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## **Briefing Book**

# **Drafting a Constitution for a Post-Conflict Iraq**

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## **Table of Contents**

### **General Provisions**

- General Provisions Decision Tree
- Role of Islam - English
- Role of Islam - Arabic
- National Identity (Arab Nation)
- Government Character – English
- Government Character - Arabic

### **State Structure**

- State Structure Decision Tree – English
- State Structure Decision Tree - Arabic
- Designing a National Structure
- State Structure and Allocation of Powers
- Designing an Effective State Structure Based on the  
Principles of Territorial Integrity and Self-Government
- Allocation of Powers & Responsibilities - English
- Allocation of Powers & Responsibilities – Arabic
- Asymmetric Autonomy – case studies
- Status of Baghdad

### **Executive/Legislative Structure**

- Executive Decision Tree - English
- Executive Decision Tree - Arabic
- Legislative Decision Tree - English
- Legislative Decision Tree - Arabic
- Composition of the Executive Authority
- Summary and Link to Detailed Legal Memoranda

### **Elections**

- Elections Decision Tree – English
- Elections Decision Tree – Arabic
- Considerations in Designing an Electoral System
- Election of Members of the Iraqi National Assembly
- Framework for Electoral Law and Political Parties Law
- Summary and Link to Detailed Legal Memoranda

### **Judiciary**

- Judiciary Decision Tree – English

Judiciary Decision Tree - Arabic  
Constitutional Court  
Summary and Link to Detailed Legal Memoranda

## **Central Bank**

### **Allocation of Oil Resources**

Allocation of Oil Resources Decision Tree- English  
Allocation of Oil Resources Decision Tree - Arabic  
Natural Resource Ownership  
Equitable Revenue Allocation  
Summary and Link to Detailed Legal Memoranda

## **Human Rights**

Human Rights Decision Tree  
Protecting Human Rights and Fundamental Freedoms  
Avoiding the Qualification of Human Rights  
Summary and Link to Detailed Legal Memoranda

## **Minority Rights**

## **Women's Rights**

### **Amending the Constitution**

Constitutional Amendments Decision Tree  
Constitutional Amendments

## **Constitution Checklist (Compilation of Decision Trees)**

### **Summary of detailed legal memoranda available on PILPG.org ([www.pilpg.org/areas/peacebuilding/simulations/iraq/](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/))**

Structuring an Executive  
Establishing a Representative Legislature  
Promoting Judicial Independence  
Protecting Human Rights  
Constructing an Electoral System  
Resolving Property Claims  
Refugee and IDP Return  
Equitably Allocating Oil Resources  
Integrating the Peshmerga into a New Iraqi Defense Structure

## **General Provisions**

### **General Provisions Decision Tree**

1. Description of State
  - a. Republic
  - b. Federal or unitary
  - c. Capital city
  - d. Physical boundaries/makeup
  - e. Constituent units
  - f. People
  - g. Character of state (Arab nation, other)
  - h. Independent
2. Official religion (e.g., Islam)
3. Islam/Shari'a as a/the/principal source of law
4. Source of sovereignty (e.g., people)
5. Citizenship and Nationality (can be here or in section on fundamental rights)
  - a. Qualifications
  - b. Benefits and privileges of citizenship
6. National flag, symbols, anthem etc.

## General Provisions

### Role of Islam *Sample Language*

Islam is the official religion of the State and is to be considered [a source] [the source] [a primary source] of legislation. No law shall be valid if it contradicts the [universally agreed tenets of Islam] [fundamental principles of Islam], the principles of democracy, the values of this Constitution, or the fundamental rights, freedoms and liberties of all persons and communities as cited in Chapters X and X of this Constitution. [insert chapter numbers of the sections on Fundamental Rights and Minority Rights].<sup>1</sup>

This Constitution respects the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights and effective enjoyment of all individuals to freedom of religious belief and practice.<sup>2</sup> These right shall include the freedom to hold or to adopt a religion or belief of his choice, and the freedom, either individually or in community with others, and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.<sup>3</sup>

\*Alternatively, the last sentence could also be added in the section on fundamental rights.

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<sup>1</sup> Based on TAL, Art. 7(A).

<sup>2</sup> Based on TAL, Art. 7(A).

<sup>3</sup> Ethiopia Const., ch. 3, art. 27, cl. 1; Syria Const., ch. 1, art. 35 (reference to public order); Lebanon Const., ch. 2, art. 9 (reference to public order).

## General Provisions

### Role of Islam

#### دور الإسلام

\* *الخيار الأول*: إدراج دور الإسلام في المقدمة الدستورية.

#### المقدمة

الإعتراف بالعراق كبلدٍ متعدد القوميات و بالأكثرية العربية كجزء لا يتجزأ من الأمة العربية، بالإضافة إلى<sup>4</sup>

التعهد بأن العرب، الأكراد، وباقي الأقليات القومية هم شركاء في هذا الوطن الأم، و بأن حقوق هذه المجموعات مضمونة و محفوظة من خلال الدستور في ظلّ عراق واحدٍ موحد،<sup>5</sup>

\* *الخيار الثاني*: إدراج الفقرات التالية في المقدمة الدستورية او كقاطٍ منفصلةٍ في صلب الدستور.

#### المادة [ ]. دور الإسلام

(1) إعتبار الإسلام الدين الرسمي لدولة العراق و (أ- أحد مصادر التشريع، أو ب- مصدر التشريع الرئيسي)، و إقرار عدم نفاذ أية قانون يتعارض و (أ- عقائد الإسلام المتفق عليها عموماً، أو ب- مبادئ الإسلام الجوهرية)، مبادئ الديمقراطية، قيم هذا الدستور، أو الحقوق الأساسية لأية إنسان أو مجتمع كما هو منصوص في المادة [ ] و المادة [ ] من هذا الدستور . (يجب إدراج أرقام المواد المتعلقة بالحقوق الأساسية و حقوق الأقليات)<sup>6</sup>

(2) يحترم هذا الدستور الهوية الإسلامية لأغلبية الشعب العراقي، و يضمن للفرد حقوقه الدينية الكاملة و تمتعه الفعلي بحرية المعتقد و الإيمان و ممارسة العبادة<sup>7</sup>. و تتضمن هذه الحقوق حرية الفرد لتبني أو التمسك بدين أو معتقد معين من إختياره الشخصي، و حرية الإشهار و التعبير عن دينه أو معتقده عبر التعبّد و المراعاة و الدراسة و الممارسة و التعليم بشكلٍ فردي أو جماعي، في السرّ أو في العلن.<sup>8</sup>

- كبديل، يمكن إضافة الجملة الأخيرة في المادة المتعلقة بالحقوق الأساسية.

<sup>4</sup> Based on TAL, Art. 7 (b).

<sup>5</sup> Based on 1958 Iraq Const., Art. 3.

<sup>6</sup> Based on TAL, Art. 7(A).

<sup>7</sup> Based on TAL, Art. 7(A).

