

**LEGISLATIVE REVIEW OF THE  
DRAFT LAW OF NON-GOVERNMENTAL  
ORGANIZATIONS  
APRIL 2009**

After studying the current draft law on the Non-governmental organizations, IILHR with the assistance of the Iraqi Civil Action Network have compiled comments for your review. In summary, the main area of concern and comment is the independence of civil society and their ability to fully operate independent of the Iraqi government. In order for Iraq to have a legitimate democracy, it is essential to support the NGO's to the fullest extent possible.

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.

Prepared by  
**The Institute for International Law & Human Rights**  
In conjunction with  
**The Iraqi Civil Action Network**

*By the name of the people*

*Presidential Council*

*Pursuant to what has been approved by the parliament and has been endorsed by the presidency council, and according to the provisions of clause (first) article (61) and provisions of clause (third) article (73) of the constitution,*

*The following law has been issued:*

**Number (     ) for the year 2009**  
**The law of**  
**Non-Governmental organizations**

**Chapter One**

**Definition and goals**

**Article - 1 -**

*For the purpose of this law the following phrases and words will give the meaning described hereinafter.*

**COMMENT:** The Arabic text should read as “terms & items” instead of “phrases and words”

**COMMENT:** Add definition of International NGO; define public welfare & what a “fully intact” person is

**First** – *Non-Governmental organization: It is a number of natural or legal people who have been registered and obtained the legal personality, according to the provisions of this law, who seek to achieve non-profit purposes.*

**COMMENT:** Define the terms “natural person” and “legal person”. Natural persons are typically defined as a “living, breathing human being, as opposed to a legal entity such as a corporation.” A legal person is typically defined as “a legal entity through which the law

allows a group of natural persons to act as if they were a single composite individual for certain purposes”

Additionally according to generally accepted international practices, NGO’s should not be required to obtain legal personality in order to engage in lawful activities.

Would also be advisable to define what the scope of natural or legal persons is meant to be: to carry out general activities, of community otherwise their non-patrimonial interest may establish non-governmental organizations according to the provisions of this law. After registration NGO’s will be legal persons of private law without any patrimonial aim.

Provision should be included here on who are not subject to this law such as political parties, trade unions and religious cult.

*Second - the foreign Non-Governmental organization: It is a branch of a Non-Governmental organization established according to the laws of another country, which will practice the activities of the organization inside the republic of Iraq and register according to the provisions of this law.*

*Third - Non-Governmental organization Network: It is a Non-Governmental organization established according to the provisions of this law, consisted of a number of Non-Governmental organizations where each one of them has a legal personality.*

*Fourth - Department: Department of Non-Governmental organizations in the Secretariat of the Council of Ministers.*

**COMMENT:** Should not be attached to the Executive branch of government. The Executive should not be involved in oversight of NGO’s, as a prime responsibility of the NGO community is to monitor the Executive. If the Executive is in charge of licensing and monitoring the NGOs, this defeats this essential democratic role and would threaten the legitimacy of democracy in Iraq. Further, according to international practice, NGO’s play a key role in framing and debating issues of public policy and should have the right to speak freely about all matters of public significance, including debate about and criticism of existing state policies and actions. Putting the control over NGO registration in the hands of those whom NGOs are criticizing limits their freedom to speak freely

through the fear that their registration will be denied or revoked if the organization criticizes the policies of the Executive.

**SUGGESTION:** Create an independent commission (similar to the IHEC & Human Rights Commission) to take on the roles that have been set out in this law prescribed by the Department. If this is accepted there would be the need to then remove the definition of the Department and add in the definition of the independent NGO Commission. Another option would be to tie NGO registration to a Clerk's office of a court whose territorial circumscription activates the NGO.

*Article -2 -*

*This law aims to do the following:*

*First - Enhancing the rule of civil society organizations, supporting and improving them and maintaining their independency according to the law.*

**COMMENT:** Needs to be more specific when stating "according to the law" and specify that it is "according to THIS law." The essence of this article inherently supports the position of creating an independent commission to monitor NGO's and administer this law. The independency of NGOs as well as the governmental institution which assists in organizing them is essential to the success of democracy in Iraq.

*Second - Enhancing citizen's freedom in establishing Non-Governmental organizations and joining them.*

*Third - Finding a central mechanism to organize the process of registering the Iraqi and foreign Non-Governmental organizations.*

**COMMENT:** Needs to be clarified. Is this referring to the mechanism or location of registration? Could be interpreted as claiming that the registration process must be completed centrally, meaning that the only place where an organization could register would be in Baghdad. This is not in line with how things are done now and would be too much work for one center, applications would overload one center. Alternatively, this article could be interpreted as referring to

the mechanism of registration whereby the mechanism would be centralized and consistent throughout Iraq.

