both in the English translation and as IILHR understands the Arabic, may be unclear or too limiting. It may also raise issues regarding the definitions of family and supporter under the Social Welfare Act No. 126 of 1980, which may require the title of the current law to incorporate a reference to Act 126.

Additionally, to align it with international standards and execute its obligations under the CEDAW, the drafters may wish to expand the scope of the current draft law to advance the protection and equality of all women in furtherance of many provisions of the Constitution and include: prohibitions on sex-based discrimination and harassment; specific protections of women’s social, cultural, and economic rights; and a framework for the Council of Women to establish programs and services to advance the status of women.

SUGGESTION 1:

Should the Council of Representatives choose to expand the scope of the law in accordance with international practice, the title of the law may be revised as follows:

Protection of Women’s Rights and Interests Act

or

Promotion of Women’s Economic, Social, and Cultural Equality Act

or

Women’s Equal Rights Act

PART C:

Article -1 - This Law aims to the followings:

First – Putting an end to poverty and destitution that the woman without supporter suffers and upgrades her economic and social status which guarantees her social and psychological security. A woman without supporter means a woman who does not have its own income.

COMMENT 1:

See commentary on possible constitutional conflicts (Part IV Possible Constitutional Conflicts and Remedies) and suggestions on inserting a “Findings and Purposes” provision for Article 1 above where in the drafters may outline specific findings related to the life conditions and needs of women without supporters in Iraq

As the First part of Article 1 is written, the current draft law is not tied to any provision of the Iraqi Constitution. Defining the purpose of the current law in

constitutional terms would reinforce the concept of its necessity, and constitutionality and strengthen its legitimacy.

SUGGESTION 1: Suggest referring to article(s) of constitution where this law would originate, give example of language –

Example: Pursuant to what has been approved by the parliament and has been endorsed by the presidency council, and according to articles 14, 16,22, 23, 30, 31,34, 36, 37 of the constitution, the following law has been issued: and give examples of Constitutional articles.

SUGGESTION 2:

Should the drafters determine that it is in the best interest of the Iraqi people or a certain group of people to broaden the scope of the current law to include the advancement of the constitutional rights described in the above comment, and to execute its obligations under the CEDAW, IILHR suggests restructuring the current law to include a series of chapters dedicated to discrete topics.

The chapters may include, for example:

Chapter 1—Findings and objectives

Chapter 2—Definitions

Chapter 3--Applicability

Chapter 4—Establishment of the Council

- *institutional framework including funding and degree of independence*
- *role of federal and provincial governments*

Chapter 5—Functions of the Council

Chapter 6—Funding the Council and its Activities

Chapter 7—Establishment of the Committees within the Governorates

Chapter 8—Establishment of the Fund for Women without Supporters

Chapter 9—Prohibition on Discrimination and Harassment

Chapter 10—Right to Equal Opportunity

Chapter 11—Right to Employment

Chapter 12—Right to Own and Inherit Property

Chapter 13—Right to Social and Health Security, Income, and Housing

Chapter 14—Right to Healthcare

Chapter 15—Right to Education

Chapter 16—Right to Participate

Chapter 17—Protection of Liberty and Dignity

Chapter 18—Promoting Awareness of Rights

Chapter 19—Burden of Proof and Remedies for Violations of the Act

Chapter 20—Other Provisions

SUGGESTION 3: To align Article 1 with the Constitution and international practice generally, the entire objectives section may be placed within the suggested Chapter 1—Findings and Purposes reconsidered to read:

Recognizing that, although significant progress has been made in restructuring our society and its institutions, systematic inequalities remain imbedded in our social structures, practices and attitudes which undermine the aspirations of our constitutional democracy;¹⁴

This Act endeavors to facilitate the transition to a democratic society guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom by prohibiting, as far as is possible, discrimination against people and eliminating, as far as is possible, the poverty and destitution faced by many Iraqi's and especially Iraqi women;¹⁵

In pursuance of these principles, the objectives of this Act are:

- (a) to further the aims of Articles 14, 16, 22, 23, 30, 31, 34, 36, and 37 of the Constitution;*
- (b) to facilitate further compliance with international law obligations and treaty obligations including, amongst others, the Convention on the Elimination of All Forms of Discrimination against Women;*
- (c) to give effect to the letter and spirit of the Constitution, in particular—*
 - i. to eliminate, as far as is possible, the economic, social, health, educational, political and cultural inequalities between men and women;*
 - ii. to eliminate, as far as is possible, discrimination against persons on the ground of sex, marital status, family status, family responsibilities, pregnancy or potential pregnancy in the areas of work, accommodation, healthcare, education, property ownership, or the administration of the laws of Iraq; and*
 - iii. to prohibit harassment on the basis of sex, marital status, family status, family responsibilities, pregnancy or potential pregnancy;*
 - iv. to promote recognition and acceptance within the community of the principle of the equality between men and women*

Second- Strengthening the social solidarity to enhance the family building.

COMMENT 2:

¹⁴ See Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 (2000), (S. Afr.) for language comparisons.

¹⁵ *Id.*

It is unclear how the draft law will enhance family building. Also, it should be noted that there is no enumerated provision in the draft law, nor any suggested activity of the Council created within this law, aimed at regulating family interactions. The Council of Representatives is advised to strongly consider whether such regulations, which may interfere with the autonomy of the family or, in the cases of individuals without families, the autonomy of the individual, are a desirable subject of legislation.

The Constitution and the current draft law seek to eliminate, at a minimum, social and economic inequalities between men and women. Where a law comments on the desirability of one form of family structure over another, it necessarily discriminates against those who are not part of the desired family structure, those who have been widowed, those who are divorced, those who have never married or produced children, and others. To enshrine this kind of discrimination in legislation risks undermining the purpose of the legislation as stated in Article 1 the First of this law, as well as violating Article 14 of the Constitution.

SUGGESTION 4:

Should the drafters of this law wish to maintain Article 1 Second rather than adopt the language suggested under Article 1 first above, Article 1 second may be revised as follows:

- a) removing the Second part of Article 1 entirely;
- b) altering the language of the Second part to something more aligned with the Constitution such as:

To ensure the dignity of persons lacking the economic support of families

Third – securing the health insurance and social status of women

COMMENT 3:

Securing the right to health care/insurance and the social status of women are lofty, complex goals best enumerated in separate clauses under Article 1. Regarding the “health insurance” provision, however, the current draft law, under Article 9 (F), does not explicitly assure “adequate” or “comprehensive” or any other form of healthcare..Drafters should consider focusing on proper health care for women and not limiting the provision on health insurance.

Regarding the “social status” of women provision, there is some question based on the organization of the language as to whether the intended objective is to (a) secure the current social status of women (i.e. preserve it); or (b) to enhance and improve the social status of women. Assuming the purpose is to enhance

and improve the social status of women, the provision may be reworded to clarify that intent.

