

Recommendations of the NGO Law Roundtable (9-11 May 2009)

The following are the recommendations that were agreed upon during the NGO Law Roundtable that took place from 9-11 May 2009 in Baghdad, at the Al Rasheed Hotel. This meeting was organized by the United Nations Office for Project Services (UNOPS) with technical support from the International Center for Not-for-Profit Law (ICNL), with funding support from the European Union, Government of Finland and other donors. It was attended by representatives of Iraqi and international NGOs, the Ministry of State for Civil Society Affairs as well as other governmental institutions, the NGO Directorate and MPs from the Iraqi Council of Representatives, including the chair of the Civil Society Committee. Observers present at this meeting included, inter alia, representatives from the European Commission, the U.S. Embassy, Canadian Embassy, USAID, UNAMI and a number of United Nations agencies.

The objective of the Roundtable was to review and discuss the text of the draft Iraqi NGO law in light of international best practice standards for NGO legislation. The conference began with a panel discussion on the current draft NGO law that highlighted the views of the government, the Parliament and NGOs on its provisions. It then moved into four targeted sessions on four major areas of concern in the draft NGO law: registration and legal personality, internal governance, self-regulation and accountability, finance and reporting requirements and the State sanction of NGOs and ensuring their compliance with the law. In each of these four sessions, participants received a presentation on international best practice standards and then were divided into three working groups to generate their own recommendations on the subject. On the final day of the Roundtable, all of the participants reviewed the recommendations of the working groups and came up with a final statement reflecting the views of the conference as a whole.

It is hoped that the recommendations that emerged from this conference will help shape the deliberations and discussions of the Council of Representatives as the NGO law enters second reading in Parliament and beyond.

In the name of the people
The Presidency Council

According to what has been approved by the Council of Representatives and endorsed by the Presidency Council, and in accordance with Articles (61- First), and (73-Third) of the Constitution, the following law has been issued:

No. () of 2009
The Law of Non-Governmental Organizations

Chapter One
Definitions and Objectives

Article (1): The following terms, used in this law, have the following definitions:

First: Non-Governmental Organization: A group of natural or legal persons that have registered and obtained legal personality according to the terms of this Law to pursue any lawful purpose as an independent, non-governmental and not-for-profit body.

Second: Foreign NGO: It is a branch of an organization that has been established according to the laws of another country. It performs the organization's work in Iraq and registered according to the provisions of this law.

Third: NGO Network: It is an NGO registered under the provisions of this law that has a legal personality consists entirely of other NGOs with their own legal personalities.

Fourth: The Department: The NGOs Department in the Secretariat of Council of Ministers.

Article (2): This law intends to:

1. Enhance the role played by NGOs by supporting their growth, development and independence according to law.
2. Promote the freedom of citizens to establish and join NGOs.
3. Create a central mechanism to regulate the registration of Iraqi and foreign NGOs.

Article (3): the NGOs shall seek to achieve the objectives of this law by peaceful and democratic means.

RECOMMENDATION: *Article 3 should be amended as follows, “The NGO shall seek to achieve its objectives by peaceful and democratic means according to the provisions of this law.”*

Chapter Two

Establishment

Article (4):

First: Both natural and legal Iraqi persons have the right to establish, or join or withdraw from a NGO pursuant to the provisions of this law.

Second: Natural persons who wish to found NGOs must be:

1. An Iraqi
2. Legally competent and be at least (20) twenty years of age;

RECOMMENDATION: *Article 4.2.2 should be amended as follows, “Legally competent and be at least (18) eighteen years of age”*

3. Not convicted with a crime involving moral turpitude

RECOMMENDATION: *Article 4.2.3 on moral turpitude be removed.*

Article (5):

First: A NGO is established by submitting an application for registration to the Department, signed by at least five persons.