**SUGGESTION:** This article should be divided into 3 parts: (1)

Which addresses the goals of the law such as creating the framework for exercising the right to freedom of association, promoting civic values, democracy and rule of law, achieving a general or group interest, facilitating NGO's access to public and private resources, partnering between public authorities and NGOs; (2) which addresses the mechanism of registration (central/unified registration); (3) mandating that offices must be established in all regions to carry out the registration mechanism set out in part (1).

*Article - 3 -*

*The organization shall work to achieve the objectives of this law by peaceful and democratic ways.*

**COMMENT:** Need to clarify is this referring to NGOs or the department? Also is confusing because is the non-governmental organization working to uphold this law or to further their own goals of the organization

**SUGGESTION:** change so reads:

“The NGO registered under this law shall work to achieve ITS objectives by peaceful and democratic ways according to this law”

*Chapter Two*

*Foundation*

*Article - 4 -*

*First - Each normal or legal Iraqi person has the right to establish a non-governmental organization, or joining them, or pulling out of them according to the provisions of this law.*

**COMMENT:** Should be “natural person” instead of “normal person”. And the Arabic needs to be changed so that it reads as the English version where it states “or” not “and” Also should be mentioned that NGO's are established on the basis of an agreement of members, who will share their material contribution, knowledge and lucrative

activity in order to accomplish activities of general, community or personal non-patrimonial interest.

*Second – The founding member has to be:*

*A – Iraqi citizen.*

**COMMENT:** Why limit to Iraqi citizen? Creates a barrier to bringing new ideas and diversity inside of Iraq. Supports the isolation of Iraq. Many of the subjects that NGOs deal with need assistance and ideas from outside sources, allowing foreigners to be a founding member of an Iraqi NGO could lead to further cooperation and connection between communities. **SUGGESTION:** Reciprocity - allow foreigners who come from a county which allows Iraqi citizens to be founding members of an NGO be founding members in Iraqi NGOs. If this is opened up to foreigners, Article 4 FIRST must be changed to reflect.

*B – Fully intact and over (20) twenty years of age for the normal person.*

**COMMENT:** Why is this set at age 20 when in Iraq age 18 is what is consider an adult? At age 18, every citizen should have the all rights afforded to them, what is the reason for limiting these rights? Additionally, what is meant by “Fully intact” – should be defined in definition section

*C – Not convicted with non political felony or an offence involving moral turpitude.*

**COMMENT:** The application of this would result in much confusion as the definition of these offences has changed throughout time. Further, the penal code has been amended and some things that were considered a crime in the past are not considered a crime today and vice versa. Further, what is the harm in allowing people with convictions to create an NGO if they comply with all other requirements? Also it's not taking in consideration the rehabilitation process of the convicted person which may weaken new legislative and program initiatives which focus on rehabilitation as a central theme to criminal issues.

**SUGGESTION:** One suggestion is to limit this to convictions resulting after April 2003. Another suggestion is to delete this article

*Article – 5 –*

*First – the foundation request should be submitted to the Department signed by the founders on condition of not being less than (5) five persons, including the following:*

**COMMENT:** Please see comment at article 1 Paragraph Fourth on where should the NGOs register.

*A – Name of the organization in Arabic or Kurdish language with English language.*

*B – Address of the organization endorsed by a related governmental entity.*

*C – Names, phone numbers of the founders and their e-mails (if applicable).*

*Second – The founding request should be attached with:*

*A – Founding statement.*

*B – Bylaw of the organization.*

*C – Copy of Iraqi citizenship certificate and Civil Identity Card for natural founders.*

**COMMENT:** Please see comment at article 4 Second A.

*D – Names of the legally authorized persons for representing the organization, receiving the formal notifications, answering all questions related to the founding, registration and means of contacting them.*

**COMMENT:** There is some opposition to the requirement being simply to have 5 people to be able to register as this means that any family can gather 5 family members and register as an NGO and receive grant money, etc which in turn could be used for the interest of the family. This concern is also related to corruption concerns amongst tribal groups.

**SUGGESTION:** Include a limitation of a percentage of family members which can serve together on a board of an organization or also change this article to limit the number of related people who can be founding members of an organization.

**Article – 6 –**

*The bylaw of the organization should include the following:*

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**First** – *The official name of the organization in Arabic or Kurdish language with English language.*

**Second** – *Address of the Headquarter of the organization.*

**Third** – *Detailed report on the goals of the organization*

**Fourth** – *Copy of the logo and stamp of the organization.*

**Fifth** – *Terms of membership and conditions of termination, and the rights and duties of the members.*

**Sixth** – *Organizational structure of the organization, mechanism of the election and the jurisdiction of each of its entities.*

**Seventh** – *Determining the entity that has the authority of making the dissolution order, inside the organization.*

**Eighth** – *Determining the side where the movable and non-movable fiscal assets of the organization will be assigned to, in case of its termination or dissolution with respect to clause (fourth) article (24) of this law.*

**Ninth** – *Means of appointing affiliates and determining their salaries.*

**Tenth** – *Fiscal resources of the organization and the monthly or annual participation fees, if any.*

**COMMENT:** Bylaw of NGO should include mandatory the signatures of the founding members.

**Article – 7 –**

*Foundation's request and foundation process is free of charge.*

**Article – 8 –**

**COMMENT:** Please see comment at Article 1 Paragraph Fourth.



**First** – The Department will make a decision on the foundation request in (7) seven days from date of registering it, at the office of the head of the Department, failing to do so; the request will be considered approved.