Additionally, it should be noted again as above, that this law does not directly create any rehabilitation programs, establish the specific aims of such program, nor dictate that the aims of any programs created under Article 9(E) of the law shall be committed to furthering the goal of enhancing the social or economic standing of women.

SUGGESTION 5:

Should the Government of Iraq wish to maintain Article 1 Third rather than adopt the language suggested under Article 1 first above, Article 1 third may be revised by separating the health and social status provisions into two parts, and clarifying the language of both subsequent provisions. Note, however, that maintaining either provision as an objective of the current law would require adding language under the section defining the obligations of the Council of Women which is created within this law to ensure that these aims are achieved.

Third—to assure that all Iraqis, regardless of sex, marital status, family responsibilities, pregnancy or potential pregnancy, has access to adequate health care as guaranteed in Article 31 of the Iraqi Constitution;

Fourth—to enhance the social status of women in Iraq and promote equality of opportunity of men and women

PART D:

Article - 2 - This law seeks to achieve its aims by: --

First - the preparation of programs and means of rehabilitation and training of women and prepare her to participate in building the new society.

Second - the creation of training, educational and social centers and to upgrade the role of women in society and their actual participation in its construction.

COMMENT1:

Stating that the law seeks to establish programs to assist women's economic and social development may replicate later articles of this law which cite the establishment of such programs as an obligation of the Council of Women created by this law. Further, in the same manner as Article 9(E) below, statements about the establishment of such programs are too general and sweeping. This will have consequences for interpretation and coverage issues.

Additionally, the law seeks to achieve its objectives not only through the establishment and maintenance of programs for women, but also by providing individual financial assistance. If the objectives of the law are as multifaceted as the analysis of Article 1 above suggests, then attempts to state definitively in

a single article how the law intends to achieve those objectives will be necessarily cursory and potentially limiting. Enumerating the means to the ends in such a way is needless and may lead to unnecessary interpretive consequences.

SUGGESTION 1:

Article 2 may be an unnecessary and potentially confusing provision of the law. Its elimination would add clarity to the document as a whole. Provisions relating to the development of rehabilitation and training programs, and educational and social centers will be more effective if they are constructed as mandates rather than as ideas or additional goals, as they currently appear to be.

As the establishment, funding, and maintenance of such programs appears to be within the purview of the Council of Women created in Article 9, the Council of Representatives may consider adding an additional article or articles relating to the programs that give further detail and outlines their objectives. For a more specific discussion of rehabilitation and other programs, see the analysis of Article 9(E) below.

COMMENT 2:

The current draft law does not contain a definitions provision. Without defining the meaning of terms contained within the Act, interpretations of the Act by regulatory bodies, the judiciary, and the public may be confused or contradictory. According to international practice, most laws contain a provision dedicated to defining the terms utilized within the act.

SUGGESTION 2:

The drafters of this law may wish to add an article defining terms used throughout the Act to enhance clarity and ensure the objectives of the Act are not lost to interpretation as follows:

Article [x]—Definitions

- (1) accommodation—any residential or business accommodation;*
- (2) Constitution—the Iraqi Constitution;*
- (3) the Council—the Council for the Advancement of Women’s Economic, Social, and Cultural Rights [or whatever name is selected]*
- (4) discrimination—any act or omission, including a policy, law, rule, practice, condition, or situation which directly or indirectly—
 - 1. imposes burdens, obligations or disadvantage on; or*
 - 2. withholds benefits, opportunities or advantages from,*any person on one or more prohibited grounds;*
- (5) education—refers to educational institutions meaning a school, college, university or other institution at which education or training is provided;*
- (6) employment and work—include
 - 1. part-time and temporary employment*
 - 2. work under a contract for services; and**

-
3. work as a State employee;
 - (7) equality—includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes equality in terms of outcomes;
 - (8) family responsibility—responsibility in relation to a person’s spouse, partner, dependent, child or other members of his or her family in respect of whom the member is liable for care and support
 - (9) family status—membership in a family and the social, cultural and legal rights and expectations associated with such status;
 - (10) fund—the Fund for the Welfare of Women without Supporters established under Article 15;
 - (11) harassment—unwanted conduct which is persistent or serious and demeans, humiliates, or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to
 1. sex or gender;
 2. marital status, family status, family responsibilities; or
 3. pregnancy or potential pregnancy;
 - (12) marital status—the status or condition of being single, married, divorced, widowed, or in a relationship involving a commitment to reciprocal support;
 - (13) President—President of the Council for the Advancement of Women’s Economic, Social, and Cultural Development;
 - (14) the public authorities—includes
 1. any institution or administrative structure in the federal, regional, provincial or local sphere of government;
 2. any other functionary or institution—
 - a. exercising power or performing a function in terms of the Constitution or a provincial constitution; or
 - b. exercising a public power or performing a public function in terms of any legislation or under customary law or tradition.
 - (15) women without supporters—women who, regardless of age, are—
 1. Divorced—meaning a woman whose marriage has been terminated by a competent judicial body;
 2. Widowed—meaning a woman whose husband has died;
 3. Single—meaning a woman who is not married or is not in a relationship of reciprocal support;
 4. women who have lost their supporting partners or family members in a manner approved and recognized by the final decision of a competent judicial body.Or any other term which needs to be defined by the present law.

(Chapter Two) Applicability

PART E:

Article -3 - includes care under the provisions of this Act if the Iraqi women: --

First - Divorced: the women whose marriage restriction was lifted with the certification of the competent court.

Second - widow: a woman who's her husband died.

Third- single: A woman who is not married and had no supporter

Forth - Women who have lost her supporter and the loss was approved by judicial final Judgment

COMMENT 1:

Rendering the current law applicable only to women without sponsors, as defined in the current Article, may conflict with Article 14 of the Constitution. This potential conflict, however, may be mitigated if the drafters chooses to include a *Findings and Purposes* section, as described above (Part IV Possible Constitutional Conflicts and Remedies) which identifies the drafters interest in advancing economic and social status of Iraqi women and furthers the aims of specific constitutional articles, particularly Article 30.

Additionally, in accordance with international practice (CEDAW), the drafters should contemplate broadening the scope of the current law to apply to all women generally. The financial support granted under Article 14 of the current draft may still be applicable to only women without sponsors by including a reference to that limitation in Article 14 itself. By formatting the Act in this way, the prohibitions on discrimination and harassment, the protection of Constitutional rights, and the establishment of assistance programs by the Council of Women will apply to all women.

SUGGESTION 1:

To expand the scope of law and make it applicable for ALL WOMEN.

On the other hand drafters may wish to consider employing an application provision such as that used by South Africa. Such **provision would defining the supremacy of the law over regional or provincial laws** where conflicts arise, or declare groups (not prohibited under the constitution) to which an Act does or does not apply.

The Application provision of the *South African* Promotion of Equality and Unfair Discrimination Act of 2000, for example, states:

(1) This Act binds the State and all persons.

(2) If any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act must prevail.