RECOMMENDATION: *Two thirds of the participants recommend that the minimum number of founders in Article 5.1 be reduced to three persons.*

This application must include the following information:

1. The official name of the organization in Arabic, Kurdish and English.
2. The official address of the organization certified by it's a competent official body.
3. The names, phone numbers and e-mail addresses (if any) of the founding members

Second: The establishment application should be attached with the following:

- a. The statement of establishment
- b. The NGO's Bylaws.
- c. Copies of the Iraqi nationality certificate and civil identification card of the natural founding members.
- d. The names and contact information of the persons who will be the official point of contact of the NGO and who shall receive official notifications, answer inquiries related to establishment and registration.

Article (6): The bylaws of an NGO must include the following:

First: The official name of the organization in Arabic, Kurdish and English.

Second: The address of the organization's main office.

Third: A detailed statement of the organization's objectives.

Fourth: A copy of the logo and stamp of the organization.

Fifth: The organization's rules of membership. These should stipulate how members obtain and lose membership and the rights and duties of members.

Sixth: The organizational structure of the organization, election mechanisms and powers of any other internal committees of the organization.

Seventh: Identifying the body that can decide to dissolve the NGO.

Eighth: Nominating the body that NGO's remaining assets will be transferred to when being dissolved or liquidated, taking into consideration item (four) of Article (23) of this law.

Ninth: The manner in which employees of the organization are recruited and their emoluments defined.

Tenth: The financial resources of the organization and the sum of annual subscription if any.

Article (7): The establishment and registration applications should be exempted from duties.

Article (8):

First: The Department shall decide about the establishment application within (7) seven days of the date of registration with the office of the head of the Department. Otherwise, the application is considered approved.

Second: The NGO must submit to the Department the registration transaction within (60) sixty days of the date of application approval. Otherwise, the application for registration is considered refused.

RECOMMENDATION: *The period for the registration transaction in Article 8.2 should be reduced from 60 days to 30 days.*

Third: The application for registration shall include the following documents:

- a- the registration form prepared by the Department, which must include the required information
- b- an estimated budget of the year of application
- c- minutes containing the election of the board of directors or the decision of appointment
- d- a list of the NGO assets

Fourth: the Department issues the NGO's certificate of registration within 60 days of the date of receiving a registration application that meets the required information and documents.

Fifth: An NGO obtains legal personality as of the date of issuing the registration certificate.

Sixth: If an application for registration is denied, the Department must state the reasons why the prospective NGO has been refused registration. The applicants shall be notified in writing.

Seventh: the Department refusal of registration is appealable to the Administrative court pursuant to law.

RECOMMENDATION: *The right of appeal in Article 8.7 should be to the Court of Appeal rather than the Administrative Court.*

Eighth: The registration certificate issued by the Department shall be valid for two renewable years.

RECOMMENDATION: *In addition to the specific recommendations on Article 8 above, there were also several broader recommendations on the registration process in general. Firstly, there was a recommendation to streamline the registration process so that it involves only one step rather than two. Secondly, there was a recommendation to remove the requirement in Article 8.8 for NGOs to re-register every two years. Thirdly,*

there was a recommendation to create an Independent Commission to govern the NGO sector in Iraq, including the registration and oversight of NGOs.

Article (9): The Department keeps a register of NGOs, NGO networks and branches of foreign NGOs registered with the Department. This register contains the name of the NGO, the network or the branch, the field of work, its full address and any other actions taken against or penalties imposed on.

Article (10): the NGO is prohibited to:

First: Choosing purposes that would be contrary to the state independence, its national unity and its democratic, republican and parliamentary system.

Second: Promotion of ethnic, sectarian or racial disagreement.

Third: Encouraging violence against the Iraqi state, its constitution and democratic system.

Fourth: Adopting purposes that would violate the laws of Iraq or otherwise constitute a clear, direct and immediate threat to the national security, public safety or public order of Iraq. Examples of this include armed activities, weapon manufacturing, purchasing or selling weapons or ammunition, training individuals on military actions, conducting training related to war techniques, engaging in, supporting, provoking or financing terrorist acts, cultivating, producing, dealing with, storing or possessing drugs for commercial purposes.

RECOMMENDATION: *The words “Adopting purposes that would violate...” in Article 10.4 should be replaced with “Adopting activities that would violate...”*

Fifth: Carrying out business so as to distribute money among its members for personal benefit, or using the organization to evade payment of a tax.