<sup>8</sup> Ethiopia Const., ch. 3, art. 27, cl. 1; Syria Const., ch. 1, art. 35 (reference to public order); Lebanon Const., ch. 2, art. 9 (reference to public order).

## **General Provisions**

### **National Identity** *Sample Language*

Iraq is a country of many nationalities. Iraq belongs to all who live in it, united by our diversity, common history, purpose and destiny, and committed to working together to promote the good governance and the welfare of all citizens of Iraq.

The Arab majority in Iraq considers itself to be an inseparable part of the larger Arab Nation and they are committed to maintaining the diversity of the Iraqi nation.

The Arabs, Kurds, national and religious minorities of Iraq are partners in our homeland committed to fostering the unity and progress of the people of Iraq. Each of their national identities and rights within a unified Iraq and are acknowledged by this Constitution and considered indispensable to the promotion of freedom, unity, peace, stability and security.

## **General Provisions**

### **Government Character**

#### *Sample Language*

The composition of the Government of Iraq, all the governments of each of Iraq's regions, provinces, governorates, and local governing councils, or any of their respective agencies, and the conduct of its affairs, shall be carried out in such a manner as to: reflect the religious, [linguistic], ethnic and cultural diversity of Iraq, promote national unity while preserving diversity, foster a sense of belonging to the common state of Iraq, and ensure that there shall be no concentration of power in a select group of persons.

## General Provisions

### Government Character (Expanded Version)

#### المادة [ ]. الشخصية الحكومية

سيكون نظام الحكم في العراق نظاماً جمهورياً فيدرالياً ديمقراطياً تعددياً، وسيتم إقتسام السلطات والصلاحيات ما بين الحكومة الفيدرالية والحكومات الإقليمية، المحافظات، البلديات، والإدارات المحلية. و أساس النظام الفيدرالي مبدأ فصل السلطات و سيتم بناءه على الحقائق التاريخية و الجغرافية بغض النظر عن العناصر المتعلقة بالأصل، الجنس، العرق، الجنسية، أو المذهب.<sup>9</sup>

أما هيكل الجمهورية العراقية فهو قائم على اساس تعاون و تكاتف و تضامن مواطنيها و إحترام و حماية حقوقهم و حرياتهم<sup>10</sup>.

ستقوم الحكومة العراقية من خلال تكوينها و تكوين مؤسساتها، و من خلال طريقة عملها و تنفيذ مهامها، بعكس الطابع [الفيدرالي][التعددي] لدولة العراق، و بتثبيت و تأكيد الوحدة الوطنية و مبدأ الولاء للوطن أولاً و آخراً، و ذلك لضمان عدم تحكم أفراد ينتمون لفئة مذهبية أو عرقية معينة بالسلطات و الصلاحيات المنوطة بالحكومة و مؤسساتها.

و بالنسبة لتكوين حكومة دولة العراق و حكومات الأقاليم و المحافظات و المجالس المحلية، و بالنسبة لتكوين أية من المؤسسات التابعة لهذه الحكومات و المجالس، و طريقة عمل و تصريف شؤون و تنفيذ مهام هذه الحكومات و المجالس و المؤسسات، يجب الحرص على عكس الطابع التعددي للشريحة السكانية الممتلئة في هذه الأجسام الرسمية و الواقعة ضمن نطاق سيطرتها، بالإضافة إلى العمل على تقوية حس الإنتماء و الولاء القومي لدولة العراق الموحد في صفوف المواطنين.

<sup>9</sup> TAL, Art. 4. This document assumes that this provision, or one similar to it, will appear in the final constitution

<sup>10</sup> 1958 Iraq Const., Art. 3

## **State Structure**

### **State Structure Decision Tree**

1. Centralization or Decentralization of powers
2. Detailing powers exclusively held by the Central Government
3. Detailing powers held by the Central Government but can be shared or assumed with local governments
  - A. Process for assuming these powers
  - B. Process for settling disputes between governments (Constitutional Court)
4. Detailing powers held exclusively by local governments, provinces, regions, etc.
5. Process for ensuring cooperation between the center and the periphery

### **Central Government Powers**

1. Foreign affairs
  - A. Conduct foreign policy and international affairs
  - B. Establish international trade relationships
2. Defense – defend against external threats
3. Economy
  - A. Establish and implement monetary and fiscal policy
  - B. Authorize national system of taxation
  - C. Manage financial equalization
  - D. Manage international credit and debt
  - E. Manage State property
  - F. Establish and implement customs and tariff policy
  - G. Manage inter-regional transportation and national infrastructure
4. Citizenship and immigration
  - A. Border control/customs
  - B. Issue citizenship and passports
  - C. Regulate immigration, refugee and asylum policy

#### D. Census

5. National law enforcement
6. Civil aviation
7. National telecommunications and postal service
8. Weights, measurements and standards

#### **Regions/Governorates/Provincial Powers**

1. Organization of institutions of regional and local government
2. Establish regional and local symbols, flags, anthems etc.
3. Regional and local taxation
4. Health care
5. Education
6. Preservation and promotion of regional and local languages and culture
7. Social policy
8. Regional and local public works
9. Regional and local infrastructure, telecommunications and transportation
10. Regional and local economic policy
11. Regional and local courts

#### **Municipal Governments**

1. Provision for regional/local power
2. Provisions for local elections

## State Structure

### State Structure Decision Tree

#### الهيكلية الإدارية للدولة

##### أولاً) حكومة لامركزية

- 1) مميزات الوحدات المكونة للحكومة اللامركزية
  - أ) الحدود الجغرافية
  - ب) الحدود العرقية أو الإثنية
  - ج) سلطات, صلاحيات, و وظائف تلك المكونات

##### ثانياً) اتحاد فيدرالي

- 1) ترسيم حدود العراق الفيدرالي
  - أ) المحافظات المتواجدة حالياً
  - ب) المحافظات, الولايات, أو الأقاليم الجديدة
  - \* الحدود الجغرافية
  - \* الحدود العرقية أو الإثنية
- 2) كيفية تقسيم الصلاحيات والوظائف بين الحكومة الفيدرالية والحكومات المحلية
  - أ) السلطات والصلاحيات المقتصرة على الحكومة الفيدرالية
  - ب) السلطات والصلاحيات المقتصرة على الحكومات المحلية
  - ج) متى تتفوق سلطة الحكومة الفدرالية على سلطة الحكومة المحلية؟
  - \* عند تحديد النظام الضرائبي
  - \* عند سنّ قوانين التجارة الواقعة بين ولايتين أو محافظتين أو إقليمين

##### ثالثاً) حلف كونفيدرالي

- 1) حلف الوحدات المكونة للحلف
  - أ) الحدود الجغرافية
  - ب) الحدود العرقية أو الإثنية
- 2) السلطات المخولة لهذه الوحدات وسلطات الدولة المركزية
- 3) كيفية إتخاذ القرارات ضمن الوحدات
  - أ) عن طريق الإجماع
  - ب) عن طريق الأكثرية
  - ج) عن طريق الإستفتاء

## State Structure

### Designing a National Structure: The Core Elements *Memorandum*

The purpose of this memorandum is to identify the key issues which arise when designing a national structure which involves the devolution of powers to states.

