

**IILHR COMMENTS: DISABILITY
DRAFT LAW AUGUST 2008**

After studying the current disability draft law, IILHR has compiled comments into this paper for your review. In summary, the main areas of concern and comment include the following: the need to follow international standards when defining disability, to include that the underlining goal of this law is to provide and promote equal opportunities for the disabled and to support their integration into mainstream society. Additionally, financial analysis and implications should be included in every draft law, review and suggestion of financial implementation into the annual or future budget needs to be addressed in a separate article. Further review and suggestions are set out in this paper. Please do contact IILHR for further discussion, information and clarification

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COMMENT: In order to make this law as complete as possible, the purpose of the law should be the very first article.

SUGGESTION: Move Article 2 before Article 1.

Add language to the following effect: [The purpose of this law is to strengthen and protect the rights and interests of people with disabilities, and to abolish the discriminations, and to guarantee their full and equal participation in all activities in society]

Article 1 – Definitions

COMMENT: Need to add more definitions

SUGGESTION: Add definitions for the following (and possibly others):

[**educational institution** means a school, college, university or other institution at which education or training is provided.

employment includes:

(a) part-time and temporary employment; and

(b) work under a contract for services; and

(c) work as an employee of a State or an instrumentality of a State

Disability discrimination -For the purposes of this Act, a person (**discriminator**) discriminates against another person (**aggrieved person**) on the ground of a disability of the aggrieved person if, because of the aggrieved person's disability, the discriminator treats or proposes to treat the aggrieved person less favorably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person without the disability.]

• First- Disability defined

○ COMMENT: International standard of definition should be matched

○ SUGGESTION: Follow definition and language used in international treaties/declarations/standards (some examples follow)

▪ UNHCR Declaration on Rights of the Disabled-

[The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.]

▪ UN Convention on Rights of People with Disabilities-

[Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in

interaction with various barriers may hinder their full and effective participation in society on an equal basis with others]

- Second – Categories of Disabilities defined
 - COMMENT: Define what the terms [physically disabled] and the terms [mentally and psychologically disabled] means
 - SUGGESTION: Add language to this effect:
 - [The phrase physical or mental impairment means--
 - (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;
 - (ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
 - (iii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.]
- Third – Welfare defined: NO COMMENT
- Fourth- Rehabilitation defined: NO COMMENT

Article 2 – Purpose of Law

- COMMENT: Should be very first article
- SUGGESTION: move this article before definitions
- COMMENT: Include a short preamble to article with overarching purpose
- SUGGESTION: Add language similar as one of the following:
 - (1) [This Law is formulated for the purpose of protecting the lawful rights and interests of, and developing undertakings for, disabled persons, and ensuring their equal and full participation in social life and their share of the material and cultural wealth of society.]; or

- (2) [The grant of the rights and privileges for disabled persons shall be guided by the following principles:
 - (a) Disabled persons are part of Iraqi society, thus the State shall give full support to the improvement of the total well-being of disabled persons and their integration into the mainstream of society. Toward this end, the State shall adopt policies ensuring them to compete favorably for available opportunities.
 - (b) Disabled persons have the same rights as other people to take their proper place in society. They should be able to live freely and as independently as possible. This must be the concern of everyone, the family, the community and all government and non-governmental organizations. Disabled persons' rights must never be perceived as welfare services by the Government.
 - (e) To facilitate integration of disabled persons into the mainstream of society, The State shall advocate for and encourage respect for disabled persons. The State shall exert all efforts to remove all political, social, cultural, economic, environmental and attitudinal barriers that are prejudicial to disabled persons]; and/or
- (3) People with Disabilities are fully entitled to exercise their rights as citizens guaranteed by the constitution and other international laws which are ratified by the government of Iraq such as the rights to live, rights to access to health care services, rights to mobility, rights to access education, rights to work, rights to be involved in politics and of access to other private and public services]
- First –
 - COMMENT: Is the purpose of the law only to protect disabled from exploitation and discrimination? What about taking steps to supply equal opportunities for the disabled, promoting respect for those with disabilities, and discouraging discrimination towards the disabled?
 - SUGGESTION: add language similar to the following
 - [(a) to eliminate, as far as possible, discrimination against persons on the grounds of disability in the areas of:
 - (i) work, accommodation (residential or business), education, access to premises, clubs and sport; and
 - (ii) the provision of goods, facilities, services and land; and
 - (iii) existing laws; and
 - (iv) the administration of Iraqi laws and programs; and

(b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and

(c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.]