Sixth: Nominating any person for public positions, raising funds to support candidates into public positions, or providing candidates with financial and moral support.

RECOMMENDATION: *The Council of Representatives should reconsider Article 10.6, as the participants felt it generally inappropriate that NGOs be forbidden from making political statements, and because the definition of “political” is so broad as to make this article inherently vague and subject to abuse.*

Seventh: NGOs may not grant special benefits, directly or indirectly, to any person related to the organization. This includes members, founders, staff and members of the executive board, donors, or the relatives of any of these people.

Eighth: An inclusion in its bylaw of a statement indicating the distribution of funds obtained from grants and aids among its members, in case the organization was dissolved.

Chapter Three Membership

Article (11)

First: An NGO member must be:

- a. An Iraqi
- b. Legally competent and be at least (18) eighteen years of age.
- c. Not convicted with a crime involving moral turpitude.

RECOMMENDATION: *Article 11.1.c on moral turpitude should be removed.*

- d. Accepted the NGO's bylaw in writing.

Second: a member loses his membership in case of death, resignation, failure to meet one of the membership conditions, being dismissed according to the NGO's bylaw or the dissolution of the organization.

Third: a member losing membership or his successor shall have a right in the organization's money, unless the organization keeps a common co-opt fund stipulated in its bylaw.

Fourth: As an exception to Clause (B) item (First) of this Article, Juveniles may join the NGO as honorary members only. They may not attend the meetings of the general assembly or vote on its decisions.

Fifth:

- A. A NGO may also accept foreign members residing in the Republic of Iraq, provided that they do not make up more than 25% of the organization's membership.
- B. Foreign members may not make up more than 25% of any the organization's bodies.

RECOMMENDATION: *The Council of Representatives should reconsider the foreign membership restrictions in Article 11.5, with a view to them being removed or at least eased.*

Sixth: A foreigner may not chair the NGO, be one of its founder or a chairman of one of its bodies.

RECOMMENDATION: *Two thirds of the participants recommend that Article 11.6 be removed.*

Seventh: Any person has the right to be a member of several NGOs, but may not chair more than one NGO.

RECOMMENDATION: *Article 11.7 should be reformulated as follows, “Any person has the right to be a member of several NGOs, but may not chair more than one NGO. This does not include NGO networks.”*

Eighth: NGOs have the right to set their own membership requirements, provided that they are consistent with this law and the ethics in general.

Ninth: Members, founders, employees and the directors of an NGO may not be held personally financially liable for a NGO’s legal or financial obligations. A NGO’s creditors may not seek repayment for the debts of the NGO from the personal finances of its members, founders, employees or directors.

Article (12) - members of NGOs must be committed to:

First: avoid any conflict of interest, actual or potential, between their personal or career interests and the interests of the organization.

Second: Disclose any potential or actual conflict of their personal interests or job with the interests of the organization to the administrative board.

Third: Exclude themselves from attending any meeting or taking any decision of any matter in which they have a personal interest.

Fourth: Contractual transactions between them and the organization and its members must be according to the NGO's bylaw.

RECOMMENDATION: *Article 12 should be reformulated and clarified in order to make the conflict of interest rules for NGOs more explicit.*

Chapter Four Financial Provisions

Article (13) – NGOs' resources consists of:

First: members' subscriptions

Second: Donations, grants and bequests

Third: The revenues of their activities and projects.

Article (14)

First: The NGO pledges to use its funds to fulfil the organization’s goals.

Second: NGOs are eligible to bid on open procurement processes for state contracts, provided that the subject of the procurement process relates to the NGO’s field of expertise.

Third: Obtaining the approval of the Department, an NGO may possess real estates necessary to establish a headquarters, branches, and a meeting avenue for its members, as well as to achieve its goals.

Fourth: An NGO may sell any property not essential to attaining its objectives according to law and subject to consent from the Department. The property price shall be recorded as revenue to the organization.