**Second** – The organization will submit the registration file to the Department within (60) sixty days from the date of accepting the foundation request; otherwise the foundation request will be considered rejected.

**Third** – Foundation file is to be attached with the following documents:

**A** – Application form of Registration that organized by the Department included of all required information.

**B** – Approximate budget for the year of submitting the request.

**C** – Minutes of electing the board of directors or the order of appointing it.

**COMMENT:** Need to clarify and specify intention of this article as “order of appointing it” is confusing. Does this mean report the names and positions of the board? The word “appointing” should be replaced with elected as it should be a free assembly of a number of people not of one, solo decision maker. Board of directors should be elected and not appointed.

**D** – List of organization's assets.

**Fourth** – The Department will issue a registration certificate in a period not more than (60) sixty days from the date of receiving the full information registration file and the required documents.

**Fifth** – The Department will obtain a legal personality from the date of issuing the registration certificate.

**COMMENT:** Not clear on timing. Organization should obtain a legal personality after the date of approval not when they get the certificate which could delay the NGO's activities for 60 days

**Sixth** – In case of rejecting the registration, the Department should point out reasons of rejection and should notify the persons who request the registration, in writing, about the decision.

*Seventh* – The Department's decision of rejecting the registration can be appealed at the Administrative Judicial Court according to law.

**COMMENT:** As there is only one Administrative Court in Iraq (in Baghdad), this tasks should be prescribed to the Courts of first instance as they exist throughout country. This would allow all to have access to the courts and ease the burden of the Administrative Court should there be many cases in need of their attention.

*Eighth* – The registration certificate issued by the Department will be valid for a renewable period of two years.

**COMMENT:** Why is there a time limit on the registration? If an NGO continues to uphold the requirements in this law of reporting, etc why should they have to go through the initial registration every 2 years? Also legal personality cannot be awarded for limited time according to civil law.

**SUGGESTION:** Make the registration stand with no need for the organization to re-register as long as the NGO complies with law

### *Article – 9 –*

*The Department will open a special file for the non-governmental organizations, networks of non-governmental organizational and branches of non-governmental organizations that registered in it; includes the name of the organization, network, or the branch, its field of activity, full address, any procedures taken about it or any penalties implemented on it.*

**COMMENT:** Will this file be accessible to the public? According to prevailing international practices of NGO laws and registration, there should be a publically accessible national registry of all registered organizations.

### *Article – 10 –*

*The organization will be banned of the following:*

*First* – Adopting any goals run counter to the independency of the country, its national unity and its republican parliamentary democratic system.

**COMMENT:** this paragraph should refer to activities and not goals as activities endangering the country's constitutional foundation should be prohibited.

*Second – Spreading dissension or making segregation between ethnics, religions or different sects.*

**COMMENT:** This article is too vague and elastic, which could lead to a variety of interpretations to be used in differing ways against NGOs. Additionally, this could be seen as discrimination as it leaves the possibility of being able to be interpreted to mean that it is illegal for different sects to form organizations which are in furtherance of goals that relate to just one sect of society. For example organizations which seek to preserve a specific culture, specific language, or tradition which is attributed to a particular ethnic, religious or sect of society. What about racism or hate speech? Again should focus on actions.

*Third – Encouraging violence against the republic of Iraq, its constitution and its democratic system.*

*Fourth – Adopting goals that violate Iraqi laws or posing danger on national security, national safety or the public order; such as pursuing military activities, manufacturing weapons or ammunitions, buying or selling weapons or military equipments, training people for military purposes or any training related to war techniques, enrolling in terrorism activities or supporting it or encouraging it or participating in financing it, or planting drugs or producing, dealing with, storing, keeping, or merchandising it.*

**COMMENT:** Need to define all terms in here, such as “national security”, “public order”, “training people for military purposes or any training related to war techniques” – what does this training involve? Too vague as could be interpreted as any type of physical training could be attributed as for military purposes. Also this paragraph should focus on action and not goals because if the goals are non constitutional it will not be registered as an NGO to begin with.

**SUGGESTION:** Change “adopted goals” to “engaging in”. End article after “that violate Iraqi laws”. So that it reads: “Engaging in activities that violate Iraqi laws”

*Fifth* – Practicing commercial transaction in order to distribute money on their members for personal benefits, or using the organization as a way to escape from taxation.