**Shared or Assumed Powers:** Does the central government share power – where both the central government and the state government exercise joint authority over an issue, e.g. immigration, policing, or environmental protection. Or, does the state government assume power from the central government in these areas.

**Residual Powers:** Does the central government or the state retain the powers not expressly written in the constitution.

**Process for Assuming Powers:** What is the process for the state to assume powers from the central government. Does the state or the central government control the process. Must the National Assembly consent to the devolution of powers.

**Framework Legislation:** Does the central government adopt Framework Legislation, which then guides the states in their development of implementing legislation.

**Symmetrical or Asymmetrical:** Are all states entitled to the same degree of power, or are some states entitled to more power.

**Financial Arrangements:** What is the process and the formula for ensuring financial balance among the states.

**Intra-state Cooperation:** To what extent may the states form cooperative agreements among each other.

**Regions:** How many states may join together to form a region.

**Exchange of Special Representatives:** Can the state and national government each appoint special representatives to serve as liaisons between their governments and ensure cooperation on important matters.

**Dispute Resolution:** What is the process for resolving disputes concerning the allocation of powers. What role can the Constitutional Court play in the resolution of disputes.

## **State Structure**

### **State Structure and Allocation of Powers** *Sample Language*

## **State Structure**

### Categorizing Constituent Units

*Option 1:* Retain the current system of regions and governorates.

*Option 2:* Each region and each governorate shall now be called a “state”.

### Process for Creating a Larger State/Region

Any group of no more than [3] states may join together to form one larger state.

The mechanisms for creating a larger state shall be established by the National Assembly.

The creation of a larger state must be approved by the National Assembly.

National Assembly approval can only occur if the people of the states concerned approve the formation of the larger state by a referendum.

## **Allocation of Powers**

### Listing of Powers

The constitution shall provide that certain powers are held by the states, certain powers are held by the central government, and certain powers are held by the central government, but may be assumed by the states.

### Process for a State to Assume Powers

Upon fulfillment of objective criteria established by law, any state may assume those powers that are not reserved solely for the central government.

The objective criteria shall include a local referendum.

The objective criteria may also include: the size of the population, the maturity of the public administration, the degree of economic development, and a certain level of financial capability.

A panel of independent experts appointed by the Constitutional Court shall determine whether the objective criteria have been met, and forward their recommendation to the National Assembly. The National Assembly shall then take action upon this recommendation within its current session.

The decision of the National Assembly may be appealed to the Constitutional Court.

### Kurdistan

The Kurdish Regional Government, as a state, shall continue to exercise all of its current powers.

## State Structure

### **Designing an Effective State Structure Based on the Principles of Territorial Integrity and Self-Government** *Memorandum and Sample Language*

The purpose of this paper is to identify the core elements of a state structure which protects the territorial integrity of Iraq while also providing for effective self-government at the central government level and the provincial level.

The core elements discussed in this paper are common to countries with diverse populations. They are commonly found in *unitary states* such as Italy and Indonesia, *mixed systems* such as Spain, the Philippines, South Africa, and the United Kingdom, *federal states* such as Germany, Malaysia and Belgium, and *state unions*, such as India, and Serbia/Montenegro.

The core elements are:

- Preambular language reaffirming the territorial integrity of Iraq and the principles of self-government.
- A listing of powers distributed between the central and provincial governments.
- A process for all provinces to assume powers over time.
- A determination concerning powers not expressly assigned in the Constitution.
- A provision affirming that Kurdistan retains its current powers and obligations.
- A process for the central government to adopt "framework legislation" to guide the provinces in their implementation of certain responsibilities.
- Mechanisms for cooperation between the central government and provinces.

- A process for harmonization of certain provincial legislation.
- A Constitutional Court process for resolution of disputes.
- A heightened standard for constitutional amendments affecting the inherent relationship between the central government and the provinces.

Below is a commentary on each of these issue as well as suggested Sample Language to implement each core element.

- **Preambular Statement about Power Sharing:**

*Sample Language for the Preamble*

Iraq is one sovereign and independent country.

In order to promote democracy and effective self-governance, this Constitution allocates substantial powers and responsibilities to provinces.

Consistent with international law, the national sovereignty and the territorial integrity of Iraq shall be fully respected.

**Exclusive and Shared Powers:** Typically a constitution will expressly describe: (a) all the powers that are exercised *exclusively* by the central government (i.e. defense from external threats), (b) all powers held by the central government, but which may be *shared or assumed* by the provinces (i.e. environment), and (c) all those powers that are exercised *exclusively* by the provinces (conserving local culture).

*Sample Language:* (See attached Annex listing the three categories of power)

**Residual Powers:** A constitution will usually clarify which government retains the powers not expressly allocated in the constitution.

*Sample Language:*

All powers not expressly assigned in this Constitution shall fall under the jurisdiction of the [Central government][provinces].

**Process for Assuming Powers:** In countries where the provinces may assume certain powers over time, the provisions that discuss this process may vary in terms of the criteria applied, the level of control that the central government and provinces exert over the process, and the consents required by the communities concerned, the legislature, or the entire country.

In cases such as Iraq where the necessary financial capacity and infrastructure at the provincial level may not yet exist (including the existence of a sufficient provincial budget, a working executive, legislature, or judiciary), a phased approach to the assumption of powers may help to provide time for building this capacity and infrastructure.

### *Sample Language*

All provinces may assume power and responsibility over the matters listed in section B of the Annex. [*The “Annex” is the following document titled “Allocation of Powers and Responsibilities Between the Central Government and the Provinces”*].

To assume these powers and responsibilities, the province(s) must fulfill certain objective criteria established by law.

Such law shall include a local referendum and requirements relating to the size of the population, the maturity of the public administration and infrastructure, the degree of economic development, and a determination of financial capability.

Upon a decision of the province(s) to assume additional powers, a panel of independent experts appointed by the Constitutional Court shall determine whether the objective criteria have been met.

The decision of the experts shall be forwarded to the Iraqi National Assembly. The Assembly must approve the assumption of power by a resolution adopted by a majority of its members.

Where appropriate, the resolution will provide for the appropriate transfer of financial means from the central government to the province(s) in question, and, if mandated by the circumstances, specify any forms of residual control to be retained by the central government.

The decision of the Assembly may be appealed to the Constitutional Court.

All provinces may begin the process for assuming these powers no earlier than [ ] year(s) after the entry into force of this Constitution.

*Optional:* The following powers from section B of the Annex may be assumed by the provinces within [ ] year(s) after the entry into force of this Constitution: [list powers]. The following additional powers from section B of the Annex may be assumed by the provinces within [ ] year(s) after the entry into force of this Constitution: [list powers].

