

**NCCI (NGO Coordination Committee for Iraq) submission of Information
for the UPR Session 7 on IRAQ
1st September 2009**

Report on the lack of respect for Human Rights in the Iraqi draft NGO law (This document is to be used by the OHCHR for the summary of other stakeholders' information as part of the basis of the UPR).

The following document provides information and some comments on the Draft NGO Law approved by the Iraqi Council of representatives (Shoura Council) in January 2009 (**Attachment 1**). The Draft NGO Law was supposed to be reviewed by parliament last July 2009 but because "there were more important issues to be discussed" it was postponed until further notice. Here we present just a few comments on the Draft NGO Law but much more has been said on the fact that this law is not sufficiently human rights oriented, as you will see from the attachments. NCCI is concerned about this lack of respect of Human Rights, especially the Right of Association, in the Draft NGO Law which will legislate the work of National and International Non Governmental Organisations in Iraq as soon as it is adopted and ratified by the Government of Iraq.

Brief description of the NCCI¹:

The NGO Coordination Committee for Iraq – NCCI – is an independent initiative launched by a group of NGOs who were present in Baghdad in April 2003. At the time of its inception, the 14 members of NCCI intended to establish the basis of a neutral aid coordination highlighting the priorities for intervention and optimizing the responses to the needs of the Iraqi population. More than 5 years later the activities of NCCI, representing now some 52 International and Iraqi NGOs, have evolved with the changing situation inside Iraq. NCCI has developed into a wide forum where NGOs can exchange information regarding humanitarian activities and policy decisions in Iraq. NCCI continues to play its role in advocacy and lobbying inside and outside Iraq, and to act as a link for information sharing regarding humanitarian needs and assistance. Moreover, NCCI has continued pursuing the objectives for which it was originally established. Third parties – UN agencies, Iraqi authorities, other NGO platforms, and donors - also participate in the exchange of information facilitated by NCCI on relevant humanitarian and development issues in Iraq. Most of the times Iraq was facing humanitarian crises, NCCI organized and facilitated the Emergency Working group in Baghdad, and has been active in the combined UN/NGO Emergency meetings in forwarding information to UN agencies from NGOs in the field.

Initially, NCCI's members were the international NGOs operating in Iraq in all sectors of humanitarian and development work. In June 2005, as an effort to focus on process of building civil society, NCCI opened membership to national NGOs, thus linking them with the International Aid Community.

Since June 2005, NCCI's members rely on NCCI to lobby on their behalf for a neutral operating space in Iraq in order for NGOs to carry out humanitarian assistance and development programs. Their objective was to meet the needs of the most vulnerable, to be able to access the most vulnerable communities, to assess and respond to acute needs and also for the population to have access to appropriate services. The direct beneficiaries of the services provided by NCCI are mainly NCCI's members, then the wider NGO community, whether national or international, and UN agencies. Indirect beneficiaries are the sectors of the Iraqi population who are the direct beneficiaries of the NGO projects since the NGO staff

¹ More information on NCCI is available on our website www.ncciraq.org

are assisted by the information exchange, capacity building workshops and security awareness facilitated by NCCI.

NCCI Objectives are

- 1- To act as an independent, neutral and impartial NGO forum for coordination and information exchange among the NGO community on general and sectoral issues, and activities related to Iraq and its population, irrespective of ethnicity, politics, gender and religion.
- 2- To advocate that Human Rights and International Humanitarian Law are respected, and to ensure humanitarian needs are identified, well lobbied for and met.
- 3- To enhance the capacity of the NGO community in delivering humanitarian and development assistance to the population of Iraq.

Some NCCI Comments on the Iraqi Draft NGO Law:

NCCI believes that the current draft of the 2008 NGO law, as approved by the Iraqi Council of Ministers in January 2009, could:

- **Have serious implications for the future independence of Iraqi civil society and for the support that international NGOs could provide.**
- **Be used to control NGO activities rather than to support the development of civil society.**

Summary of main concerns on the draft legislation:

1. **The Draft NGO Law does not match up to international standards of good practice:**

Laws affecting freedom of association are judged according to the standards set in Article 22 of the *International Covenant on Civil and Political Rights (ICCPR)*, which the Republic of Iraq ratified on 23 March 1976 without reservations. According to Article 22, *“Everyone shall have the right to freedom of association with others... No restrictions shall be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.”*

This law gives a **restrictive interpretation of art. 39 of the Iraqi Constitution** (*The freedom to form and join associations and political parties shall be guaranteed, and this shall be regulated by law*).