*Sixth* – Nominating any person for public positions or collecting money to support nominees for public positions or giving any financial or moral support to nominees.

**COMMENT:** What about NGO participation in the nomination of people for the Human Rights Commission and other such initiatives? Need to be more specific about the “public positions” or define exactly what type of positions this means to cover. A possibility would be to more specifically state nominees for political parties/positions. Should be rephrased as NGOs are not allowed to support political parties in general.

*Seventh* – Giving any personal or private benefits, direct or indirect, to their members, founders, associates, members of Board of Director, their relatives, or any other person related to the organization including donators till the third degree.

**COMMENT:** Need to be more specific as to what is considered a “personal or private benefit” as it is generally accepted internationally that the purpose of an NGO is to engage in activities which benefit their members and in public benefit or charitable activities. Need to specify what is the intention of this article and clarify in what circumstances and which type of benefits (money, food, healthcare, donations, etc). As it is, even paying salaries to members who are members of the Board of directors for example would be prohibited.

*Eighth* – Ensuring that their bylaw indicates, clearly, the distribution of fiscal amounts coming from grants, donations on their members in case of dissolution.

## Chapter Three

### Membership

*Article – 11 –*

*First* – member of the organization should be:

*A – Iraqi citizen.*

**COMMENT:** Please see comments at article 4 Second A.

*B - Fully intact and over (18) eighteen years of age.*

*C – Not convicted with a non political felony or an offence involving moral turpitude.*

**COMMENT:** Same as commentary in Article 4 Second C, the application of this would result in much confusion as the definition of these offences has changed throughout time. Further, the penal code has been amended and some things that were considered a crime in the past are not considered a crime today and vice versa. Further, what is the harm in allowing people with convictions to create an NGO if they comply with all other requirements? Also it would harm the rehabilitation process of those who have criminal records.

**SUGGESTION:** One suggestion is to limit this to convictions resulting after April 2003. Another suggestion is to delete this article

*D – Accepted the bylaw of the organization in writing.*

**Second** – *The member will be considered as dismissed from the membership in case of death, resignation, losing any of the membership terms, dismissed according to the bylaw of the organization or in case of dissolving the organization.*

**Third** – *No member who lost his membership, or his heirs, have the right in any fiscal assets of the organization except in cases where the organization has combined fund for cooperation, mentioned in its bylaw.*

**Fourth** – *exempted from the provisions of paragraph (B) clause (first) of this article, juveniles have the right to join the organization and become an honorary member without having the right to attend the meetings of the General Assembly or voting on its decisions.*

**Fifth** –

*A - The organization has the right to accept the membership of the foreigner person who is a resident in the Republic of Iraq, on a condition that the percentage of the foreign members do not to exceed (25%) twenty five percent of its members.*

**COMMENT: Please see comments at Article 4 Second A.**

*B - The number of foreign members is not to exceed, in any of the organization entities, (25%) twenty five percent.*

**COMMENT: Please see comments at Article 4 Second A.**

*Sixth - It is not allowed for the foreigner to be a Chairman of an organization, one of its founders or to chair any of its entities.*

**COMMENT: Please see comments at Article 4 Second A.**

*Seventh - Any person has the right to become a member in many organizations but does not have the right to chair more than one organization.*

*Eighth - With respect to the terms mentioned in clause (first) of this article, the organization has the right to determine its own terms of membership, on a condition of not intersecting with the provisions of this law, the public order and the ethics.*

*Ninth - Members, founders, associates and the members of the Administrative or Executive Board are not to be held personally responsible on legal obligations of the organization; the creditors of the organization have no right to pursue them for paying the debt from their own personal assets.*

**Article - 12 -**

*Members and associates of the organization are obliged with the following:*

*First - Avoiding any actual or probable intersection between their personal and positional interests and the interests of the organization.*

**COMMENT: Again needs to be clarified what is the conflict of interest as NGO's and nonprofit organizations. Please see comments at Article 10 Seventh.**

*Second* – Exposing any actual or probable intersection between their personal and positional interests and the interests of the organization, and to inform the Administrative Board of any.

**COMMENT:** Please see comments above at Article 12 (First).

*Third* – Stop attending meetings, taking decisions in matters serving their personal interests.

**COMMENT:** Please see comments above at Article 12 (First).

*Fourth* – Any contractual procedures between them and the organization and its members are to be in line with the bylaw of the organization.

**COMMENT:** Membership duties and standards should be dealt with in each organizations bylaw. Not necessary to set out here.  
**SUGGESTION:** to delete this whole article.

## *Chapter Four*

### *Fiscal Provisions*

#### *Article – 13 –*

*Fiscal assets of the organization are to be consisted of:*

*First* – Membership fees.

*Second* – Donations, grants and wills.