**Kurdistan:** The Sample Language provided in this document presumes that Kurdistan will continue to exercise all of its current powers.

*Sample Language:*

Kurdistan shall continue to maintain and exercise all powers and authorities which it possesses at the time of the adoption of this Constitution.

**Framework Legislation:** Some constitutions further provide that the central government may adopt “framework legislation” regarding those powers that are within its exclusive competence and/or those powers that may be shared with the provinces. Consistent with this guiding framework, the provinces may then adopt implementing policies and legislation.

*Sample Language:*

With respect to those powers within the exclusive competence of the central government and those powers shared between the central government and the provinces, the central government may adopt “framework legislation” that establishes national policy and guidance on a particular matter. The provinces are then permitted to enact

implementing policies and legislation that are consistent with that framework.

**Cooperation:** A constitution may also include provisions that not only foster cooperation between the central government and provinces in the administration of their exclusive and shared powers, but also helps to increase the level of interaction and connection between the governments.

*Sample Language:*

*Exchange of Representatives:* The central government shall have a Special Representative for each province as prescribed by law. The Special Representative shall serve as a liaison between the central government and the province and shall be permitted to observe the sessions of the provincial legislatures. Each province shall also appoint a Provincial Special Representative. The Provincial Special Representative shall serve as a liaison between the provincial government and the central government and shall be permitted to observe the sessions of the Iraqi National Assembly. The appointment procedures, terms of service, and additional duties and functions of these representatives shall be prescribed by law.

**Harmonization:** To ensure that the allocation of powers does not result in a lack of consistent laws and policies on issues of national importance, some constitutions provide the central government with certain authority to adopt legislation, in specific circumstances, that harmonizes the laws and policies of its provinces and local governments.

*Sample Language:*

When it is necessary in the general interest of the country, the central government may enact legislation that harmonizes the laws and policies of the provinces, even in the case of matters over which the power and authorities are shared with the central government. The decision to harmonize legislation in this manner shall require the support of two thirds of the members of the Iraqi National Assembly.

**Dispute Resolution:** In most constitutions, it is made clear that where there are disputes between the central government and its provinces regarding the constitutionality of the activities, laws or policies of the other, these matters

can be brought to a constitutional court. The following language may appear in the chapter regarding allocation of powers or it may simply appear in the provision describing the jurisdiction of the Constitutional Court of Iraq (or its equivalent).

***Sample Language:***

The Constitutional Court may settle disputes between the central provincial and other local governments.

The Constitutional Court may decide disputes between the central, provincial and other local governments concerning the constitutional status, powers or functions of any of those governments, their departments and agents.

The Constitutional Court may review the constitutionality of any national, provincial, or other local legislation upon application by a member of the National Assembly, provincial, or other local legislature for an order declaring that all or part of a law is unconstitutional

**Constitutional Amendment:** Most constitutions contain a chapter describing how to amend the constitution. This is a way in which future changes in the circumstances of a country and the feelings of its people can be expressed in a democratic and peaceful manner. If desired, this language can also establish a higher standard to be applied before the constitution may be amended to alter the fundamental relationship between the central government and the provinces (i.e. require a higher vote in the Assembly or a public referendum). This elevate standard would ensure that a larger national dialogue may take place before significant changes occur in the powers exercised by either the central government or one or more of the provinces.

***Sample Language:***

*(to be included after inserting the standard for adopting all other amendments by the Iraqi National Assembly)*

A draft law to change the inherent relationship between the central government and the provinces, shall *also* require the [consent of the

Presidency Council][consent of the governments of the provinces of Iraq].

## **State Structure**

### **Allocation of Powers and Responsibilities Between the Central Government and the Provinces** *Sample Language*

**Note:** The powers listed here are intended only to provide an example of the types of powers which may be allocated between the central government and the provinces.

#### *A. Powers and Responsibilities Held by the Central Government*

The central government shall exercise power and responsibility over the following matters:

#### **Constitutional Order**

- Adopting and amending the Constitution of Iraq;
- Adopting and implementing the laws specified by the Constitution;
- Establishing special commissions as specified by the Constitution;
- Establishing and regulating the operation of the central government organs, including the executive, legislative and judicial organs;
- Maintaining the territorial integrity of Iraq;
- Determining national symbols, flags and anthems;

#### **Defense**

- Defending Iraq against external threats;

#### **Foreign Affairs**

- Conducting foreign policy and international affairs;
- Establishing international trade relationships;

## **Economy**

Establishing and implementing monetary and fiscal policy;

Authorizing a national system of taxation;

Managing financial equalization;

Managing international credit and debt;

Managing national property;

Establishing and implementing customs policy;

Managing internal transportation and maintaining the national infrastructure;

## **Citizenship and Immigration**

Issuing citizenship and passports;

Regulating immigration, refugee and asylum policy;

Conducting a census;

## **Other**

National law enforcement;

Civil aviation;

National telecommunications and postal service;

Weights, measurements and standards;

[Additional powers and authorities.]

*B. Powers and Responsibilities Held by the Central Government, but which may be Shared or Assumed by the province(s)*

The central government shall exercise the following powers unless shared or assumed by one or more of the provinces according to the process set forth in this Chapter:

Ensuring compliance of the laws of the province(s) with the Constitution of Iraq;

Protecting human rights;

Protecting minority rights;

Protecting the environment;

Managing natural resources;

Law enforcement;

Social security;

Public health;

[Additional powers and authorities.]

In matters where the central government and province(s) exercise shared power and responsibility, where there is a conflict in whose law will prevail, the law(s) of the [central government][province] shall prevail.

### *C. Powers and Responsibilities Held by the Provinces*

The provinces shall exclusively exercise the following powers:

Organizing the institutions of provincial and local governments;

Determining provincial and local symbols, flags and anthems;

Provincial and local taxation;

Provincial and local law enforcement;

Health care;

Primary Education;

Preservation and promotion of provincial and local languages;

Preservation and promotion of provincial and local culture;

Social policy;

Provincial and local public works;

Provincial and local infrastructure, telecommunications and transportation;

Provincial and local economic policy;

[Additional powers and authorities.]

#### *D. Retention of Powers and Responsibilities by Kurdistan*

Kurdistan shall continue to maintain and exercise all powers and authorities which it possesses at the time of the adoption of this Constitution.

## State Structure

### Allocation of Powers and Responsibilities Between the Central Government and the Provinces

الفصل ( ) : توزيع السلطات و المسؤوليات بين الحكومة المركزية والأقاليم / المحافظات

البند ( ) . السلطات و المسؤوليات المنوطة بالحكومة المركزية

سُعدّ الحكومة المركزية في موقع السلطة و المسؤولية فيما يتعلق بالمسائل التالية:

#### النظام الدستوري

تبني و تعديل دستور العراق .

تبني و تعديل القوانين المحددة في الدستور .

إنشاء لجنة خاصة كما هو محدد في الدستور .