(3) *This Act does not apply to any person to whom and to the extent to which the [South African Employment Act] applies.*¹⁶

(Chapter Four)
Establishment and functions of the Council

PART F:

Article - 4 - Establishing a council called the (Council of women who do not have a supporter) associated with the Ministry of Labor and Social Affairs, has a moral personality and is represented by its President or who is authorized by him.

COMMENT 11:

The language of the current article is unclear in establishing the affiliation and degree of independence that will be enjoyed by the Council of Women. IILHR is aware of the State Ministry for Women's Affairs and of a Women's Department under the Ministry of Labor and Social Affairs and recognizes that there are other governmental bodies dedicated to women's affairs and to advancing women's interests. It is not clear from the article, however, whether the Council will be a component of the Ministry of Labor and Social Affairs, whether it will be regulated and overseen by the Ministry, or whether it is independent from the Ministry.

Should the drafters choose to maintain the narrow scope of the current law as providing for only the financial support of women without supporters and establishing a Council of Women to advance the economic status of such women, then creating this Council as a branch of the Ministry of Labor and Social Affairs may be desirable. However, should the drafters desire to expand the scope of the law and the establishment of a Council of Women tasked with advancing the status and protection of women in general, then the structure, affiliation, and degree of independence of this Council of Women should be reconsidered.

SUGGESTION 1:

The State Ministry of Women's Affairs may be better suited to oversee and regulate the activities of the Council of Women which the current draft law seeks to establish. To be effective in its efforts to promote the economic, social, and cultural status of women under the Act, however, the Ministry would need to work in conjunction with other government bodies, including:

¹⁶ Promotion of Equality and Prevention of Unfair Discrimination Act, ch. 1, sec. 5, No. 4 (2000), (S. Afr.)

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- the *Ministry of Labor and Social Affairs*, to coordinate special financing granted under Article 14 of the current law and other desirable activities, such as special loan programs for women;
 - the *Ministry of Finance*, to assist in regulating the funding and maintenance of the Council of Women and any special monetary programs it establishes in pursuance of the Act;
 - the *Ministry of Health*, to assist in pursuing the right to adequate healthcare for women;
 - the *Ministry of Education*, to assist in pursuing the right to equal and adequate education for women, including the possible establishment of special schools or programs to advance the education and literacy of women;
 - the *Ministry of Housing and Construction*, to assist in the pursuit of providing adequate housing for women, especially women without supporters, as new construction or zoning regulations may be necessary;
 - the *Ministry of Human Rights*, to ensure that Iraqi and international human rights norms are followed by the Council of Women and the programs it establishes under the Act; and
 - the *Ministry of Justice*, to assist with claims for violations of the Act or
 - *Ministry of Planning*, to include the topic in multiannual strategic plans of development of Iraq

However, the State Ministry for Women's Affairs is currently under-funded and understaffed to successfully accomplish the objectives of the Act, should the drafters choose to expand the scope of the current draft law to align with international practice. It should be noted, however, that Iraq has come under much international criticism over the last several years for its dearth of legislation and general activity in the area of women's rights. Despite a present lack of funds, the drafters may wish to consider assigning the Council of Women created under this Article, and its funding, to the State Ministry of Women's Affairs to prevent overlap and the possibly crippling glut of bureaucracy that would likely develop if governmental responsibilities for advancing women's interests is spread across various ministries. Such bureaucratic deadlock is evident in countries like the *United States*, the *United Kingdom* and *France*. As Iraq has already established the State Ministry of Women's Affairs, assigning the Council of Women to that Ministry, rather than to the Ministry of Labor and Social Affairs, could be the most efficient and effective choice as follows:

Article 4—

A Council for the Advancement of Women's Economic, Social, and Cultural Rights [for example] shall be established as a division of the State

Ministry for Women's Affairs but shall exercise autonomy in its decision-making authority under this Act.

COMMENT 2:

It is unclear from the language of Article 4 whether the Minister of Labor and Social Affairs (or the State Ministry of Women's Affairs as suggested above) is meant to automatically occupy the position of President/Chairperson of the Council of Women or if the language instead intends only to establish an official relationship between the Council and the Ministry.

SUGGESTION 2:

Should the drafters intend for Article 4 to establish the Minister as President/Chairperson of the Council of Women, the language should be clarified to indicate such a relationship. If it is intended that the Council of Women elect a President/Chairperson from among its members, a provision may be added to the draft law (see analysis of Article 6 below).

PART G:

Article - 5 - The Council shall consist of:

First - Minister of Labor and Social Affairs.

Second- The following representatives of the ministries, any post of them must not less than Director General.

A. Ministry of Finance.

B. Ministry of Health.

C. Ministry of the Interior.

D. Ministry of Housing and Construction.

C. Ministry of Human Rights.

H. Ministry of State for Women's Affairs.

Third- the representative of Baghdad Provincial Council

Fourth - a representative of one of the civil society organizations concerned with women affairs chooses by the Minister of Labor and Social Affairs.

COMMENT 1:

Should the drafters choose to establish the Council of Women as a division of the State Ministry of Women's Affairs, its members would need to be reconsidered. The current structure of Article 5 raises concerns about the

representation and role of the provincial governments in the Council as well as issues regarding the independence of its Members.

First, there is nothing in the current draft law to indicate the relative roles of the federal and provincial governments. For a law seeking to advance the economic, social, and cultural interests of women in accordance under the Constitution and in accordance with international practice, participation at the provincial and local level is critical. Also programs established by the Council of Women under the Act will necessarily be executed, maintained, and overseen at a local level. Without the participation of local and provincial authorities, the Act will be wholly ineffective. In order for the Council of Women to pursue the objectives of the Act, it will need to act with the cooperation and input of local and provincial authorities in order to tailor programs to meet the needs of women in various geographic locales and to ensure the proper execution of its decisions.

SUGGESTION 1:

Each province should be represented on the Council of Women or an associate body. For the sake of efficiency, it may not be necessary to grant each provincial representative the full benefits of Council membership but, for the Act to be effective, provincial representatives must have sufficient authority to identify the needs of the women they represent and to present those needs to the Council of Women to tailor the decisions of the Council of Women to meet the needs of their constituents. Provincial representatives on the Council of Women should be answerable to the governments of the provinces they represent and should be sufficiently funded by the Council of Women under this Act in order to execute the programs and decisions of the Council of Women effectively within the provinces they represent.

Should the drafters not wish to alter the current structure of the Council of Women to include member representatives from each province, it may wish to establish a Board of Advisors to assist Council of Women functions as *Afghanistan* did as a consulting body.¹⁷ The Board of Advisors could be composed of regional representatives and be granted a degree of authority wherein its members are able to raise issues pertaining to women to the Council of Women, serve an advisory function, and assist with the implementation of Council of Women policy within the provinces. Such a board could offer regular reports on progress within the provinces and provide a useful perspective on the needs of the people.