**COMMENT:** Sponsorships should be included also.

*Third* – Revenues resulting from the projects and activities of the organization.

**COMMENT:** “Other revenues as stipulated by law” should be added.

#### *Article – 14 –*

*First* - The organization is obliged to spend its fiscal resources on activities that achieving its goals.

*Second* – The organization has the right to participate in bids announced by the government on a condition that the services or substances required are part of the organization competence.

**SUGGESTION:** would be advisable to mention “public authorities” instead of “government” and include “other organizations”.

*Third* – The organization, with the approval of the Department, has the right to own real estates necessary to take as a centre to it and to its branches or as a place to hold the meetings of its members or to achieve its goals, according to law.

**COMMENT:** Since by this point, the NGO has its own legal personality, it should be allowed to act with the full rights of that legal personality, no approval should be necessary for the NGO to act as long as acting within the law. This further impedes on the NGOs independence which is set out as in Article 2 (first) as one of the aims of this law. This article should be omitted

*Fourth* – The organization has the right to sell any real estate that is not necessary any more to its goals according to the law, with the permission of the Department, where the amount of the real estate is to be registered as revenue to it.

**COMMENT:** Same as commentary in Article 14 (Third) above, since by this point, the NGO has its own legal personality, it should be allowed to act with the full rights of that legal personality, no approval should be necessary for the NGO to act as long as acting within the law. Further impedes on the NGOs independence which is set out as in Article 2 (first) as one of the aims of this law. This article should be omitted

*Article – 15 –*

*The organization will annually submit the following to the Department:*

**COMMENT:** Please see comment at article 1 Fourth.

*First* – One fiscal report included a detailed description of the financing resources of the organization and its fiscal activities.



*Second* – Report on the activities of the organization included a summary on the projects that were executed during the year.

*Third*- Any other reports at the Department deems necessary to be submitted to reveal the NGO's activities, operations and transactions.

**COMMENT:** Could prove to be highly burdensome for the NGO, should include some sort of standard or regulation into the article as to the extent of what the Department can ask for. For example, it should be limited to reports which will not cause an undue fiscal hardship to the organization, or involve more work than necessary to achieve the goal – for example if reports have been conducted by other organizations or for other parties, the Department should not request that this work be repeated without a valid reason to request so. Waste of time and resources should be a consideration here, as there is a danger that these requests could easily come to be used as punitive measures.

*Article – 16 –*

*First* – The organization will execute its fiscal activities through a bank account.

*Second* – The organization bank account cannot be blocked unless with a court order.

**COMMENT:** Which courts can issue the court order? Who can ask for the blocking of a bank account, what does this process entail?

*Article – 17 –*

*First* – The organization has the right to receive donations, grants and wills from inside and outside the republic of Iraq with the approval of the Department.

**COMMENT:** Problem with needing the approval of the department – see Art. 15, need to report all finances so this is unnecessary. Additionally, international practice supports that NGO's be permitted to engage in all legally accepted and culturally appropriate fundraising activities so long as they are operating principally for the purpose of conducting appropriate not-for-profit activities and that no profits are distributed as such to founders, members, officers, board members, or employees. Therefore, no approval of the Department should be needed, this impedes on the

goal set out in Article 2(first) of the independence of NGO's, and impedes on their legal personality status, as well as creates a barrier to generating income and donations from private sources.

*Second* – Anyone who wants to make donation to the non-governmental organization should inform, first, the Department.

**COMMENT:** See commentary above in Article 17 (first). This impedes on independence, the legal personality status of the organization and adds another obstacle as it requires anyone whom wishes to donate to an NGO to first inform the department. Again, the worry of inconsistent or illegal activity here is covered in the required reporting in article 17, therefore this article could be deleted.

*Article – 18 –*

*First* – Organizations of public welfare are exempted from income tax, plus tax, tariff and custom tax, and sale tax.

*Second* – Organizations of public welfare are supposed to aim at achieving a public benefit.

**COMMENT:** Need to define what a “public welfare” organization is and how an organization applies for and gets such status. International practice dictates that organs to determine whether an organization qualifies for public benefit or charitable status should be established, this deciding institution should be an independent, mixed commission consisting of representatives from civil society and the government. In order for an NGO to be recognized as a public welfare or public utility (as national importance), it should fulfill some conditions stipulated by present law, describe how the registration process differs or not of other NGOs, obligations to be fulfilled after recognition of public welfare organization.

*Third* – The trait of public welfare is granted to the organization and revoked from it by a decision of the Council of Ministers, according to a proposition from the Secretary General of the Council of Ministers.

