

IILHR COMMENTS: DRAFT FOREIGN SERVICE LAW

October 2008

After studying the current Foreign Service draft law, IILHR has compiled the following comments for your review. The main areas of concern and comment include the following: the need to clarify the division of diplomatic ranks; as well as to determine the specific allowances desired to compliment these specific ranks. Additionally, it is imperative to note that French and English are the *lingua franca* of international relations, and serve as the working language for international institutions; therefore it is essential that all foreign service employees be knowledgeable in at least one of these two languages. On a final note, 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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Preamble –

- COMMENT: Every law should have a preamble which sets out the justification, need and purpose for the proposed law
- SUGGESTION: Add language similar to the following:
 - Article 1. Scope of Application of this Act (This language is drawn from the Diplomatic Service Acts of Estonia and Germany)
 - i. This act regulates the Foreign Service of the Republic of Iraq.
 - ii. The Foreign Service shall administer the foreign affairs of the Republic of Iraq. It shall conduct the relations of the Republic of Iraq with foreign states as well as intergovernmental and international institutions.
 - iii. The function of the Foreign Service shall be in particular to:
 - 1. Represent the interests of the Government of Iraq abroad;
 - 2. Cultivate and promote foreign relations, especially in the political, economic, development policy, cultural, scientific, technological, environmental and social fields;
 - 3. Inform the government as regards conditions and developments abroad;
 - 4. Provide information abroad on the Republic of Iraq;
 - 5. Render support and assistance to Iraqis abroad
 - 6. Participate in the development of relations in the field of international jurisprudence and the evolution of international law; and
 - 7. Coordinate, in line with the policy of the government, the activities of state and other public institutions of the Republic of Iraq abroad, to the extent that such activities carry foreign policy implications.
 - iv. The Foreign Service shall assist the constitutional organs of the Republic of Iraq in conducting their international contacts.

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Article 1 – Definitions

- First:
 - COMMENT: Need to flesh out definition to include the three divisions necessary to a foreign service: diplomatic service, administrative corps, and technical corps
 - SUGGESTION: Consular service ranks and rules should also be considered
- Second: NO COMMENT
- Third:
 - COMMENT: Define what a diplomat is
 - SUGGESTION: Add language similar to the following:
 - [A diplomat is an official of the diplomatic service who has received a diplomatic rank or administrative or technical rank and who is authorized to represent the Republic of Iraq in foreign relations.]
- Fourth: NO COMMENT
- Fifth: NO COMMENT
- Sixth: NO COMMENT
- Seventh:
 - COMMENT: Chang/clarify language
 - SUGGESTION: Add language similar to the following:
 - [Chief of Mission means the principal officer in charge of a diplomatic mission of the Government of Iraq or an Iraqi office abroad which is designated by the Foreign Minister as diplomatic in nature, including any individual to be temporarily in charge of such a mission or office]
- Eighth - Thirteenth: NO COMMENT

Article 2 – Foreign Service Jobs

- First:
 - COMMENT: Official ranks should be broken out in three different categories. All official ranks should also contain equivalent ranks in French and English
 - SUGGESTION: Delete current table of rankings as it is confusing. Divide rankings into the following three categories:
 - Official ranks of the diplomatic staff of the Ministry of Foreign Affairs
 - Official ranks of diplomatic, consular, administrative, and technical staff of foreign missions
 - Official ranks of consular staff of foreign missions.