¹⁷ Law in the Structure, Duties, and Mandate of the Afghanistan Independent Human Rights Commission, art. 10 (Afghanistan) http://www.aihrc.org.af/law_of_aihrc.pdf.

COMMENT 2:

Second, as Article 5 is currently written, the members under the First part (either the Minister of Labor and Social Affairs or, as per the suggestion above to move the Council of Women under the authority of the State Ministry of Women's Affairs, the Minister of Women's Affairs) has the sole authority to appoint a representative of one of the civil society organizations concerned with women's affairs without clearly define the procedure of selection. This lack of clarity may enable the Minister to select an individual from a wide array of organizations and grants broad, nearly absolute discretion, to that choice possibly compromising the independence of the member may provide the Minister with greater authority than the law intends.

Furthermore, it is not clear what the role of the appointed Council of Women-member would be with regard to civil society organizations in general. Is this member intended to represent civil society organizations in general? Is he or she meant to provide merely a non-government voice to Council of Women deliberations? By limiting the participation of civil society organizations to one member of the Council of Women hand-picked by the Minister with his or her complete discretion, the law risks not only creating a loophole for misconduct, but also of attracting criticism that its inclusion of the civil society voice is merely a superficial gesture rather than a substantive effort.

SUGGESTION 2:

The drafters may wish to provide civil society organizations with a more substantial role on the Council of Women by creating a subcommittee consisting of members of several civil society organizations concerned with women's affairs. The law establishing the Independent Human Rights Commission in *Afghanistan*, for example, allows for the creation of a Board of Advisors to support the Commission in the performance of its duties.¹⁸ The current draft law may benefit from the inclusion of a provision establishing a similar board composed of a specified number of members representing civil society organizations. The draft may leave the composition and authority of such a Board to the discretion of the Council of Women, or may specify these details. The law may also benefit, however, from defining more clearly the phrase "civil society organizations concerned with women's affairs." Most non-governmental organizations establish mission statements and coordinate their works toward achieving a specified goal. Specifying that the civil society organization whose members are eligible to serve on a Board under the Council of Women must be mandated to, for example, promote the equality of Iraqi

¹⁸ Law in the Structure, Duties, and Mandate of the Afghanistan Independent Human Rights Commission, art. 10 (Afghanistan) http://www.aihrc.org.af/law_of_aihrc.pdf.

men and women, or to protect women's rights, or to promote the social, economic, and cultural equality of women is advisable.

COMMENT 3:

The current draft law does not indicate what, if any qualifications are required by the members of the Council of Women regarding human rights, women's rights, or other relevant experience short of membership in an enumerated ministry. Experience in women's rights, human rights, or a related field would greatly contribute to the efficacy of the Council and to the effectiveness of the programs it oversees and put the current draft law in line with international practice.

SUGGESTION 3:

The drafters may wish to consider adding qualification criteria to the current draft law in selecting members of the Council of Women. Legislation establishing the National Commission for Women in India, for examples, states:

The Commission shall consist of—

(a) a Chairperson, committed to the cause of women...

(b) five members...of ability, integrity, and standing who have experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary organizations (including women activists), administration, economic development, health, education, or social welfare ...¹⁹

In *Pakistan*, the National Commission on the Status of Women Ordinance requires that Commission members shall be persons "of integrity and standing having substantial experience in law, legislation and knowledge and standing on socio-economic and legal problems of women". The Ordinance also states that the majority of members shall be women, including one member from each Province, and at least one member from the minorities.²⁰

COMMENT 4:

¹⁹ The National Commission for Women Act, art. 3(2), No. 20 (1990) (India)
<http://wcd.nic.in/newact.pdf>.

²⁰ National Commission on the Status of Women Ordinance of 2000, art. 3, No.24 (as paraphrased by the International Labor Organization at
http://www.ilo.org/public/english/employment/gems/eeo/law/pakistan/i_ncsw.htm).

The composition of the Council of Women, as it is currently structured, does not reserve any seats for women. While the drafters of this law may not wish to employ a quota system for Council of Women membership, it should be mindful of the issue to ensure equal representation of the sexes or, at a minimum, to account for the fact that women are, at present, underrepresented in the political sphere. Mandating that a percentage of the Council of Women and/or of the “Board of Advisors” (discussed above) shall be women, or that a certain number of seats shall be reserved for women, would address this potential problem.

SUGGESTION 4:

Article 49 of the Iraqi Constitution reserves one-quarter of the seats in the Council of Representatives for women.²¹ Keeping in line with Constitutional practice, the legislation could include a provision reserving a fraction of the seats on the Council of Women, or on an advisory board that the Council of Women may create, for women. This would be consistent with the Constitution and further the goal of ensuring the representation of women in the public sphere.

PART H:

Article 6 - The Council shall elect at its first meeting two chair deputies among its members.

COMMENT 1:

International practice indicates that leadership positions in councils such as that established under the current draft law include a Chairperson or President, a Deputy Chair or Vice President, and a secretary.²² While there is nothing in international practice to indicate that the appointment of two co-chair deputies is inadvisable, it is not a commonly seen practice. Additionally, the current draft law does not establish a position of Secretary. In order for the Council of Representatives to effectively and efficiently receive updates on the Council of Women’s progress throughout the year, render the minutes of its meeting available for public inspection, and receive an annual report of facts and

²¹ Iraqi Constitution, art. 49 (Fourth).

²² See Law in the Structure, Duties, and Mandate of the Afghanistan Independent Human Rights Commission, art. 7, 9, & 19, No. 3471 (2005) (Afghanistan) http://www.aihrc.org.af/law_of_aihrc.pdf; National Women Commission Act, art. 5(a), No. 34 (2006 (Nepal) <http://nepal.ohchr.org/en/resources/Documents/English/other/2009/March%2009/3.NWC%20ACT%202007.pdf>); and The National Commission for Women Act, art. 2(a) & (c), No. 20 (1990) (India), <http://wcd.nic.in/ncwact.pdf>.

findings, the selection of a secretary is of the utmost importance and should be included in the draft law.

Finally, examining Article 4 and Article 6 together, it is not clear whether the language of Article 4 means that the President of the Minister of Labor and Social Affairs (or the State Minister for Women's Affairs as suggested in the commentary on Article 4) is to be the President/ Chairperson of the Council of Women.

SUGGESTION 1:

Adding language to the current draft law establishing the position of Secretary and outlining the process of appointment or election to the position from within the Council of Women is advisable.

Second, if the Minister of the named Ministry is meant to be the President of the Council, then the language of Article 4 should be clarified. If that is not the intention, then Article 6 should be amended to include provisions for the election or appointment of the President/Chairperson of the Council.

PART I:

Article 7 -

First - The Council shall meet once in every three months at the call of the president.

Second - The Council is convened in the presence of a majority of the members and takes decisions and recommendations by the majority of votes present.