- Second –
 - COMMENT: Why are equal opportunities only mentioned in regards to sports?
 - SUGGESTION: Equal opportunity should be the underlining goal of this law. Should be attached to all rights in order to assist the protection of the legal rights of disabled people. Add equal opportunity language to all goals of this law.
- Third – Unemployment Governmental Assistance
 - COMMENT: Need to make sure this assistance is given with the aim being to integrate the disabled person into mainstream society and does not result in segregating them or removing them from mainstream society
 - SUGGESTION: Add language to reflect the aim of integrating disabled people into Iraqi society, such as:
 - [with the goal of assisting these disabled people to integrate into mainstream society]
- Fourth – Employment Protections
 - COMMENT: Why do these protections only apply to the State? What about private employers?
 - SUGGESTION: add in all of society to allow people with disabilities to be protected against discrimination in regards to employment in the private sector as well as the public sector. Add language similar to the following:
 - [No entity, public or private, shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.]
- Fifth – Equality of Education
 - COMMENT: Need to be more specific – what does equality of education mean? Access? Non-discrimination in getting into school as well as providing the means to get into school and enjoy all activities of mainstream students (structural needs such as wheelchair accessible, lower desks if needed, etc). Also what

about providing training for the teachers and administrators of the schools?

- SUGGESTION: Be more specific, add in language similar to the following:
 - [(1) Disabled persons shall be provided in access to all public educational institutions at all levels.
(2) Government organs and authorities shall ensure (1) Adequate training for personnel to cater for the educational development of the disabled in mainstream educational institutions. (2) Vocational training to develop skills. (3) Government organs and authorities shall;
(A) Take into consideration the special needs and requirements of the disabled in the formulation, design of educational policies and programs;
(B) Ensure structural adaptation of all educational institutions to the needs of the disabled as much as possible;
(C) Promote specialized research institutions that will facilitate research and development of educational needs of the disabled.]

- Sixth – Prevention

- COMMENT: How will this be done? What measures will be taken to prevent further disabilities from occurring? What mechanism will be used? Laws? Research? Immunizations/medical? Other?

- Seventh – Transportation

- COMMENT: Needs to be expanded on- by providing transportation does this mean free of charge or just access to the transportation? Should be a timeframe for implementing this provision as it needs financial investment from authorities. If transportation is privatized then government should sponsor the implementation of the law.
- SUGGESTION: Add language similar to the following:
 - [(1) A Disabled person shall be entitled to equal access (and free?) to transportation by bus, rail, air or any other conveyance that serves the general public needs.
(2) All transport system shall take steps to adapt required fittings for needs of the disabled.
(3) Priority shall be given to the disabled in all publicly supported transport systems. Accordingly reasonable number of seats shall be reserved solely for the use of the disabled.

(4) Federal, regional or local governments should apply with the provisions of this law in one year after getting in to force.]

- Eighth – Immunization Campaigns: NO COMMENT
- Ninth – Private sector
 - COMMENT: All of the provisions in this law should apply equally to the private sector
 - SUGGESTION: Change article to reflect that this law is equally applicable to both private and public sectors (as basic principle should be stated at the beginning of the law)
- Tenth – Rehabilitation
 - COMMENT: Make sure that these programs are based on the principle of integrating disabled people into society and not creating programs which remove and segregate them from Iraqi society. Ministry of Health together with Ministry of Labor and Social Affairs should prepare a study on situation of people with disabilities, analyzing possibilities and proper program designs to serve the interest of this category of citizens.
 - SUGGESTION: Add language to reflect that these rehabilitation programs are based on integration principles, add language similar to the following:
 - [These rehabilitation programs will support the principles of integration for the disabled and will not result in removing and segregating them from mainstream society]
- Eleventh – Families of Disabled Rehabilitation: NO COMMENT
- Twelfth – Training for Families of Disabled
COMMENT: Local, regional and federal governments should expand training possibilities to every Iraqi citizen interested in disabled people care as a profession/job. Should be included into list of social services offered by authorities.