**COMMENT:** The problem of being connected to the Executive as discussed in earlier articles exists here as well and it is necessary to not tie the regulation of NGOs to the Executive. Additionally, there

is no clear definition of what a public welfare organization is-- again, need to define what a “public welfare” organization is. Finally, International practice dictates that organs to determine whether an organization qualifies for public benefit or charitable status, this deciding institution should be independent, mixed commission consisting of representatives from civil society and the government. Note that in many countries in Europe NGO’s of public utility are all recognized by the Executive because they are fulfilling objectives of national level.

*Fourth* – The Council of Ministers has the right to award the organization of public welfare rights and privileges part of what has been mentioned in this law, in order to help it in achieving its goals, and on the other hand the cabinet has the right to take special measures of monitoring and supervising.

## Chapter Five

### Records and Auditing

#### **Article – 19 –**

*The organization and its branches have to hold the following records:*

*First* – Members' record, containing names of the organization's members and their addresses, nationality, age and their occupation.

*Second* – Decisions' record, containing decisions of the General Assembly and decisions of the Administrative Board.

*Third* – Accounting records, containing revenues and expenses of the organization.

*Fourth* – Fiscal record, containing all movable and real estate assets of the organization, their amount and description.

*Fifth* – Activity and project record, containing the type of activity or project, the financing party and the benefit expected from it.

*Sixth* – Any other records that are deemed necessary by the Department and considered obligatory to exercise its monitoring and regulatory activities

**COMMENT:** Same commentary as in Article 15 (third). Could prove to be highly burdensome for the NGO, should include some sort of standard or regulation into the article as to the extent of what the Department can ask for. For example, it should be limited to reports which will not cause an undue fiscal hardship to the organization, or involve more work than necessary to achieve the goal – for example if reports have been conducted by other organizations or for other parties, the Department should not request that this work be repeated without a valid reason to request so. Waste of time and resources should be a consideration here, as these requests could easily become to be used as punitive measures.

*Article – 20 –*

*First – The organization will hold its financial documents and reports for a period of (10) ten years.*

**COMMENT:** Some felt this was a bit burdensome to be required to keep all documents for so long. Suggestion of lowering to 3 years or specifying that electronic preservation of documents is acceptable.

*Second – The organization is obliged to have all its account records in accordance with the accredited principals of auditing.*

*Third – The organization should conduct, annually, an internal auditing to its accounts by a certified auditor.*

*Article – 21 –*

*First – The Department have to check the accounts of the organization in coordination with Bureau of Supreme Auditing.*

**COMMENT:** Should not be done through the Supreme Audit Board, suggest this be done the independent commission that it is suggested be formed as the Supreme Audit Board's role is to conduct financial audits on public institutions financed by federal/local budget.

*Second - If it was clear to the Department that the records of the organization are not accurate or it has been manipulated, then it will execute a direct auditing on the*

*accounts, records and activities of the organization at its office and branch offices with the help of a certified auditor.*

**Third** – *The organization is obliged to provide all required documents for the auditing.*

**Fourth** – *The Department is not allowed to reveal information that it gets during the auditing process except to the related governmental agencies.*

## **Chapter Six**

### **Merging and dissolving**

**COMMENT:** would be advisable to discuss in separate chapters the dissolution (according to bylaw or by court order), liquidation (by court order), merger and establishing federations or networks of NGOs

#### **Article - 22 –**

**First** – *Organizations with similar or relevant goals has the right to merge and form one organization with one unified bylaw according to the bylaw of each one of them.*

**Second** – *Procedures of merging and establishing new organization are subjected to the provisions of this law.*

**Third** – *Organization of public welfare cannot merge except with another organization of public welfare.*

**Fourth** – *The organization has the right to participate, be a member or merge with an organization, entity, club, association or a network that in line with its goals where its headquarter is outside the Republic of Iraq only with the approval of the Department.*

**COMMENT:** Why is the approval of the department needed? As long as the NGO is in compliance with this law and all other laws of Iraq, approval is not necessary and again impedes on the true independence of NGO's. Suggest removing "approval of the department"

**Fifth** – *The new organization will obtain the legal personality at the date of issuing the registration certificate, and will be considered as a general substitute to the merging organizations concerning their rights and obligations.*

**Article – 23 –**

**First** – *Dissolving the organization is either optional, by a decision of its members according to its bylaw, or judicially, by a court order.*

**COMMENT:** which court order? Should be the court of first instance.  
Please see comments at article 8 Seventh

**Second** – *If the organization took its dissolving decision then it has to inform the Department within (30) thirty days of its issuing, and appointing a liquidator or demand one to be chosen and appointed by the Department.*

**Third** – *In case of a court order is issued to dissolve the organization, the court will appoint the liquidator.*

**Fourth** – *For purposes of dissolving, the organization has to submit a report of its movable and real estate assets where this report will be adopted to fulfill all its fiscal obligations and the rest will be distributed according to its bylaw, unless these assets are gained by grants, donations and wills, in this case it will be transferred to another organization with the same goals, to be determined by the Department.*

## Chapter Seven

### Penalties

**COMMENT:** NGOs have legal personality according to civil law. Best state practices show that no special penalties exist for NGOs as they are subject of existing legislation in case of violating the law. Establishing a “special treatment” for NGOs violates international standards. It would also be advisable to define who is entitled to such things as suspension, dissolution and liquidation of an NGO – Independent Commission, public authorities, and any concerned citizen, and member, founder and so on?