RECOMMENDATION: *The words “and subject to consent from the Department” in Article 14.4 should be removed.*

Article (15): an NGO must submit the following to the Department each year:

First: One financial report including a detailed description of the source of the NGO’s funds and financial transactions.

Second: A report of the NGO's activities including a briefing on the projects implemented by the organization during the year.

Third: Any other reports that the Department deems necessary to be submitted to reveal the NGO’s activities, operations and transactions.

RECOMMENDATION: *Article 15.3 should be deleted.*

Article (16):

First: NGOs should conduct all their financial transactions through public banks exclusively or private banks by the consent of Department only in necessary cases.

Second: Only a court may authorize the freezing of the bank account of an NGO.

RECOMMENDATION: *Article 16.1 should be reformulated as follows, “NGOs should conduct all their financial transactions through either public or private banks.”*

Article (17):

First: The NGO has the right to receive donations, grants and bequests from Iraq or abroad with prior approval from the Department.

Second: Anyone wishing to donate funds to a NGO should notify the Department.

RECOMMENDATION: *Article 17.1 and 17.2 should be modified to remove the requirement for Department approval and notification.*

Article (18):

First: Public utility NGOs shall be exempted from income tax, VAT, customs duties and sales tax.

Second: Public utility NGOs should seek to achieve a public interest.

Third: The capacity of a public utility organization shall be granted to an NGO or withdrawn from it under a decision by the Council of Ministers based on a proposal by the Secretary General of Council of Ministers.

Fourth: The Council of Ministers may grant a public utility organization the rights and privileges that help achieve its objectives, beyond the stipulations of this law. In return, the Council may take certain procedures to monitor and supervise the organization.

RECOMMENDATION: *There were several recommendations related to Article 18. One was to clarify the definition of “public utility” in the Article. The second was to create a special state fund that would provide financial support to NGOs, and to delete Articles 18.2, 18.3 and 18.4. The third was to exempt all NGOs from income tax, VAT, customs duties and sales tax.*

*Chapter Five
Records and Accounts Auditing*

Article (19): the NGO and its branches must keep the following records:

First: members register containing the members' names, addresses, nationalities, ages and positions.

Second: a record of decisions containing the decisions of the general assembly and the administrative board.

Third: a record of accounts including the NGO's revenues and expenses.

Fourth: a record of funds containing the NGO's transferable and non-transferable money with the values and details for each.

Fifth: a record of activities and projects including the type of activity or project, the financing entity and its benefit.

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

RECOMMENDATION: *Article 19.6 should be removed.*

Article (20):

First: NGOs must keep all financial documents, reports and records of activities for ten years

RECOMMENDATION: *The period stipulated in Article 20 for which records must be retained should be reduced from ten years to five years.*

Second: Accounting records of NGOs must conform to the legally approved accounting principles.

Third: NGOs must conduct internal audits of their accounts each year through a chartered accountant.

Article (21):

First: The Department will coordinate with the Board of Supreme Audit to audit the NGO's accounts.

RECOMMENDATION: *Article 21.1 should be deleted, or the Board of Supreme Audit alone should be put in charge of auditing NGOs.*

Second: If the Department finds that NGO's records are inaccurate or involve fraudulence, the Department has the right to order a direct audit of the accounts, records and activities of the NGO at its offices via a chartered accountant.

RECOMMENDATION: *The end of Article 21.2 should read "...via a chartered accountant or a licensed auditor".*

Third: If an NGO is being audited, it must provide all required information.

Fourth: The Department may not disclose the information that is being audited for entities other than the concerned governmental bodies.

*Chapter Six
Merger and Dissolution*

Article (22):

First: NGOs of similar objectives have the right to merge and form a new organization with its own bylaw based on the bylaw of each.

Second: Procedures of merger and establishment of the new organization shall be subject to the provisions of this law.

Third: A public utility NGO may only merge with a public utility organization.

Fourth: An NGO may be affiliated with or join an organization, commission, club, firm or network based outside Iraq with a prior approval by the Department.