Under existing Iraqi law, as is the case in most countries of the Middle East and North Africa, CSO registration is mandatory. The government sees the right of association as a gift from the government to the people, when in actuality it is one of the original human rights and is protected as such by international law (as discussed above in Part II). Registration of CSOs is mandatory, and even informal groups are prohibited from operating without first obtaining a license. Furthermore, complicated registration procedures with many requirements make the registration of a new CSO difficult or nearly impossible.

2. This Law gives the executive power many ways to exercise control over NGOs:

➤ Control over resources:

Any donations from inside or outside Iraq must first be approved by the government. All donors need to notify the government prior to making any funds available to NGOs. The government can thus decide which NGO will survive. This will also delay the delivery of humanitarian assistance, largely conducted by NGOs.

Article 18 of the draft Law allows government officials to cut off all donations and grants, both foreign and domestic, with or without cause. Particular NGOs may thus be starved of resources, essentially extinguishing their rights to associate. Such broad discretionary powers simply cannot be reconciled with *ICCPR* Article 22, which as discussed above prohibits any restrictions on freedom of association that are not both “necessary in a democratic society” and in the interests of national security, public safety, public order, the protection of health or morals, or the protection of the rights and freedoms of others. Although the need to protect against money laundering and terrorist financing is a legitimate government interest, the proposed restriction is so heavy-handed and all-embracing as to hinder and deter legitimate donor and grant-making support to NGOs engaged in the activities so critical to the reconstruction and development of Iraq.

The restrictions on funding imposed by Article 18 are also inconsistent with the United Nations *Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, which affirms that each state has the responsibility to “adopt... the legal guarantees required to” protect human rights and fundamental freedoms (Article 2). Among these rights is the “right, individually and in association with others, to solicit, receive, and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms.”² The UN High Commissioner for Human Rights has explicitly stated that the *Declaration’s* protections extend to the “receipt of funds from abroad.”³ In placing restrictions on the flow of foreign funding to human rights defenders, Article 18 is inconsistent with the *Declaration on Human Rights Defenders*.

Moreover, given the fact that donations and grants are a substantial source of funds for NGOs, it is highly questionable that the NGOs Department would have the capacity to review all donations and transfers to NGOs in advance. At best, a restriction of this type will lead to serious delays in the legitimate work of NGOs; more disturbing is the possibility that this restriction will deter the contribution of badly-needed funds altogether.

In sum, such restrictions in funding means the development of Iraqi Civil Society, will be greatly constrained, financially and technically.

➤ Restrictions on capacity to operate

Approval needed for opening a branch, buying or selling property; though the draft law recognizes that NGOs have “the right to sell off any property” and “the right to possess property,” the exercise of either of these rights is subject to “the approval of the NGOs Department” (Article 15). It is not clear what interest is served by requiring NGOs to seek government approval before purchasing or disposing of their property. NGOs are in the best position to determine when the acquisition or sale of property will advance their goals and activities. The NGOs Department, which cannot have extensive knowledge of all fields of work in which NGOs are involved, will not be as well-placed to make this determination. The NGOs Department, which will not have the same knowledge of the needs of the NGO or beneficiaries who benefit from its programs, might not understand why the NGO needs to own a dedicated facility to advance its goals. Under Article 15, however, the NGOs Department would have the right to override the NGO’s decision.

Long-term planning for NGOs is quite impossible due to registration expiring every 2 years. Articles 6 and 9 of the draft law establish a complicated and unnecessarily confusing registration process that may delay or discourage the formation of new NGOs. In addition, all NGOs are required to re-register every two years, a substantial detriment to the sustainability of civil society as well as a time-consuming burden for both NGOs and government officials.

Moreover, because the NGOs Department appears to have the authority to reject an application for any reason, it is not clear on what basis an administrative court might review a rejection, making the right of appeal specified in Article 9(7) ineffective.

➤ **Restrictions on foreign affiliations and Limitations of foreign participation in NNGOs**

Approval needed for joining an international network. Article 23(4) provides that NGOs may “subscribe or be affiliated to an organization, board, club, foundation, or network whose headquarters is outside of the Republic of Iraq” only with the “permission” of the NGO Department. There is no discussion of how permission is obtained or on what grounds it will be granted or denied. Requiring NGOs to seek prior authorization before subscribing or being affiliated with organizations outside of Iraq burdens their ability to “receive and impart information and ideas... regardless of frontiers.”