Article 3 – Rights of the Disabled

- COMMENT: the preamble to this article reads “Disabled shall enjoy the following rights” – the disabled should be accorded all the rights afforded to all Iraqi citizens and this law should be the mechanism to ensure these rights are protected for the disabled.
- SUGGESTION: Change preamble, insert language similar to the following:
 - [People with Disabilities are fully entitled to exercise their rights as citizens guaranteed by the constitution and other international laws which are ratified by the government of

Iraq. This law reinforces and protects these rights, especially with regards to the following rights:]

- First: NO COMMENT
- Second: NO COMMENT
- Third:
 - COMMENT: The standard of living of the disabled should be equal to that of mainstream Iraqi's.
 - SUGGESTION: Amend language to read:
 - [Economic and social security as to ensure an equal standard of living for the disabled as is enjoyed by mainstream Iraqi society]
- Fourth: NO COMMENT
- Fifth:
 - COMMENT: Unclear, does this mean that the government shall take special needs into consideration is economic and social planning?
- Sixth:
 - COMMENT: Must ensure the aim of this provision is to ensure integration into society and will not result in segregation of the disabled. Disabled people can be taken care of by any qualified person; leave option open and not limit only to families (sponsoring)
 - SUGGESTION: add language similar to the following:
 - [so long as this does not result in the disabled persons removal and segregation from mainstream society]
- Seventh: NO COMMENT
- Eighth: NO COMMENT
- Ninth:
 - COMMENT: Need to ensure that these programs have the goal of integrating the disabled into mainstream society and will not result in segregation of the disabled. These programs should be sponsored by local, regional or federal government.
 - SUGGESTION: add language similar to the following:
 - [which aims at supporting the disabled to integrate into mainstream Iraqi society]
- Tenth: NO COMMENT
 - COMMENT: who will sponsor these loans? Private Banks? highly unlikely. Governments should guarantee special loaning programs for disabled people.
- Eleventh: NO COMMENT

Article 4 – Formation of the Council

- First –
 - COMMENT: Many other countries give the duty of this council to the Human Rights or Equal Opportunity Commission, a national council or a public agency. However, the proposed Council is an inter-ministerial committee established to develop, implement and oversee special programs and legislation for disabled people. The role of the Iraqi HRC is to focus on discrimination, so may not be a good fit in Iraq. Leaving it in the executive branch can influence and coordinate more efficiently than a Commission for which disabled people's rights are only part of its activity.
 - COMMENT: Include the representatives of Ministry of Education, Ministry of Planning and of the Minister for Governorates Affairs as members in this Council.
 - COMMENT: is the purpose of this council for the “welfare of disabled persons” or for the protection of the rights of the disabled?
 - SUGGESTION: change to read Council shall be formed for the purposed of protecting the rights of the disabled...”
 - COMMENT: procedure of approval, swearing in, etc of members is not mentioned.
 - SUGGESTION: Need to have a procedure in place – who approves the nomination of a member and who swears them into their position on the council
 - COMMENT: The two disabled and two civil society members should be chosen by a committee or all of the other members and not just the President of the Council as an individual. Also need to state the nomination and approval procedures for these members.

Article 5 –

- First – Meetings
 - COMMENT: There should be more than one way and one person who can call a meeting to session.
 - SUGGESTION: add in language specifying in addition to the President calling a meeting that something like 3 or more members may jointly call a meeting to session as well. Some additional mechanism to call a meeting needs to be in place.
- Second - Decisions
 - COMMENT: does this mean decisions are taken by a majority of the members on the council or a majority of the members of the council who are present at the meeting?
- Third – NO COMMENT

Article 6 – Resignation and Replacement

- COMMENT: Is this the only reason that a member may be replaced?

Article 7 –

- COMMENT : If Council is created as an inter-ministerial (see comments to Article 4), they should work out of their respective offices.
- SUGGESTION: If Council is decided to be inter-ministerial than this article should be deleted.

Article 8 – Tasks of Council

- First & Second
 - COMMENT: The Council cannot propose new laws. It is clear in the Constitution that only the Parliament and the Executive can propose laws. This article is unconstitutional as written.
 - SUGGESTION: Could make it mandatory that all proposed laws be sent to the Council for its opinion and consultation on the law. The Council's opinion could then stay attached to the draft through the remainder of the law making process.
- Third
 - COMMENT: What exactly does this mean? Making sure the law is enforced in Iraqi society after being passed by the COR? How will the Council do this?
- Fourth: NO COMMENT
- Fifth:
 - COMMENT: Need to ensure that the determination of the proper vocations to train and rehabilitate the disabled person is not by means of segregating them from society but rather by means that support their integration into mainstream Iraqi society.
 - SUGGESTION: Add/change language that reflects integrating disabled people into society, such as:
 - [To encourage scientific research to identify the size, kind and reason of the disability, and to identify the means to prevent it and to determine the proper vocations to train and to rehabilitate the disabled persons in accordance with the level of their disability and in a manner which supports their integration into mainstream society]
- Sixth:
 - COMMENT: Should the Council also comment/reply to these reports as to whether they are up to standards with the disability laws and current developments in Iraq and abroad in the field of disability law?