- COMMENT: Diplomatic ranks should be established for positions above Ambassadorial rank; these could include Ministerial Ranks from Head of Office to Deputy Minister.
- Second: NO COMMENT

Article 3 – Appointment in the Foreign Service Jobs

- First:
 - COMMENT: Gives too much exclusive power to one person by putting all hiring in the hands of solely the minister. This could be problematic for many reasons including corruption, favoritism and factionalizing the hiring process. It is not realistic to have the Minister himself in charge of hiring all employees.
 - SUGGESTION: Reconsider hiring decisions exclusively made by the Minister; also set out further instruction as to how rank of hires are determined.
 - [Rank shall be determined according to the background of the employee]
- Second:
 - COMMENT: Definition of an Iraqi should be the same as how an Iraqi is defined in the Constitution
 - COMMENT: Section B -is unclear – is this for just entry level employees? Suggest removing the ceiling of 35 years of age.
 - COMMENT: Section C -needs clarification. Generally medical staff is attached to Ministry of Foreign Affairs and they certify the health of employees.
 - COMMENT: Section H –would all employees hold a degree with the Foreign Service Institute before they become employees? However this is worked out, it should not be done in a way that prevents performance or functions in the foreign service because of financial constraints
 - SUGGESTION: Add language similar to the following:
 - [Must have oral and written knowledge of at least two foreign languages of which one must be either French or English (the two diplomatic languages)]
- Third: NO COMMENT

Article 4 – Article 7: NO COMMENT

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Article 8 –Ambassador Appointment

- First:
 - SUGGESTION: change old language of “Republican Decree” to “the President of the Republic”
 - COMMENT: Section F – knowledge of a “living language” is unclear and not sufficient for diplomats. It is necessary that foreign service employees speak at least one official diplomatic language (French or English).

Article 9 - Article 11: NO COMMENT

Article 12 – Promotion & Evaluation

- SUGGESTION: Add language similar to the following to provide for a responsible and effective evaluation process:
 - Evaluation shall be carried out by an Evaluation Committee of the Ministry of Foreign Affairs.
 - The procedure, principles, and membership of an Evaluation Committee are approved by the Minister of Foreign Affairs.
 - Evaluation shall take place:
 - At least once during two years of service;
 - If a proposal to promote a diplomat is made
 - Upon making a proposal to confer or withdraw a diplomatic rank
 - Upon making a proposal to confer, reduce, or withdraw a diplomatic service rank
 - The suitability of diplomats to their office, their personal characteristics, professional and social skills, and state of health shall be assessed in evaluations.
 - Resolutions of an Evaluation Committee shall be the basis for making proposals for:
 - Appointment to the foreign service, promotion, relocation or release from office;
 - Conferral and withdrawal of diplomatic ranks;
 - Conferral, reduction and withdrawal of diplomatic service ranks;
 - Other assignments, including in-service training and studies.

Article 13 –

- COMMENT: Change the promotion duties from that of the Minister to that of the Evaluation Committee set forth in the Article 12 suggestion

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- SUGGESTION: Change language to reflect the following:
 - [The Evaluation Committee may recommend promoting a Foreign Service employee, except the special ranks employees, if the employee has a satisfactory job performance as it is proved in his evaluation report ...]

Article 14 – NO COMMENT

Article 15 – Retirement

- COMMENT: 80% of salary seems very high. How long would the retired Ambassador receive this benefit? What about the rest of the Foreign Service employees, do they get any similar sort of retirement benefit?

Article 16- NO COMMENT

Article 17 –

- COMMENT: Should there be a time limit of time spent at one location? Other countries generally use a 2-3 year posting rule, where unless situations are special an employee will be in one place for that amount of time and then will be moved to another posting.

Article 18 – Article 24 – NO COMMENT

Article 25 – Financial Issues

- COMMENT: overall the allowances set out here are very broad and need to be further expanded upon so that they are clear. For example, what are “foreign service allowances for employees of the mission”? What are “allowances for the work at the Ministry center”? Which transportation services are provided for? Travel to and from posting or all transportation while at posting—for instance, as it currently reads this could be interpreted to cover the cost of an automobile and gas, etc. The term “employees family” must be defined.
- SUGGESTION: Establish allowances pursuant to regulations issued by the Council of Ministers. For examples of the vast variety of allowance options see the US Foreign Service Act
- COMMENT: Section I- What exactly is meant by “original country”? Does this mean Iraq? Does this mean the country from where the deceased was originally from? Needs clarification

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Article 25 – Article 27 Rank & Title

- COMMENT: These articles are confusing. Need to be clarified and synchronized with diplomatic and consular ranks. Adopting the suggestion of how to divide ranks as set out in our comments in Chapter Second of Article 2 would help to clarify this section.