Strong limits on the proportion of foreigners (25%) permitted amongst members of an NGO or network of NGOs. This applies also to Iraqis who have acquired another nationality.

Non-Iraqi citizens cannot serve as “the head of the organization or one of its founders or the chairman of its board” (Article 12(6)), and they cannot make up more than 25% of the members of a domestic NGO’s membership or board of directors (Article 12(5)(a) and (b)).

A foreigner should not be excluded from the fundamental right to association guaranteed by the *ICCPR*. The right to associate, including the right to head, found, or become a member of an NGO, is protected by the *ICCPR* and as a result must be made available to all persons within the jurisdiction of the member states. To bar a foreign national from establishing, running, or participating in an NGO is a clear violation of the *ICCPR*.

➤ **Restrictions on foreign NGO Activities**

Article 30 of the draft law prohibits foreign NGOs from participating in “political and factional activities” in the Republic of Iraq. Because there are often separate laws governing political parties, political fundraising, elections, and political campaigning, it may be appropriate to limit the participation of NGOs in endorsement of, and fundraising to support, candidates for public office. However, all NGOs should have the ability to speak freely on matters of public significance, including existing or proposed legislation, state actions, and policies – and as discussed in the above previous section (“*Restrictions on foreign affiliations and Limitations of foreign participation in NNGOs*”), this right applies to “everyone” and not simply Iraqi citizens. According to international best practice, NGO laws do not place restrictions on the right of NGOs, including foreign NGOs, to carry out public policy activities such as education, research, advocacy, and the publication of position papers. Such restrictions, in fact, violate international norms protecting freedom of expression and freedom of association and deprive society of valuable points of view. For example, Article 19(2) of the *ICCPR* states:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Prohibitions on “political or factional activities” must therefore be written with great specificity. Disallowed activities should be clearly described, because vague prohibitions on

“political and factional activities” can be applied in a discretionary fashion to limit legitimate advocacy activities of NGOs.

➤ **A tool to ensure that NGOs do not displease the Government**

A harsh penalty system for violating the law (up to 3 years in jail) is stipulated. The Article 26 of the NGO Law referring to Criminal Penalties is entirely inappropriate and must be removed from the law. This is a civil act, and should be subject to civil penalties that do not include imprisonment. The Iraqi Criminal Code already contains sufficient protection against acts such as fraud or embezzlement; no repetition of those penalties is required here. Under no circumstances does international best practice contemplate criminal penalties in NGO laws. When participation in an NGO that is “established contrary to the provisions of this law” is punishable by up to three years’ imprisonment, it is clear that many otherwise qualified individuals will not form or join NGOs for fear that a minor violation of the law might result in a long prison term.

➤ **Freezing all NGO activities temporarily**

Since all NGOs will have to register again once this law is passed and cannot operate before the registration is completed, they will have to stop their activities at the same time. Humanitarian and development work currently carried out by NGOs will be frozen and will be again when they re-apply for registration in 2 years. This will also impact on activities carried out on behalf of the UN and with donor funding.

In addition to issues regarding the legislation itself, NGOs still have concerns about the NNGO and INGO registration process in Iraq: It is time consuming, onerous and often lacks transparency and consistency. The current NGO Assistance Office (NAO) location inside the Green Zone in Iraq has exacerbated the problem, making NGOs unable to access the office. Furthermore, electronic communication is problematic because of NAO staff capacity (In mid-2008, staffing levels were reduced by 50%).

Recommendations:

- Wider and transparent consultation with Civil Society before the legislation is endorsed; The Government of Iraq should take into consideration most of the recommendations done by NGOs and Civil Society Organizations. (See Annex 2)
- Development of clear criteria to guide the Government in endorsing or rejecting registration.
- The restrictions on funding imposed by Article 18 should be removed. In placing restrictions on the flow of foreign funding to human rights defenders, Article 18 is inconsistent with the *Declaration on Human Rights Defenders*.
- The overall registration procedure specified in the draft law should be re-examined. Registration should be streamlined into a single procedure rather than a two-step process. The authority of the NGOs Department to reject registration applications should be limited to specific conditions, and the NGOs Department should be compelled to issue a receipt at the time of application. A procedure should be specified that will allow NGOs to seek court intervention if their registration applications are left unanswered.
- The UN and donors should support the NGO Department with technical assistance for greater transparency and accountability and assure that the NGO Law matches up with international best practice.