**Article – 24 –**

*With respect to other laws, the organization will be punished if it violates the provisions of this law by the following penalties:*

**First** – *the suspension, which will be implemented by an order issued by the Department according to the following:*

**COMMENT:** Violations leading to suspension need to be defined clearly so as not to leave too much discretion to the Department or Commission or court, which is enforcing these violations.

**A** – *Notifying the organization to remove the violation for a period of not more than (10) ten days from the date of notification.*

**B** – *Suspending the activities of the organization for a period not exceeding (30) thirty days if the violation is not lifted during the above mentioned period in paragraph (A) of this clause or if it repeats, again, the same violation.*

**C** – *The organization has the right to appeal the order of suspension at the Minister Office within (10) ten days of being notified.*

**COMMENT:** Appeal should be made to a court. Define which court.

**D** – *The Minister will make his decision in the appeal in (10) ten days from the date of registration at his office where his decision is subject to appeal in front of the Administrative Judicial Court within (10) ten days after the organization is being notified or considered so.*

**COMMENT:** Change to reflect removing ministry and creating an independent commission. Define which court.

**Second** – *The dissolution, which is issued by a court order according to a request from the Department in one of the following cases:*

**A** – *If the organization has been established for a period of one year and it has not yet practiced its activities determined in its bylaw, or in case it has stopped practicing its activities for mentioned period without reason.*

**COMMENT:** What is the intention/purpose of this provision? Why is it recommended that organizations lose their registration if they

took a hiatus from activities? Also need to define the reasons which would be acceptable for not practicing its activities for a year. Suggest deleting this provision, as long as the organization complies with this law, other Iraqi laws and all the reporting requirements mentioned in this law, they should remain in good status despite a lack of activity.

*B – If it practiced activities that contradict with its set goals mentioned in its bylaw, or in case it stopped practicing its duties mentioned in this law.*

*C – In case it became unable to fulfill its duties and obligations.*

**COMMENT:** What does this provision mean? Duties and obligations to whom? The registry? The department? The NGO? Its members? What are they referring to and who defines when an organization is unable to fulfill its duties and obligations?

*D – If it dedicated its assets or the revenues of its assets to other purposes different from the ones it was established for.*

*E – If it was proved that it practiced gambling or any other thing that violates the public order and the ethics.*

**COMMENT:** Controversial article as there is no clear law/definition for public order and ethics and these things vary from one place to another. Would suggest deleting or being much more specific and comprehensive of what is meant to be included here.

*F – If it was proved that it possesses and stores war or military weapons or explosives or drugs in its headquarters or in one of its branch offices or in any other place.*

**COMMENT:** dissolution of an NGO in this case is acceptable if all members or founders are involved in this kind of illegal activity. Shouldn't punish a whole organization for a few peoples criminal activities related to NGO HQs or offices. It should be made a difference of people or whole organization involved.

*G – In case it didn't lift the violation in spite of being notified and suspended and after all appeal procedures related to the suspension order.*



**COMMENT: Should impose simple fees but not suspension**

**Article – 25 –**

**First** – *To be imprisoned for period of not more than (3) years, whoever:*

**A** – *it was a member in an organization, which was established in contrast with the provisions of this law.*

**B** – *Practices any activity with an organization whose request of registration was rejected or it was dissolved according to the provisions of this law.*

**Second** – *To be imprisoned for a period not exceeding (6) six months, any member who practiced an activity within an organization whose activities were suspended.*

**COMMENT: Again, it is advisable to impose fines instead of imprisonment. Imprisonment is too harsh of a punishment and does not fit the violation here. Also, not in line with international standards.**

## **Chapter Eight**

### **Foreign non-governmental organizations**

**Article – 26 –**

*The branch of the foreign non-governmental organization can be registered in Iraq in accordance with the provisions of this law.*

**Article – 27 –**

**First** – *The organization branch should submit the following information and documents for the registration purposes:*

**A** – *Name of the organization.*

**B** – *Address of the main Headquarter of the branch in Iraq attested from a formal authorized entity.*

*C – Detailed report of the activities the branch is looking forward to achieve in Iraq.*

*D – Names, addresses and phone numbers of foreign non-governmental organization branch members who are residents in Iraq.*

*E – Copy of the Iraqi Nationality Certificate and the Civil Identity Card for the Iraqi member, and a copy of the passport and the residency card for the foreign member.*