COMMENT 1:

Language regarding the position of President of the Council of Women under Article 4 or 6 needs to be clarified in order to assist in the interpreting of the meaning of the term "President" under this Article. Additionally, language defining the use of the term "President" throughout the article could be added under a "Definitions" provision to assist with clarity and interpretation.

PART J:

Article 8 -

Any member fails to attend meetings of the Council three times in a row, without lawful excuse, will be considered resigned from the council and the ministry or the concerned body shall nominate the alternative member during the (15) fifteen days from the date of notifying of the resignation of its representative in writing.

COMMENT 1:

While Article 8 establishes a procedure for the assumed resignation of a member of the Council of Women, it does not address removal or affirmative resignation procedures. International practice indicates that, where legislation

establishes a council or commission, it should also provide for removal and resignation procedures.

SUGGESTION 1:

It is advisable to include a provision addressing removal and resignation procedures within this draft law so as to preempt any confusion or interpretive complications that may arise if a member of the Council of Women fails to perform his or her duty or becomes unable to perform.

The Government may wish to refer to the following sample language from India and Nepal:

1. *The Central Government shall remove a person from the office of Chairperson or a Member ...if that person—*
 - (a) becomes undischarged insolvent;*
 - (b) gets convicted and sentenced to imprisonment for an offense which in the opinion of the Central Government involves moral turpitude;*
 - (c) becomes of unsound mind and stands so declared by a competent court;*
 - (d) refuses to act or becomes incapable of acting;*
 - (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or*
 - (f) in the opinion of the Central Government has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest;*

Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.²³

2. *The post of chairman or member shall be deemed to have been vacated in the following circumstances:*
 - (a) lapse of tenure of the post;*
 - (b) submission of resignation from the respective post;*
 - (c) in case of adoption of decision by the concerned committee of the parliament for removal from the post with the declaration that keeping the post is inappropriate on the basis of lack of working capacity or bearing bad character or misappropriation of amount of the commission;*
 - (d) not deserving qualification pursuant to section 6 [see commentary on member qualifications above for section 6 language];*
 - (e) Absence for up to three consecutive times in the meetings of the commission without serving reasonable notice;*
 - (f) Mental disorder; or*

²³ The National Commission for Women Act, art. 4(3), No. 20 (1990) (India), <http://wcd.nic.in/ncwact.pdf>.

(g) Death

*The Chairperson or member accused pursuant to parts (c) or (e) shall be provided a reasonable opportunity to present self-explanation.*²⁴

COMMENT 2:

No article in the current draft law addresses term limits for members of the Council of Women or its leaders. International practice indicates that term limits are generally included in laws establishing women’s or human rights commissions.²⁵

SUGGESTION 2:

Add a provision regarding term limits for Council members and those in leadership positions.

PART K:

Article 9 --

First - The Council undertake the following functions: --

COMMENT 1:

The language of Article 9 does not clarify the mutual obligations of the Council of Women, the Executive, other Ministries, non-governmental, or private organizations. It does not authorize the Council of Women to investigate reports of discrimination or monitor the appropriate implementation of laws regarding women or to remedy problems it identifies or to report on progress.

SUGGESTION 1:

Even if the limited scope of the current draft law is maintained rather than to expand the purview of the Council to include protecting women’s rights it should consider clarifying the language of Article 6 to close some of the gaps in authority and responsibility.

The following suggestions address each part of Article 9 in turn.

²⁴ National Women Commission Act, art. 9, No. 34 (2006) (Nepal)

<http://nepal.ohchr.org/en/resources/Documents/English/other/2009/March%2009/3.NWC%20ACT%202007.pdf>

²⁵ See The National Commission for Women Act, art. 4, No. 20 (1990) (India); National Women Commission Act, art. 8, No. 34 (2006) (Nepal).

A - Adoption of the financial policy of the Council.

COMMENT 2:

Please see commentary on Financial Provisions Chapter (insert page number) regarding the Council of Women’s degree of financial independence, authority to invest and manage funds, authority to receive aid from foreign or non-state sources, and auditing.

SUGGESTION 2:

Add language to the Financial Provisions Chapter addressing the issues raised in the comment above and in the commentary on the Financial Chapter (Chapter Five of the law/Part P). Alter the language of Article 9 Section A to reflect the authorities granted under the Financial Provisions Chapter.

For example:

(A) The Council shall adopt the financial policy of the Council in compliance with Article __, subsection__

B – Putting a plan of action for the care of women with no supporter and follow-up implementation.

COMMENT 3:

In case of drafters are expanding the scope of the law to promote the social, economic, and cultural development of women and to prohibit discrimination as suggested, the functions of the Council of Women and its authorities should be more clearly enumerated. Even if the current focus of the draft law is maintained(limited to providing financial assistance to women without supporters), the means through which the Council of Women can achieve that goal should be more clearly specified under Article 9 to preempt interpretation and authority challenges. As presently written, there are no clear guidelines to indicate what actions the Council of Women has the legal authority to pursue, or whether the Ministry of Labor and Social Affairs has the authority to approve those actions (which would indicate that the Council of Women is not independent).

SUGGESTION 3:

Add language to Article 9 to more clearly and comprehensively establish the Council of Women’s scope of authority. The Council of Women may more effectively promote the welfare of women without supporters or women in general if it had the authority to:

-
- investigate matters related to protections provided for women under the Constitution and this Act;
 - make recommendations for the effective implementation of those protections to relevant ministries and organizations;
 - suggest remedial legislative measures;
 - bring cases of violation of the provisions of the Constitution and other laws relating to women to the appropriate authorities (courts, High Commission of Human Rights, Iraqi Legislature and so on)
 - investigate complaints relating to:
 - deprivation of women's rights,
 - non-implementation of laws enacted to provide protection to women and to promote equality and development, and
 - non-compliance with policy decisions, guidelines, or instructions aimed at mitigating hardships, ensuring welfare, and providing relief to women;
 - calling for special studies or investigations into specific issues arising out of discrimination against women;
 - undertake promotional and education research regarding means to improve the participation of women in public life, education, the work-force, and other spheres so as to identify factors hindering their advancement and access to services;
 - advise on the policies or laws related to the socio-economic development of women;
 - promote increased awareness of women's rights throughout Iraq;
 - inspect or order the inspection of a jail, remand home, women's institution or other place of custody where women are kept and suggest remedial action;
 - fund litigation involving issues raised under this Act;
 - address any other matter referred to the Council of Women by the Iraqi authorities.²⁶

Further consideration should be given to the subject of investigative powers. What if any investigative powers shall be granted to the Council of Women and whether other agencies are compelled to participate under the Act. To this end, it should determine whether the Council of Women shall have the investigative authority to:

- obtain information or statement by calling a legal person before the Council of Women;
- hear testimony and collect witness statements;
- order the submission of any document to the Council of Women;
- collect documents from governmental or public offices;

²⁶ See The National Commission for Women, art. 10, No 20 (1990) (India)
<http://wcd.nic.in/newact.pdf>.