- Seventh:
 - COMMENT: Again, need to ensure that these programs are prepared and implemented with the goal of integrating disabled people into society and not removing them and segregating them from the community. These private programs can complete the government programs, may be sponsored by state or local budget, so coordination is absolutely necessary.
 - SUGGESTION: Add language to the end similar to the following:
 - [with the goal of integrating the disable person into Iraqi society]
- Eighth:
 - COMMENT: all gifts, donations, wills and endowments should also have the intention of providing funds, etc that will support the integration of disabled people into mainstream Iraqi society. Necessary rules should be issued by Ministry of Finance or by decision of Council of Ministers.
 - SUGGESTION: Add language similar to the following:
 - [All such donations, gifts, wills and endowments should support and not hinder the goal of integrating disabled people into mainstream Iraqi society]
- Ninth:
 - COMMENT: What is the disabled Welfare Fund? What is the purpose? Where do these funds come from? Again, must make sure that this Welfare Fund encourages the integration of the disabled into mainstream society and does not help to segregate them. Necessary rules should be issued by Ministry of Finance or by Executive decision.
 - SUGGESTION: Must explain this Welfare Fund more so and/or reference where it is further explained. Additionally, need to make sure that the concept of integration into society is supported within this Welfare Fund, its goals and its uses.
- Tenth:
 - COMMENT: Where are these comments going? What is the procedure for publishing these comments or delivering them to the appropriate people? What happens after read—is this meant to encourage action by the Iraqi government or reaction?.
 - SUGGESTION: clarify the purpose, goal and mechanisms of this task. Additionally, the Executive should consult the Council in the process of ratifying international conventions in this field

- Eleventh:
 - COMMENT: What happens after the Council drafts their budget? Where does it go? Who approves it? How does this affect the independence/influence the council?
 - SUGGESTION: add in specific procedure or who approves and administers budget. Additionally, part of the budget should come from each Ministry, approved by Council of Ministers.
- Twelfth:
 - COMMENT: Very broad and opened ended
 - SUGGESTION: maybe narrow down by adding language focusing the possible additional tasks on the goal of this law and Council. Add/Change language similar to the following:
 - [Any other tasks assigned by the Council which supports the goals of this Council in protecting the lawful rights and interests of, and developing undertakings for, disabled persons, and ensuring their equal and full participation in social life and their share of the material and cultural wealth of society]

Article 9 – Council’s Reporting:

- SUGGESTION: delete [Supreme] and replace [Prime Minister] with either the Council of Ministers or the Cabinet

Article 10:

- COMMENT: Need to clarify the role of these centers and the method to how disability capabilities are determined. This process should be standardized to be the same across all of Iraq and in all centers by decision of the Health Minister.

Article 11:

- COMMENT: *Could be a translation issue here.* Is this referring to the centers set forth above in Article 10? If so, need to use same language (Article 10 calls them disability check up centers whereas Article 11 calls them disability examination centers). If this is referring to a separate center then that needs to be explained along with the role and function of the centers.
- COMMENT: Why does the Council need a copy of the disabled persons file? This infringes on privacy issues and the Council should trust the diagnosis of its centers.
- SUGGESTION: Delete this article

Article 12:

- COMMENT: These levels of disability and capability of work categories need to be explained as well as the services that are granted accordingly.
- COMMENT: These provided services need to be given with the aim of integrating the disabled person into mainstream society.
- SUGGESTION: add language reinforcing this goal, such as:
 - [all provided services shall be prepared, implemented and given to disabled people with the intent to encourage their integration into mainstream Iraqi society]

Article 13:

- COMMENT: Is this referring to the “Welfare Fund”? This needs to be clarified as well as, again; this “Fund” needs to be further explained.
- SUGGESTION: One option is to be part of Health Ministry’s budget as separate fund.

Article 14: NO COMMENT

Article 15: NO COMMENT

Article 16:

- COMMENT: Not sure what this means or what these required instructions are or where they will be issued.

Article 17:

SUGGESTION: Add language at the end of phrase [except Article 2 (7) which shall be enforced in one year after the publication in the Official Gazette]