Article 28 & Article 29- NO COMMENT

Article 30 – Advisor & Technical Attache’s Appointment

- Second
 - COMMENT: Section A – definition of Iraqi should match that set out in the constitution

COMMENT: Section F – it is not sufficient or clear that personnel serving in this capacity have knowledge of a “living language”, must specifically be French or English, as previously noted.

Article 31 – The Appointment of the Representatives at the International and Regional Organizations

- Second
 - COMMENT: Not clear, what does “organizations of a technical nature” mean? Should be more specific.
 - COMMENT: Section A – definition of Iraqi should match that set out in the Constitution
 - COMMENT: Section C – Vague – how is it determined that one is an expert?
 - SUGGESTION: Set forth criteria such as: number of years working in the field, scholastic achievements and degrees obtained, research and/or written material produced, etc.

Article 32 – The Ministry Councils & Committees

- COMMENT: This article should set forth the the general purpose, goal, and functions of these councils and committees. Likewise, this article should describe procedures for establishing them, including composition, selection, and other arrangements .

Article 33 & Article 34 – Establishing Diplomatic & Consolatory Relations and Delegations

- COMMENT: This article needs further clarification, and raises questions such as: Does this provision apply to all missions or must an individual delegation be established for each mission separately? What are the requirements necessary to be in the proposal? Why

couldn't such a delegation be automatically established in each mission?

Article 35 – Disciplinary Provisions

Article 36 –

- First
 - COMMENT: This provision gives too much power on the Minister, and should be broadened to ensure that investigations are independent and appropriately supported.
 - SUGGESTION: Provide for all foreign service employees (or even Iraqi citizens) to be able to submit proposals and complaints to an inspector general of the foreign service.
- Second
 - COMMENT: Why is this a verbal process? What is the procedure for the committee's investigation? Are there findings made public? Is 30 days really enough time for the committee to fully investigate? Also, what happens if the investigation exceeds the time limit?
 - SUGGESTION: extend the investigation time to 60 or 90 days and flesh out the procedure that the committee must adhere in order to make a good faith effort to complete a full and fair investigation.
- Third
 - COMMENT: States Ambassador has “veto” over decision of committee – do they mean “appeal”? Ambassador should not have veto power over anything let alone over a disciplinary decision against himself. If it is intended to mean “appeal”, who would the Ambassador make his appeal to? And what would this process be? Additionally, at the end of the process who is entrusted with the duty to enforce the punishment?

Article 37 –

- First
 - COMMENT: Why is a separate committee necessary? Can't the same committee as set out in Article 36 perform this function as well?
- Second
 - COMMENT: Again, why is this specifically a verbal process? And is 30 days really enough to carry out a full and fair investigation?
- Third

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- COMMENT: Same as Article 36 regarding the word “veto” – this needs to be revised and if they intended to say “appeal” a process for that needs to be set forth.
- Fourth
 - COMMENT: Are these the only actions/punishment/repercussions allowed? Should also be able to simply remove the Ambassador from office and from the Foreign Service.

Article 38 –

- COMMENT: If the investigation yields criminal behavior, the committee should immediately remove the Ambassador from his position as well as referring the case to the appropriate court of law.
- SUGGESTION: revise language to be similar to the following:
 - [In the case where committee finds that the Ambassador committed a criminal act brought out by his job or misusing his position, then it shall remove him from his position and refer the case to a competent court.]

Article 39 – Article 41 Final Provisions- NO COMMENT

Article 42-

- COMMENT: Shouldn't this new Foreign Service law include all the regulations and instructions issued in the law referred to here??

Article 43 – Article 45- NO COMMENT