-
- inspect a location;
 - conduct public hearings; or
 - initiate legal action against an offender.²⁷

It is also advisable to consider whether governmental or non-governmental entities will be obliged to participate in the Council of Women's investigations and whether they are legally obligated to comply with recommendations for corrective action arising from the investigations.

C - Discuss the financial allocations for the care fund of women with no supporter before the end of each year and make recommendations thereon to the Council of Ministers to take necessary decisions in the matter.

COMMENT 4:

It is not clear from the language of Section C whether:

- the Council of Ministers is obligated to comply with the recommendations of the Council of Women;
- the Council of Women's recommendations shall relate to the dispersal of the Fund to women without supporters, or whether they shall relate to the budget of the Ministry of Labor and Social Affairs that should be deposited into the Fund each year;
- whether the Council of Women's recommendations and maintenance of the fund shall be based on some official measure (such as some calculated value based on cost of living established another agency); and
- whether the Council of Women has the authority to manage the Fund.

SUGGESTION 4:

Add language to Article 9 Section C addressing the concerns raised in the comments above to clarify the Council of Women's authority, the management of the fund, and the mutual obligations of the Council and the Ministry under which it operates.

D - a proposal to review the amount of salary due to this law, depending on the economic conditions.

COMMENT 5:

²⁷ See National Women Commission Act, art.11(3) (2007) (Nepal)
<http://nepal.ohchr.org/en/resources/Documents/English/other/2009/March%2009/3.NWC%20ACT%202007.pdf>

The current language of section D leaves the amount of money due to be dispersed to women under the authority of this Act completely up to the discretion of the Council of Women, provides no guidelines and establishes no limits to that discretion other than the reference to “economic conditions.” creating a large loophole in the law that has the potential to negatively impact the lives of the women this Act is designed to assist.

SUGGESTION 5:

The drafters may wish to examine the formulas utilized by the governments of the *United States*, the *United Kingdom*, or other countries to calculate the monthly payments granted to individuals under social welfare plans. While these plans typically account for potential income and employment, the drafters may wish to examine disability benefit calculations in the above-mentioned countries, as these formulas are more likely to account for the fact that the recipient is not likely to be able to support themselves independently in the near future do to the present cultural and economic conditions in Iraq. If the scope of this law is expanded, to include the promotion of employment and other rights for women, however, the formulas used to determine dispersal amounts as well as eligibility criteria, should be periodically reexamined as women become more represented in the work force.

The United States, for example, calculates benefits using “average indexed monthly earnings” which reflect changes in general wage levels over a period of years and ensures that future payments will reflect the general rise in the standard of living.²⁸ In addition to considering average wages and the rising cost of living, the government may wish to consider national averages for costs relating to needs such as food, clothing, recreation, personal incidentals, fuel for heating, cooking and water heating, electricity, household supplies, medical supplies, and shelter.

In order to address these issues, the drafters may wish to consider altering the language of Section D to include the following:

The Council of Women shall develop a method to compute benefit amounts owed to women without supporters accounting for, but not limited to, the following factors:

- *average wage rates*
- *cost of living*
- *inflation*

²⁸ Social Security Administration, Social Security Benefit Amounts, <http://www.ssa.gov/OACT/COLA/Benefits.html>

-
- *national average costs of basic necessities such as food, clothing, shelter, and fuel*

E - Preparation of rehabilitation programs and training courses.

COMMENT 6:

Section E makes a very general statement about the type of courses the Council of Women has the authority to enact, missing to specify that such programs must further the objectives of this Act or be tailored to support any particular skills that would promote women's economic, social, or cultural standing in Iraq. Without further elaboration on the type and scope of such programs, the Council of Women is granted what may be excessive discretion in this arena.

Further, there is no indication, either under this article or under the Funding Provisions, about the ability or responsibility of the Council of Women to fund these programs nor to be approved, for budgetary purposes, by any other agency.

Finally, there is no language in the Act requiring the Council of Women to make such programs and services available to women throughout the country. It is not clear whether the programs may be established only in Baghdad, in other specified governorates, must be replicated in every region, or are to be established and located based on need.

SUGGESTION 6:

Create a separate chapter for the programs authorized under the current Section E, adding language specifying that the programs must be established in furtherance of the objectives of this Act, to consider outlining the nature of such programs , including education, job-skill training, special loan programs to establish business, etc. Funding sources and mechanisms should also be addressed.

F - Coordination with the relevant authorities to offer, health and cultural services to the women with no supporter.

COMMENT 7:

Section F does not address whether the relevant agencies and authorities are obligated to comply with programs and policies initiated by the Council of Women or whether they must only "coordinate."

SUGGESTION 7:

Consideration of the mutual obligations of the Council of Women and relevant agencies, defining cooperation in terms of programs established under this Act should be addressed.

Second - The Council's decisions and recommendations issued at the absence of the President of the Council will not be considered valid unless it is approved during the (15) fifteen days from the date of registration in his office.

No Comment

PART L:

Article - 10 - for the formation of committees in the governorates centers called the (Committee of care of women who has no supporter), the Council shall determine its headquarters.

COMMENT 1:

It is not clear from the language of Article 10 whether the Council of Women is herein authorized to establish committees in the governorates, or whether the Council of Women is authorized only to determine the location of the headquarters of the governorate committees established by the Article itself.

SUGGESTION 1:

Clarify the language of Article 10 in order to separate the issues of headquarters and committee establishment. The drafters may also wish to consider, in light of comments on Article 5 above, the degree to which committee members or governorate representatives will play an advisory role in the Council.

PART M:

Article -11 -

First - The Committee stated in Article (10) of the Act consists of the Governor or his Deputy as Chairman and membership of a representative of the Ministry of Labor and Social Affairs and representatives from each of the bodies set forth in paragraphs (a) (b) (c) (e) of item (Second) of Article (5) of this Act.

COMMENT 1:

As currently structured, governorate representation in the committees is limited to the Governor. All other members are representatives of the central government. This arrangement may severely limit the degree of input the committees, and in turn the Council of Women, receive from the governorates regarding needs, challenges, and the successful implementation of programs.

Additionally, the current committee structure does not leave any room for representatives of civil society organizations which may be active in a given governorate and which may assist in identifying challenges faced by women in a specific region, promoting awareness and education, and in implementing programs.

SUGGESTION 1:

Include membership seats for several civil society organizations dedicated to assisting women which are active within a governorate in order to remedy the concerns raised above. The drafters may also wish to consider including additional seats for other representatives of local government of , ultimately responsible for implementing Council of Women programs.

Second - The Committee follow the mechanism provided for in Articles (6) and (7) and (8) of this Act and undertake the following:

A - Receiving the applications and making sure of the extent of the attached documents are true and correct.

B - Provide the applicant a special form prepared by the Council containing questions about her health, social, economic and cultural conditions.

C – Checking the form filled in and completes the deficiencies.

D - Sending the forms that satisfy the conditions with the original applications to the council due to a site statement by the Chairman of the Committee.