*F – Bylaw of the mother organization.*

*G – Attested document according to valid regulations confirming that the foreign mother organization is registered in its home country as a non-governmental and non-profit organization.*

*H – Report on the activities of the mother non-governmental foreign organization outside Iraq.*

*Second – All documents above mentioned in clause (first) of this article are to be translated to Arabic and attested by an entity confirming the correct translation.*

**Article – 28 –**

*The foreign non-governmental organization has the right to establish a branch inside the Republic of Iraq, according to the provisions of this law.*

**COMMENT: Can a foreign NGO establish regional offices in addition to branches?**

**Article – 29 –**

*The branch of the foreign non-governmental organization is banned of participating political and sectarian activities in the Republic of Iraq.*

**COMMENT: would advise reconsidering including “sectarian activities” as that could lead to restrict religious foreign organizations presence in the country.**

**Article – 30 –**

*Branch of the foreign non-governmental organization working inside Iraq are subjected to the provisions of Iraqi laws.*

**COMMENT:** Status of international organizations should be included in a separate provision/chapter. The registration is and should be done by the Ministry of Foreign Affairs according to a special procedure.

### **Chapter Nine**

#### **Non-governmental organization network**

##### **Article – 31 –**

**First** – Any two non-governmental organizations, or more, registered in the Republic of Iraq according to the provisions of this law, have the right to establish a non-governmental organization network.

**Second** – The network will submit a request of establishment and registration to the Department, according to the provisions of this law.

**Third** – The network will have a legal personality separated from the legal personality of the composing organizations.

**Fourth** – The network has the right to join one or more networks.

**Fifth** – The network has the right to accept the membership of other foreign non-governmental organizations branches that are registered according to the provisions of this law, in the following conditions:

**A** – The representative of the foreign non-governmental organization should not be a chairman to the network.

**B** – The number of the branches of the foreign non-governmental organizations in the network or in any of its entities should not exceed (25%) twenty five percent of the number of members.

**Sixth** – The network will be subjected to the same provisions that the organizations are subjected to regarding establishment, registration, obtaining the legal personality, merging, dissolving, rights, duties and punishments, and it will be forbidden from the same as well.

**Chapter Ten**

**General and final provisions**

**Article – 32 –**

*The organization has the right to open new branches inside and outside the Republic of Iraq, after obtaining the approval of the Department.*

**COMMENT:** Please see comments at Article 1 Fourth

**Article – 33 –**

*The organization is not allowed to obtain a name similar to the governmental entities, parties, political entities, unions or associations.*

**Article – 34 –**

*The organization should inform the Department with any change on its submitted records and documents within (30) thirty days of any change.*

**COMMENT:** Does this refer to founding documents too?

**Article – 35 –**

*Any organization that is registered according to the provisions of this law is not allowed to be registered elsewhere.*

**COMMENT:** This article creates further barriers to Iraqi NGOs should they want to register anywhere else, even possibly Kurdistan. Also it is sometimes required to register with other governments to receive foreign assistance. Additionally, as it is now set up need to register locally which would violate this law

**Article – 36 –**

*Foreign non-governmental organizations have the right to possess movable fiscal assets, according to the law.*

**Article – 37 –**

**First** – provisions of this law are applicable on the following:

**A** – All non-governmental organization registered in the Republic of Iraq before its coming into force except the ones that were registered according to special laws.

**B** – Branches of foreign non-governmental organizations registered in the Republic of Iraq, unless otherwise were stipulated.

**Second** – All non-governmental organizations included within the provisions of paragraph (A) clause (first) of this article are obliged to adjust their legal status according to the provisions of this law within (90) ninety days of coming into force.

**Third** – Provisions of this law will not be applicable on political parties, vocational unions, associations and societies established according to special laws.

**COMMENT: are trade unions included here?**

**Article – 38 –**

The following will be cancelled:

**First** – The law of unions related to foreigners number (34) for the year 1962.

**Second** – Union law number (13) for the year 2000.

**COMMENT: why is the Union law repealed?**

**Third** – Order of the (dissolved) Coalition Provisional Authority number (45) for the year 2003 (non-governmental organizations).

**Fourth** – Order number (16) of the year 2005 (dislocation of non-governmental organization aid office).

**Article – 39 –**

The Secretary General of the Council of Ministers has the right to issue orders to facilitate executing the provisions of this law.

**COMMENT: in case independent Commission will be formed to manage NGO registration in Iraq, the position of Minister of Civil Society organization should be reconsidered. Regulations should be**

**drafted with the assistance of the independent Commission and approved by Council of Ministers.**

***Article - 40 -***

*This law will come into force starting from the date of announcement in the gazette.*

***Justifying reasons***

*In order to secure the establishment of non-governmental organizations and joining them, that is granted by the constitution, and in order to facilitate registering Iraqi non-governmental organizations, and branches of foreign non-governmental organizations.*

***This law was legislated.***