إنشاء وضبط عمليات ومهام الجسم الحكومي المركزي بالإضافة الى الأجسام التنفيذية، التشريعية، والقانونية.

الحفاظ على وحدة أراضي العراق .

تحديد رموز، أعلام ، وأناشيد الدولة .

#### الدفاع

الدفاع عن العراق في مواجهة التهديدات الخارجية .

#### العلاقات الخارجية

ممارسة السياسة الخارجية والمشاركة في الشؤون الدولية .

إنشاء علاقات تجارية دولية .

#### الإقتصاد

رسم وتطبيق سياسة قومية نقدية ومالية.

تفويض نظام ضريبي قومي.

التمكن من سياسة مالية متوازنة.

إدارة الدين و الإئتمان الدوليين.

خلق وتطبيق نظام جمركي.

إدارة التنقل بين المناطق والمحافظات على البنى التحتية.

### شؤون الهجرة والجنسية

منح الجنسية واصدار الجوازات.

ضبط الهجرة الخارجية والداخلية واللجوء السياسي.

إجراء تعداد سكاني.

### متفرقات

تطبيق القانون القومي / المحلي.

الطيران المدني.

الإتصالات السلكية و اللاسلكية و خدمة البريد.

اعتماد نظام موحد لمقاييس الوزن والمسافة و... الخ

(سلطات ومسؤوليات إضافية)

البند ( ) . السلطات والمسؤوليات المشتركة ما بين الحكومة المركزية والأقاليم / المحافظات

السلطات والمسؤوليات التالية سئعد من المسائل المشتركة بين الحكومة المركزية والأقاليم / المحافظات

ضمان خضوع وتجانس قوانين الأقاليم/ المحافظات مع دستور العراق.

حماية حقوق الإنسان.

حماية حقوق الأقليات.

حماية البيئة.

إدارة الموارد الطبيعية.

تطبيق القانون.

الكفالة الإجتماعية.

الرعاية الصحية.

(سلطات ومسؤوليات اضافية)

(بالنسبة لهذه المواضيع, ستقوم الحكومة المركزية بإرساء التوجيهات و الإرشادات العامة اللازمة, في حين يتعين عن حكومات الأقاليم / المحافظات تبني, إتباع, وتطبيق هذه الإرشادات والتوجيهات)

**البند ( ) . السلطات والمسؤوليات المنوطة بحكومات الأقاليم / المحافظات**

**قد يحقّ** لحكومات الأقاليم والمحافظات تبني السلطات والمسؤوليات الغير المشتركة مع و الغير المنوطة حكراً بالحكومة المركزية، كالتالي:

تنظيم المؤسسات الحكومية الإقليمية و المحلية.

تحديد الضرائب الإقليمية والمحلية.

تطبيق القوانين المحلية والإقليمية.

الرعاية الصحيّة.

التعليم.

المحافظة على والترويج للغات الإقليمية والمحلية.

المحافظة على والترويج للثقافات الإقليمية والمحلية.

السياسة الإجتماعية.

الأشغال العامة الإقليمية والمحلية.

البنى التحتية، الإتصالات السلكية واللاسلكية، ونظم النقل الإقليمية والمحلية.

(سلطات ومسؤوليات اضافية)

### البند ( ). البنود الخاصة

قبل إختتام أو توقيع اية معاهدة أو إتفاق دولي ذات أثر على مصالح اية إقليم أو محافظة، يتوجب مسؤولي الحكومة المركزية المعنيين إستشارة تلك الأقاليم والمحافظة. في حال عدم التوصل الى حلّ يرضي الطرفين، أو في حال نشوء النزاعات، يتوجب على كلا الطرفين عرض المسألة امام المحكمة الدستورية لإتخاذ قرار ضمن إطار زمنيّ معين.

قد تقوم الحكومة بتبني "هياكل قوانين" للمسائل الواقعة ضمن إطار مسؤولياتها و السماح للحكومة الإقليمية بتسريع "القوانين التنفيذية" اللازمة.

يتوجب على الأقاليم – المحافظات تزويد المساعدة والدعم الضروريين لضمان وفاء حكومة العراق المركزية بتعهداتها الدولية.

أما في ما يختص بالسلطة القضائية للحكومة في شؤون السياسة الخارجية والعلاقات الدولية، يحقّ للأقاليم / المحافظات إبرام اتفاقيات محدودة ذات طابع إداري ومحليّ مع الدول والمناطق المجاورة شرط عدم تضارب هذه الإتفاقيات مع مصالح الحكومة المركزية والقوانين الفيدرالية، وشرط إخبار المجلس الوطني مسبقاً. في حال رفض المجلس الوطني التصديق على تلك الإتفاقيات، يتوجب تعليق البت بتلك المسألة إجبارياً حتى يتسنى للمحكمة الدستورية النظر بالموضوع وإتخاذ قرار ضمن اطار زمنيّ معين.

## State Structure

### **Asymmetric Autonomy** *Case Study Memorandum*

This memorandum reviews asymmetrical relationships in the Philippines, the United Kingdom, Italy, and Spain. The memorandum focuses on the constitutional structures developed to allocate powers and responsibilities, and the actual powers devolved in the four “case study” states.

## Mechanisms

**Grant of Autonomy:** A region’s right to autonomous rule is frequently provided for in the state’s constitution. In Italy, Spain, the Philippines, Papua New Guinea, Fiji, Russia, and China, the constitution provides for some entitlement to self government.<sup>11</sup> The constitution may provide that the right to autonomy is widely available. For example, the 1978 Spanish Constitution provides that “bordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may accede to self-government and form Self-governing Communities in conformity with the provisions contained in this Part and in respective Statutes.”<sup>12</sup> Alternatively, the constitution may limit the right to a predetermined group or groups. For example, the Italian Constitution and the Constitution of the Philippines specify the regions with the right to autonomous rule by name.<sup>13</sup>

An alternative way to grant autonomy is through political means. In 1997, the Labour party in Great Britain provided in its election manifesto that devolution would be available for Scotland. Upon Labour’s victory, the Scots were offered the chance to decide if they wanted their own political identity<sup>14</sup>.

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<sup>11</sup> See Yash Ghai, *Autonomy as a Strategy for Diffusing Conflict in International Conflict Resolution After the Cold War* 483, 493 (Paul C. Stern & Daniel Druckman, eds.) 2000.

<sup>12</sup> Spain Const. part VIII, § 143.

<sup>13</sup> See Italy Const. art. 116; Philippines Const., art. X, § 15.

<sup>14</sup> Colin B. Picker, “A Light Unto the Nations” -- *The New British Federalism, the Scottish Parliament, and Constitutional Lessons for Multiethnic States*, 77 Tul. L. Rev. 1, 41 (2002)

**Assumption of Autonomy:** After the legal right of autonomy is conceded, the region desiring autonomy generally must take steps to gain it. In Great Britain, the question of autonomy was put to the Scots by a referendum. In Spain, the constitution provides that the process toward self-government is initiated by Provincial Councils with the support of two-thirds of the municipalities of the region seeking autonomy. In the Philippines, autonomy must be approved by a majority of votes cast in the constituent unit.