COMMENT 2:

See commentary and suggestions on Articles (6), (7), and (8) above.

SUGGESTION 2:

Add language to Article 10 clarifying the relationship between the committees and the Council of Women regarding:

- **committee and/or local governments responsibility to implement programs established by the Council of Women;**
- **submitting regular reports to the Council of Women regarding the condition of women within its jurisdiction**
- **advising the Council of Women under specified circumstances; and**
- **performing tasks referred by the Council of Women such as investigation, research, or policy implementation.**

PART N:

Article -12 –

First: The Council shall decide the request acceptance or rejection, through a reasoned decision within (30) days from the date of registration in the Office of the Council Chair.

Second – Informing the applicant by the rejected decision in writing when she approaches, or by sending a registered letter to the address chosen for reporting.

NO COMMENT

PART O:

Article 13 –

First - may object to the decision of the council to reject the request to the Personal Status Court within (30) days from the date of the notifying.

Second - The Personal Status Court considers the objection as a matter of urgency, and its decision thereon will be final.

NO COMMENT

PART P.

Chapter Five
(Financial provisions)

COMMENT 1:

The Financial Provisions chapter does not address the funding of the Council of Women itself. as follows:

- **whether the Council of Women will be independent in its funding or tied to another commission (Note—though Article 16 states that funds are to be allocated from the budget of the Ministry of Labor and Social Affairs, it does not indicate who determines the size of the allocation or who controls the money after been dispersed);**
- **the management of funds and whether the Council of Women has the authority to invest money or receive grants from foreign entities;**
- **the auditing process and whether an annual statement must be submitted.**

A comprehensive Financial Provisions Chapter should address the above issues and indicate the degree of authority the Council of Women has over its own funds. The drafters may also wish to note that independence in funding and allocation will assist the Council of Women in performing its functions absent political pressure.

SUGGESTION 1:

The drafters may wish to consider the following funding provisions from Nepal’s legislation establishing a Women’s Commission:

Fund—(1) The Commission shall have a separate fund.

(2) The following amount shall be deposited:

- a. Amount received from the Government of Nepal;*
- b. Grant or Assistance received from a national association, organization, or person;*
- c. Amount received from any foreign government, international association, organization, or person;*
- d. Amount received from any other sources.*

(3) The Commission shall have the approval of the government before obtaining money pursuant to part (c) of subsection (1)

(4) Monies ... shall be deposited in any commercial bank by opening an account

(5) The entire expenses of the Commission shall be borne from the fund established under subsection (1)²⁹

The Government may also wish to consider the following funding provisions from India’s legislation establishing a Women’s Commission:

11. Grants by the Central Government—(1) the Central Government shall...pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act;

(2) The Commission may spend such sums as it thinks fit for performing the functions under this Act

PART Q:

Article 14 -

First - Giving the women provided for in Article (3) of this Act a sum of money of ID 100,000 one hundred thousand Dinars per month.

COMMENT 1:

The drafters may wish to consider whether income earned under this Act is taxable and how this Act will affect the tax system of Iraq.

Second - Amending the amount stated in item (first) of this article by the decision of the Council of Ministers.

COMMENT 2:

The drafters may also wish to review commentary on Article 9 sections C and D regarding establishing a formula to determine how much money from the Fund

²⁹ National Women Commission Act, art. 14, No. 34 (2006) (Nepal).

each woman shall receive every month and standardizing methods for reviewing and amending that amount, including determining time period of issuing this allowance.

PART R:

Article 15 – Establishing in the council a fund called (Fund for the Welfare of women that do not have a supporter) undertakes the followings:

First - Giving the amount of care.

Second - Financing the health, cultural and social projects.

Third - Financing the small projects for generating income.

COMMENT 1:

The Third section allows the Fund to finance small income-generating projects but does not provide any limitations as to the nature or scope of such projects, nor does it require a reporting or auditing mechanism. This provision creates a loophole in the law that may result in the misappropriation or misuse of funds.

SUGGESTION 1:

Elaborate on the nature of income-generating projects allowed under the Act and consider if the Council of Women shall be authorized to invest money or to perform certain services for profit. Additionally, it is advisable to add language under Article 15 or 16 addressing reporting and auditing mechanisms for fund management.

PART S:

Article - 16 – The financing of the Fund is established under the item (first) of Article (15) of the Act: --

First - Funds are allocated in the annual financial budget of the Ministry of Labor and Social Affairs.

COMMENT 1:

Please see commentary directly following the title of this Chapter regarding concerns about the independence of the Council's finance's, management, authorization, and amount

Second – Donations, contributions, grants and aids from inside Iraq, if it is from the outside Iraq needs the approval of the Council of Ministers.

NO COMMENT

PART T:

Article - 17 –

The Fund exempted from duties and taxes arising from its imports and profits.

NO COMMENT

PART U:

Article - 18 –

May not collect the amount granted due to the provisions of this law and of the salary of Family Care or any official source of income.

COMMENT 1:

This article is not clear. IILHR assumes the drafters intend Article 18 to mean that, where a woman receives income from the Family Care program or another government sponsored social welfare program, she is prohibited from receiving an additional allowance under this act.

SUGGESTION 1:

If IILHR’s understanding of Article 18 is correct, the drafters should modify the language of the article to render its meaning clearer. The draft law should also consider whether a woman will be allowed to transition from the Family Care or another program into the financial assistance program authorized under this Act without having to forfeit income for an extended period of time. As it takes 30 days to apply for funds under this Act and receive approval or denial, and then additional time to appeal a denial, a women receiving Family Care assistance risks having no income at all for a minimum of two months should she be required to quit one program in order to obtain assistance under this Act. Consider establishing a transition policy that would allow a woman to move from one program to another without losing income necessary to fulfill her basic needs.

PART V:

Article 19 –

Drawing back the amounts disbursed, if proven to be disbursed based on forged documents or false information.

COMMENT 1

Aside from granting the authority to draw back funds disbursed via the use of forged or false documentation, Article 19 does not address whether the Council of Women or the committees are obligated to refer the offender to the appropriate authorities for prosecution.

SUGGESTION 1:

Add language to this Article suggesting penalties for submitting forged documents or knowingly false information. Penalties may include fines, loss of social welfare privileges, or criminal prosecution.

Chapter Six (Final provisions)

PART W:

Article - 20 –

The provisions of this law applies on the Palestinian women living in Iraq since 1948.

COMMENT 1:

It is not clear whether this law applies only to Palestinian women living in Iraq since 1948 or whether it also applies to their descendents who reside in Iraq but may or may not be Iraqi citizens. The descendents of Palestinian women living in Iraq since 1948 may also require government assistance under this program.

SUGGESTION 1:

Consider addressing the applicability of this law to the descendents of Palestinian women living in Iraq since 1948 and the naturalization/citizenship issues that may be raised.

PART X:

Article 21 –

The Prime Minister has the right to issue instructions to facilitate the implementation of the provisions of this law.