RECOMMENDATION: *Article 22.4 should be reformulated so that NGOs do not require prior approval from the Department to engage in these activities. Instead, it is recommended that NGOs be required only to notify the Department after the fact.*

Fifth: Upon issuance of the registration certificate, the new NGO obtains its legal personality and becomes the successor to the former organizations' assets, debts, rights and responsibilities.

Article (23):

First: NGOs may be dissolved voluntarily by a decision of its members and according to its bylaw, or by a court order.

Second: NGOs must inform the Department within (30) thirty days of a decision to voluntarily dissolve. The organization must appoint a liquidator or contact the Department to appoint one.

Third: In the event of a court decision of dissolution, the court shall appoint a liquidator.

Fourth: NGOs must submit a statement of their transferable and non transferable assets. This statement shall be used to fulfil its obligations. Any assets remaining shall be distributed according to the NGO's bylaw. If these assents were raised

from grants, donations and bequests, they shall be transferred to a successor organization of similar objectives to be determined by the Department.

RECOMMENDATION: *The following sentence in Article 23.4 should be deleted: “If these assents were raised from grants, donations and bequests, they shall be transferred to a successor organization of similar objectives to be determined by the Department.”*

It is also recommended that language be inserted indicating that the dissolution provisions of each NGO’s bylaws should guide any deliberations on liquidation and the ultimate destination of the funds.

Chapter Seven Penalties

Article (24): in consideration of other laws, NGOs may be penalized if they violate this law with the following:

First: Suspension which is imposed by a Department decision according to the following:

- a. The Department must notify an NGO and give it (10) ten days to correct the violation as of the date of notification.
- b. If the violation is not corrected within the period stipulated in Clause (a) of this item, or was repeated, the NGO's activity shall be suspended for (30) thirty days.
- c. The organization may appeal the suspension decision to the Minister within (10) ten days of the date of notification.
- d. The Minister must decide on the appeal within (10) ten days of the being recorded with his office. His decision is appealable to the Administrative Court within (10) ten days of the date the NGO was notified, or otherwise considered notified.

RECOMMENDATION: *The word “Minister” in Article 24.1.c and 24.1.d should be replaced with the words “Secretary General”. It is also recommended that in Article 24.1.d, if the Minister does not decide on the appeal within (10) ten days, that the suspension be considered cancelled.*

Second: dissolution by a court decision upon a request by the Department in one of the following cases:

- a. If a year passed since establishment and the NGO failed to commence its activities set out in its bylaw or discontinued such activities for the same period without good reason.
- b. Should the NGO conduct activities contrary to its objectives stated in its bylaw, or failed to fulfill its duties stipulated in this law.
- c. In case the NGO becomes unable to meet its obligations and commitments.

- d. If the NGO allocated its funds and revenues for purposes other than the establishment objectives.
- e. If it was proved that the NGO runs gambling or other deeds violating public order and ethics.
- f. If it was proved that it possessed and stored weapons, explosives or drugs in one of its offices, branches or elsewhere.
- g. In case the NGO failed to correct the violation despite being notified, suspended and the chances appeal ended.

RECOMMENDATION: *Article 24.2 should be removed.*

Article (25):

First: imprisonment for (3) three years shall be imposed on:

- a. A member of an NGO that was established in violation to this law.
- b. A person conducting activity in an NGO that was denied establishment approval, or was dissolved according to this law.

Second: Imprisonment for a period that does not exceed (6) six months shall be imposed on each NGO member practicing activity despite suspension of the organization.

RECOMMENDATION: *Article 25 should be removed.*

*Chapter Eight
Foreign NGOs*

Article (26): A branch of a foreign NGO shall be registered in Iraq under the provisions of this law.

RECOMMENDATION: *The Council of Representatives should reconsider Articles 26, 27, 28, 29, 30 and all other articles that regulate foreign NGOs. The participants felt that the law as it is drafted now is so burdensome restrictive as to impede foreign NGOs from operating in Iraq.*

Article (27):

First: The NGO branch must present the following documents for registration:

- a. The official name of the organization
- b. The address of the main office of the Foreign NGO in Iraq, certified by a competent authority.
- c. A detailed statement of the objectives the organization seeks to fulfil in Iraq.
- d. The name and contact information of the Foreign NGO's current Iraq-based staff members.
- e. If the staff members are Iraqi nationals, they must provide a copy of their Iraqi nationality certificate and civil status identity card. If the staff members are

foreigners, they must provide a copy of their passport and residence documents.