## **Devolution of Powers**

A state can organize the devolution of powers in two basic ways. A constitution may allocate specified powers to the autonomous entity and reserve remaining powers to central government, or it may delineate the powers of the central government and allocate remaining powers to the autonomy. A combination of the two structures is also possible. Below, the devolution of powers is examined in four case studies.

**Devolution of Specific Powers:** The Constitution of the Philippines grants to Mindanao and the Cordilleras specific powers, and reserves all remaining powers to the central government. The granted powers are: administrative organization; creation of sources of revenues; ancestral domain and natural resources; personal, family, and property relations; regional urban and rural planning development; economic, social, and tourism development; educational policies; preservation and development of the cultural heritage; and such other matters as may be authorized by law for the promotion of the general welfare of the people of the region. The autonomous entity also has a police force and special courts with personal, family, and property law jurisdiction.

**Reservation of Specific Powers:** The Scottish Parliament is a hierarchically inferior legislative body to Westminster, and has the power to legislate on matters not reserved to Westminster. The powers reserved to Westminster include financial and economic matters; home affairs (narcotics policy, gambling, immigration, elections); trade and industry (business associations, import/export controls, antitrust); energy; transportation; social security; regulation of professions; employment; health and medicines; broadcasting; and miscellaneous matters (judicial pay, non-discrimination policy, outer space policy). In its first three years, the Scottish Parliament passed laws relating to budgets, bridge tolls, fisheries, the International

Criminal Court, education, adults with incapacities, national parks, and housing.

Italy's five autonomous entities have exclusive legislative power with respect to any matters not expressly reserved to state law; some matters are explicitly subject to concurrent legislation of both the state and the region.

The powers reserved to the central government include foreign policy and immigration; the armed forces; financial systems; state elections; law and order aside from the local administrative police; citizenship; laws and tribunals; general rules on welfare; social security; and customs.

The matters that are subject to concurrent legislation of both the state and the region include international and European union relations of the region; foreign trade; protection and safety of labor; education; professions; scientific research; health protection; food; sports regulations; disaster relief service; land-use regulation and planning; harbors and civil airports; transportation and navigation networks; regulation of media and communication; production, transportation, and national distribution of energy; pensions; budgetary matters; promotion of the environment and cultural heritage; banks; and regional institutions for credit to agriculture and land development.

Additionally, the autonomous entities of Trento and Bolzano have additional powers to pass primary and secondary legislation in education, culture, transportation, communications, tourism, housing, finance, and employment. These regions also have standing to bring conflicts to the Italian constitutional court.<sup>15</sup>

**Mixed System:** The Spanish system is more complex. For the first five years of an autonomous entity's existence, it is allocated only specified powers; the remaining powers are reserved to the state. After five years, an autonomous entity may enlarge its powers to include those powers not expressly assigned to the state.

The powers which the autonomous entities may initially assume include the organization of their institutions of self-government; changes to

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<sup>15</sup> Paul J. Magnarella, *The Evolving Right of Self-Determination of Indigenous Peoples*, 14 St. Thomas L. Rev 425, 440 (2001).

municipal boundaries; town and county planning and housing; public works within the territory; railways and roads that lie exclusively within the territory; ports of haven, recreational ports and airports; agriculture and livestock raising; woodlands and forestry; management of environmental protection; hydraulic projects, canals and irrigation of interest to the self-governing community; inland water fishing; local fairs; promotion of economic development of the self-governing community; handicrafts; museums, libraries and music conservatories of interest to the community; monuments of interest; the promotion of culture and research and, where applicable, the teaching of the self-governing community's language; promotion of tourism within the territory; promotion of sports and the proper use of leisure; social assistance; health and hygiene; and the supervision and protection of its buildings and installations.

The powers reserved to the state include immigration; international relations; court systems; foreign trade; general economic and financial planning; promotion of scientific research; social security; external health measures; roads, railways, and public works affecting more than one territory; basic regulation of mining and energy; and public safety.

## State Structure

### **Status of Baghdad** *Sample Language and Memorandum*

## State Practice

**Abu Dhabi:** Emirate – Exercises same powers as other Emirates. Abu Dhabi does not have any special powers or privileges.

**Berlin:** Lander – Exercises the same powers as the other twelve Lander of Germany.

**Brussels:** Bilingual Region - Governed by Brussels-Capital Regional Council and has the same rights as the other two Regions in Belgium.

**Budapest:** Separate administrative unit within Hungary. Has its own local government/representative body, elected by its citizens. Has equal rights with other administrative units and local governments.

**Deli:** Union Territory – Operates as a state, but the National Assembly may also pass laws regulating Deli. Administered by a Lieutenant Governor (appointed by the president of India) and by an elected Assembly.

**Moscow:** Federal City – Considered an equal member of the federation with the other republics and territories. Russia is comprised of Republics, Regions, Territories and Autonomous Areas.

**Kuala Lumpur:** Federal Territory – Powers equal to that of the states of Malaysia, except the federal head of state also serves as the head of state of Kuala Lumpur. The federal government may adopt laws concerning Kuala Lumpur. Malaysia is comprised of territories and states. There are two other Federal Territory.

**Washington, DC:** Non-state “district” – Powers determined by Congress. The United States is comprised of states. Washington is the only district.

### *Sample Language*

Baghdad shall be a [     ] province.

Baghdad shall have the same powers as provided for provinces in the Constitution.

As the capital, Baghdad:

Shall be a bilingual city;

Shall jointly develop with the central government a spatial plan to accommodate central government buildings or to create a central government zone;

[additional matters]

## Executive/Legislative Structure

### Executive Decision Tree

#### 1. Structure

##### A. Presidential

- i. Election process
  - a. Plurality/Majority
  - b. Proportional
- ii. Presidential Selection of cabinet
  - a. Who nominates candidates?
  - b. Subject to approval by legislature?