COMMENT 1: instructions of implementing legislation are drafted and approved by the Council of Ministers, so we suggest to amend provision replacing the term “Prime Minister” with “Council of Representatives”.

PART Y:

Article 22 --

This law is implemented from the date of its publication in the Official Gazette.

NO COMMENT

Reasons of Drafting this Law

PART Z:

In order to raise the level of women with no supporter and to reduce the phenomenon of poverty and destitution, and to provide the services needed, and to create a healthy and adequate social environment suitable for her and to enable her upbringing her children and

creating a generation contribute in building the new Iraq through the provision of social security to them, this law was drafted.

COMMENT 1:

Should the drafters decide to expand the scope of the law to include the protection of Constitutional rights enumerated in Part IV, Section B above, it may wish to address the desire to do so in the “Reasons to Draft this Law” section and to include the need to prohibit discrimination against women and to promote cultural and social awareness of the equality between men and women.

VII. SAMPLE REVISED DRAFT LAW

Promotion of Women’s Economic, Social, and Cultural Equality Act

Chapter 1—Findings and Purposes

Article 1—Findings—the Council of Representatives finds that—

- (1) (scientifically determined number) of Iraqi women live in poverty. Among them, __(number)__ of these women are widowed, divorced, have never married, or have been declared to have no supporter by judicial decree;*
- (2) historically, women in Iraqi society have faced discrimination in the fields of [for example] employment, education, property ownership, access to health care, access to federal or private loans, housing, public accommodation, political representation, and access to public services;*
- (3) (census data, studies by Iraqi and/or international groups, etc) have documented that women, as a group, occupy an inferior status in society, are severely disadvantaged socially, vocationally, economically, and educationally;*
- (4) Under the Constitution, Iraq’s goals regarding women are to assure equality of opportunity, full participation, economic self-sufficiency, the eradication of discrimination, and ensuring, to the best of its ability, that men and women are equal.*

Article 2— Purpose—

Recognizing that, although significant progress has been made in restructuring our society and its institutions, systematic inequalities remain imbedded in our social structures, practices and attitudes which undermine the aspirations of our constitutional democracy;

This Act endeavors to facilitate the transition to a democratic society guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom by prohibiting, as far as is possible, discrimination against people

and eliminating, as far as is possible, the poverty and destitution faced by many Iraqi's and especially Iraqi women;

In pursuance of these principles, the objectives of this Act are:

- (d) to further the aims of Articles 14, 16, 22, 23, 30, 31, 34, 36, and 37 of the Constitution;*
- (e) to facilitate further compliance with international law obligations and treaty obligations including, amongst others, the Convention on the Elimination of All Forms of Discrimination against Women;*
- (f) to give effect to the letter and spirit of the Constitution, in particular—*
 - j. to eliminate, as far as is possible, the economic, social, health, educational, political and cultural inequalities between men and women;*
 - ii. to eliminate, as far as is possible, discrimination against persons on the ground of sex, marital status, family status, family responsibilities, pregnancy or potential pregnancy in the areas of work, accommodation, healthcare, education, property ownership, or the administration of the laws of Iraq; and*
 - iii. to prohibit harassment on the basis of sex, marital status, family status, family responsibilities, pregnancy or potential pregnancy;*
 - iv. to promote recognition and acceptance within the community of the principle of the equality between men and women*

Chapter 2—Definitions

Article [x]—Definitions

- (1) accommodation—any residential or business accommodation;*
- (2) Constitution—the Iraqi Constitution;*
- (3) the Council—the Council for the Advancement of Women's Economic, Social, and Cultural Rights [or whatever name is selected]*
- (4) discrimination—any act or omission, including a policy, law, rule, practice, condition, or situation which directly or indirectly—*
 - 1. imposes burdens, obligations or disadvantage on; or*
 - 2. withholds benefits, opportunities or advantages from, any person on one or more prohibited grounds;*
- (5) education—refers to educational institutions meaning a school, college, university or other institution at which education or training is provided;*
- (6) employment and work—include*
 - 1. part-time and temporary employment*
 - 2. work under a contract for services; and*
 - 3. work as a State employee;*
- (7) equality—includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes equality in terms of outcomes;*

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- (8) *family responsibility*—responsibility in relation to a person’s spouse, partner, dependent, child or other members of his or her family in respect of whom the member is liable for care and support
 - (9) *family status*—member ship in a family and the social, cultural and legal rights and expectations associated with such status;
 - (10) *fund*—the Fund for the Welfare of Women without Supporters established under Article 15;
 - (11) *harassment*—unwanted conduct which is persistent or serious and demeans, humiliates, or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to
 1. sex or gender;
 2. marital status, family status, family responsibilities; or
 3. pregnancy or potential pregnancy;
 - (12) *marital status*—the status or condition of being single, married, divorced, widowed, or in a relationship involving a commitment to reciprocal support;
 - (13) *President*—President of the Council for the Advancement of Women’s Economic, Social, and Cultural Development;
 - (14) *public authorities*—includes
 1. any institution or administrative structure of the in the federal/regional, provincial or local government;
 2. any other functionary or institution—
 - a. exercising power or performing a function in terms of the Constitution or a provincial constitution; or
 - b. exercising a public power or performing a public function in terms of any legislation or under customary law or tradition.
 - (15) *women without supporters*—women who, regardless of age, are—
 1. *Divorced*—meaning a woman whose marriage has been terminated by a competent judicial body;
 2. *Widowed*—meaning a woman who’s husband has died;
 3. *Single*—meaning a woman who is not married or is not in a relationship of reciprocal support;
 4. women who have lost their supporting partners or family members in a manner approved and recognized by the final decision of a competent judicial body.

Chapter 3—Applicability

Article 16—This Act binds the government and all persons.

Article 17—If any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act must prevail.

Article 18—This Act does not apply to any person to whom and to the extent to which the [South African Employment Act] applies.

Chapter 4—Establishment of the Council

Article 19—A Council for the Advancement of Women’s Economic, Social, and Cultural Rights [for example] shall be established as a division of the State Ministry for Women’s Affairs.

Article 20—Council Membership

Article 21—Role of Federal and Provincial Governments

Chapter 5—Responsibilities of the Council

Chapter 6—Funding the Council and its Activities

Chapter 7—Prohibition on Discrimination and Harassment

Chapter 8—Right to Equal Opportunity

Chapter 9—Right to Employment

Chapter 10—Right to Own and Inherit Property

Chapter 11—Right to Social and Health Security, Income, and Housing

▪ *may include the provision under Article 14 of the current draft law, which provides financial support to women without supporters*

Chapter 12—Right to healthcare

Chapter 13—Right to Education

Chapter 14—Right to Participate

Chapter 15—Protection of Liberty and Dignity

Chapter 16—Promoting Awareness of Rights

Chapter 17—Burden of Proof and Remedies

Chapter 18—Other Provisions