- f. The bylaws of the mother organization.
- g. Documentary proof that the Foreign NGO is registered as a not-for-profit non-governmental organization in its original country.
- h. An activity report on the Foreign NGO activities outside Iraq.

Second: Foreign information and documents set out in item (First) of this Article should be translated into Arabic and approved by an official body indicating accurate translation.

Article (28): An NGO may establish a branch in Iraq under the provisions of this law.

Article (29): Branches of foreign NGOs are strictly prohibited from engaging in political or sectarian activities in Iraq.

Article (30): All Iraqi laws apply to foreign NGO branches operating in Iraq.

Chapter Nine *NGO Networks*

Article (31):

First: Any two or more NGOs registered in Iraq have the right to establish an NGO network according to this law.

Second: An NGO network must submit an application for registration to the Department in accordance with this law.

Third: The network acquires legal personality independent of the member organizations.

Fourth: A network may join one or more networks.

Fifth: A network may accept the membership of other NGOs registered under this law according to the following conditions:

- a. The representative of the foreign NGO must not be the head of the network.
- b. The number of foreign NGOs registered with the network may not exceed (25%) twenty five percent of the total number of members.

Sixth: All provisions of this law that apply to the network should be applied to the NGOs, including establishment, registration, legal personality acquisition, merger, dissolution, rights, duties and penalties. As such, all prohibited actions apply.

*Chapter Ten
General and Final Provisions*

Article (32): The NGO is permitted to open branches inside Iraq and abroad upon a Department approval.

RECOMMENDATION: *Either NGOs should only be required to notify the Department if they open branches, or Article 32 should be deleted entirely.*

Article (33): The name of organization should not be similar to the name of governmental institutions, political parties and blocs, associations or unions.

Article (34): the NGO must notify the Department of any change on the data and documents submitted to the Department within (30) thirty days from the date of change.

Article (35): The NGO registered under this law should not register in other entities.

RECOMMENDATION: *Article 35 should be reformulated and clarified. During the discussions, the government representatives stated that the original purpose of this article was to ensure that there was only one Federal Ministry granting registration and legal personality to NGOs. If this is true, the participants recommended that the article be reformulated to state this and allowing NGOs to register in all other jurisdictions (including with Iraqi regional authorities such as the KRG). If this is not the case, it is recommended that Article 35 be removed.*

Article (36): The branches of foreign NGOs have the right to possess transferable money under this law.

Article (37):

First: The provisions of this law apply to:

- A. All NGOs registered in Iraq before enforcement, except for the ones that were established under special laws.
- B. Branches of foreign NGOs registered in Iraq unless stipulated otherwise.

Second: NGOs included in the provisions of item (First) of this Article shall be committed to adjust their situations under the provisions of this law within (90) ninety days of its validity.

RECOMMENDATION: *The time period under Article 37.2 should be extended from 90 days to 180 days.*

Third: The provisions of this law shall not apply on political parties, labour unions, associations and societies that were established according special laws.

Article (38): The following shall be cancelled:

First: the Law of Societies Relating to Foreigners (No. 34) of 1962.

Second: The Law of Societies (No.13) of 2000.

Third: The (dissolved) Coalition Provisional Authority Order (No. 45) on Non-Governmental Organizations of 2003.

Fourth: The Detachment of NGO Assistance Office Order (No. 16) of 2005.

Article (39): The Secretary General of Council of Ministers has the authority to issue instructions to facilitate the implementation of the provisions of this law.

RECOMMENDATION: *Article 39 should be deleted.*

Article (40): This law is in force from the date of its publication in the Official Gazette.

Justifying Reasons

In order to confirm the right to establish and join NGOs as guaranteed by the constitution and for the purpose of facilitating the registration of Iraqi and foreign NGOs, this law was enacted.