##### B. Parliamentary

- i. Selection of Prime Minister
  - a. Simple majority of legislature
  - b. Super majority of legislature (e.g., 2/3)
  - c. Secret ballot voting
  - d. Open roll call voting
  - e. Bicameral legislature → Prime Minister selected from upper or lower house
- ii. Selection of cabinet
  - a. Ministers selected from within the legislature
  - b. Ministers selected from outside the legislature
  - c. Prime Minister selects cabinet
  - d. Subject to approval of legislature (if bicameral, which house)
- iii. Separate, ceremonial Head of State (President)
  - a. Role of Head of State

##### C. Pluralistic

- i. Number of executives
- ii. Selection of executive
- iii. Powers and authorities of the executives vs. the Parliament
- iv. Presidency council
  - a. Selection of Prime Minister
  - b. Decision-making process/procedure
    1. Unanimous

## 2. Majority

### D. Mixed Presidential and Parliamentary system

- i. Balance of power
- ii. Distribution of power

### 2. Qualifications of executive

- A. Age and citizenship
- B. Reputation, integrity etc.
- C. Vetting and other

### 3. Selection Process of Executive

- A. General Election
- B. Appointment
- C. Terms in office
- D. Removal: impeachment, death, resignation

### 4. Cabinet

#### A. Selection Process

#### B. Ministries

Ministry of Foreign Affairs

Ministry of Defense

Ministry of Justice

Ministry of the Interior

Ministry of Oil

Ministry of Finance

Ministry of Education

Ministry of Public Works

Ministry of Health

Ministry of Trade/Commerce

Ministry of Communication

Ministry of Displacement and Migration

Ministry of Culture

Ministry of Water Resources

Ministry of Labor

#### C. Authority of ministries to create administrative rules and regulations

#### D. Other Authorities and powers

#### E. Right of ministries, within its competence, to nominate deputy ministers, ambassadors and other employees of special grade

5. Powers/competencies of the executive (depends on system chosen)
  - A. Power to veto any legislation passed by legislature
  - B. Power to send legislation to Constitutional Court for determination of constitutionality
  - C. Negotiate international treaties and agreements
  - D. Recommend passage of laws to legislature
  - E. Commander-in-chief of Armed Forces
    - i. Ceremonial purpose; no command authority
    - ii. Command authority
  - F. Day-to-day responsibility for management of government
  - G. Execute laws passed by legislature
  - H. Nominate Prime Minister
  - I. Signs every law, other than those relating to its powers
  - J. Receives reports on government on its meetings
  - K. Accredits, receives and appoints foreign diplomats
  - L. Signs foreign treaties
  - M. Power to pardon offenders and reduce penalties
  - N. Appoints, dismisses judges, civil servants, officers and noncommissioned officers
  - O. In States with presidents of more expansive powers:
    - i. presides over Council of Ministers;
    - ii. sanctions and promulgates laws;
    - iii. summons and dissolves Parliament;
    - iv. calls for a referendum
    - v. proposes Prime Minister candidates
    - vi. makes civil and military appointments
    - vii. declaring war, states of emergencies

## Executive/Legislative Structure

### Executive Decision Tree

#### السلطة التنفيذية

#### اولاً) فى ظل نظام رئاسى

- 1) كيفية إنتخاب رئيس الدولة  
أ) عن طريق الإنتخاب المباشر  
ب) عن طريق الهيئة الإنتخابية

- 2) كيفية إختيار مجلس الوزراء  
أ) رهن الموافقة من قبل الهيئة التشريعية

#### ثانياً) فى ظل نظام برلمانى أو نيابى

- 1) من أية مجلس سيتم إختيار رئيس مجلس الوزراء في ظل نظام تشريعي ثنائي؟
- 2) نسبة أصوات افراد الهيئة التشريعية المطلوبة لتأمين تكليف رئيس مجلس الوزراء
- 3) كيفية إختيار مجلس الوزراء  
أ) هل سيكون الوزراء من افراد الهيئة التشريعية؟
- 4) هل سيكون هناك رئيس رمزيّ للدولة؟  
أ) ما هو دور الرئيس في تعيين رئيس وأعضاء مجلس الوزراء؟

#### ثالثاً) فى ظل نظام تعدديّ

- 1) عدد الرؤساء التنفيذيين للدولة
- 2) ما هي السلطات المنوطة بكل رئيس, وهل سيكون بمقدورهم تعطيل صلاحيات بعضهم البعض
- 3) كيفية إختيار الرؤساء  
أ) إن عن طريق الإنتخاب  
\* انتخاب مباشر  
\* الهيئة الإنتخابية  
ب) إن عن طريق الإختيار  
\* على اساس مناطقي أو إقليمي

\* على اساس عرقيّ أو إثنيّ  
\* من أفراد الهيئة التشريعية

## Executive/Legislative Structure

### Legislature Decision Tree

1. Number of legislative bodies
  - A. Bicameral
  - B. Unicameral
2. Composition of bodies
  - A. Elected vs. appointed
  - B. Number of legislators in each body
3. Election of legislators
  - A. National election
  - B. Regional election
  - C. Majority/Plurality, Proportional or Mixed system
  - D. Reserved seats/set asides (e.g., ethnic, sectarian, regional etc.) and party list requirements
  - E. Appointed by constituent units
4. Qualifications
  - A. Age and citizenship
  - B. Education
  - C. Residency
  - D. Vetting and other
5. Term of service
  - A. X years
  - B. Limit on number of terms
  - C. Procedures for removing before end of term
    - i. For cause (e.g., moral turpitude, high crimes)
    - ii. Without cause
6. Legislative immunity, if any
7. Rules of procedure
  - A. Procedure for initiating and passing legislation
    - i. Proposed legislation initiated in either house or only one (if bicameral)

- ii. Veto power over other house (if bicameral)
    - iii. Hearing/public hearings
  - B. Procedure for conducting business (not related to initiating and passing legislation)
  - C. Number necessary for a quorum
  - D. Number of votes required to pass legislation and/or make a decision
  - E. Voting process and procedure
- 8. Creation of committees, subcommittees, etc.
  - A. Authority and powers
- 9. Powers/competencies
  - A. Declaration of war
  - B. Elect or Appoint President, Prime Minister, Cabinet Ministers
  - C. Enact legislation
  - D. Finances
    - i. Power to tax and collect revenue
    - ii. Regulate commerce among the states and foreign nations
    - iii. Issue currency and keep it stability
    - iv. Approve a budget;
    - v. Raise and support military
    - vi. Supervise national treasury
  - E. If bicameral, checks and balances between upper and lower house
    - i. Powers and competencies of the upper and lower house
    - ii. Upper house vested with more power than lower house (or vice versa)
  - F. Non-legislative functions (e.g., confirmation hearings, judicial appointments, impeachment hearings, etc.)

## Executive/Legislative Structure

### Legislature Decision Tree السلطة التشريعية

#### اولاً) ضمن نظام تشريعيّ واحد

- 1) كيفية انتخاب المشرّعين
  - أ) قومياً
  - ب) إقليمياً أو مناطقياً
  - ج) المقاعد المحجوزة أو المناصب المعيّنة
    - \* لإعتبارات عرقية أو إثنية
    - \* لإعتبارات إقليمية أو مناطقيّة
    - \* لإعتبارات قبليّة
    - \* للمحافظة على العنصر النسائي
  - د) عبر نظام التمثيل النسبي , أو الإنتخابات الفردية , أو كلاهما

- 2) طريقة عمل الهيئة التشريعية
  - أ) تحديد النصاب القانوني
  - ب) كيفية سنّ القوانين وإتخاذ القرارات
    - \* عبر الأغلبية البسيطة
    - \* عبر الأغلبية الساحقة

- 3) مدة ولاية المشرّعين
  - أ) حدود ولاية المشرّع

- 4) عدد أفراد الهيئة التشريعية

#### ثانياً) ضمن نظام تشريعيّ ثنائي

- 1) كيفية إنتخاب المجلسين
  - أ) قومياً
  - ب) إقليمياً أو مناطقياً
  - ج) المقاعد المحجوزة أو المناصب المعيّنة
    - \* لإعتبارات عرقية أو إثنية
    - \* لإعتبارات إقليمية أو مناطقيّة
    - \* لإعتبارات قبليّة
    - \* للمحافظة على العنصر النسائي

د) عبر التعيين من الحكومات المحلية أو الوحدات المكونة

2) السلطات المخولة بكل مجلس  
أ) من يتمتع بسلطات أقوى؟

3) طريقة عمل المجلسين  
أ) أين تبدأ عملية التشريع؟ أفي كلا المجلسين أو في إحداهما فقط؟  
ب) أسيكون في قدرة أحد المجالس الاعتراض على قرارات المجلس الآخر  
ج) كيفية الوصول الى قرار موحد وجماعي

## **Executive/Legislative Structure**

### **Composition of the Executive Authority** *Sample Language*

#### ***Option 1: Executive Authority with a Presidency Council***

The executive authority shall consist of the Presidency Council, the Council of Ministers and its presiding Prime Minister.

#### ***Option 2: Executive Authority with a President***

The executive authority shall consist of the President, the Council of Ministers and its presiding Prime Minister.

## **THE PRESIDENT**

#### ***Option 1: Election of Presidency Council***

The Iraqi National Assembly shall elect a President and two Deputies. They shall form the Presidency Council, which will function as the ceremonial Head of State.

The Presidency Council shall take its decisions unanimously, and its members may not deputize others as proxies.

#### ***Option 2: Election of President***

The Iraqi National Assembly shall elect a President. The President will function as the ceremonial Head of State.

## **Election Procedure**

The election of the Presidency Council [or President] shall take place on the basis of a single list and by two-thirds [or simple majority] vote of the Iraqi National Assembly.

If after two ballots no candidate(s) has obtained a two-thirds majority [or simple majority], then the candidate(s) who receive the largest number of votes on the next ballot is elected.

## **Qualifications**

He must be at least [X] years of age.

He must be a citizen of Iraq.

He must possess a good reputation, integrity and rectitude.

If he was a member of the dissolved Ba'ath Party, he must have left the dissolved Party at least ten (10) years before its fall.

He must not have participated in repressing the *intifada* of 1991 or participated in aiding the Anfal campaign, and must not have committed a crime against the Iraqi people.

[Additional criteria]

## **Term of Service**

The term of office of the Presidency Council [or President] is [X] years.

Reelection for a consecutive term is permitted only once.

## **Incompatibilities**

The Presidency Council [or President] may not be a member of the government nor of the government of a region/governorate.

The Presidency Council [or President] may not hold any other salaried office, or engage in any trade or profession, or belong to the management or advisory board of any enterprise conducted for profit.

## **Oath of Office**

The Presidency Council [or President], upon assuming office, shall take the following oath before the assembled Members of the Iraqi National Assembly:

[Language for the oath]

The oath may be taken without religious affirmation.

### **Functions and Powers of the Presidency Council [or President]**

The Presidency Council [or President] shall—

sign every law, other than a law relating to its powers;

take action to achieve the formation of a Government and shall receive the resignation of the Government in according with this Constitution;

receive from the Government a report on its meetings;

accredit the diplomatic representatives of the State, receive the credentials of diplomatic representatives sent to Iraq by foreign states, empower the consular representatives of the State and confirm the appointments of consular representatives sent to Iraq by foreign states;

sign such conventions with foreign states as have been ratified by the Iraqi National Assembly.

The Presidency Council [or President] shall have the power to pardon offenders and to lighten penalties by the reduction or commutation thereof.

The Presidency Council [or President] shall carry out every other function and have every other power assigned to him by law.

### **Countersignature**

The signature of the Presidency Council [or President] on an official document, other than a document in connection with the formation of a Government, shall require the countersignature of the Prime Minister or of such other Minister as the Government may decide.

## **Removal of the President(s)**

The Iraqi National Assembly possesses the power to remove any Member of the Presidency Council for incompetence or lack of integrity by a three-fourths [or two-thirds] majority of its Members' vote. In the event of a vacancy in the Presidency Council, the Iraqi National Assembly shall, by a vote of two-thirds [or simple majority] of its members, elect a replacement to fill the vacancy.

## **THE PRIME MINISTER AND COUNCIL OF MINISTERS**

### ***Option 1: Election by National Assembly upon Recommendation of President(s)***

The Prime Minister is elected by the Iraqi National Assembly [without debate] upon recommendation by the Presidency Council [or President].

The person who receives the votes of a majority of the Members of the Iraqi National Assembly is elected. The person elected is appointed by the Presidency Council [or President].

If the person recommended by the Presidency Council [or President] is not elected, the Iraqi National Assembly may elect a Prime Minister within [X] days after the ballot by a two-thirds vote of its Members.

If no Prime Minister is elected within this period, a new election shall take place without delay, in which the person who receives the largest number of votes shall be elected. The Presidency Council [or President] shall appoint him Prime Minister within [X] days of the election.

### ***Option 2: Election by Presidency Council***

The Prime Minister is elected unanimously by the Presidency Council.

The Presidency Council must agree on a candidate for the post of Prime Minister within [X] days. In the event that it fails to do so, the responsibility of electing the Prime Minister reverts to the Iraqi National Assembly.

In that event, the Iraqi National Assembly must elect by a two-thirds majority.

### **Qualifications**

He must be at least [X] years of age.

He must be a citizen of Iraq.

He must possess a good reputation, integrity and rectitude.

If he was a member of the dissolved Ba'ath Party, he must have left the dissolved Party at least ten (10) years before its fall.

He must not have participated in repressing the *intifada* of 1991 or participated in aiding the Anfal campaign, and must not have committed a crime against the Iraqi people.

[Additional criteria.]

### **Appointment and Dismissal of the Council of Ministers**

#### ***Option 1: By President(s) upon Recommendation of Prime Minister***

The Council of Ministers shall be appointed and dismissed by the Presidency Council unanimously [or President] upon the recommendation of the Prime Minister.

#### ***Option 2: By Prime Minister***

The Prime Minister shall appoint and dismiss the Council of Ministers.

## **Vote of Confidence**

The Prime Minister and Council of Ministers shall then seek to obtain a vote of confidence by simple majority from the Iraqi National Assembly prior to commencing their work as a government.

### **Dissolution of Iraqi National Assembly**

If a motion of the Prime Minister for a vote of confidence is not supported by a simple majority of the Members of the Iraqi National Assembly, the Presidency Council [or President], upon the recommendation of the Prime Minister, *may* dissolve the National Assembly within [X] days. The right of dissolution lapses as soon as the National Assembly elects another Prime Minister by a majority vote of its Members.

[X] hours must elapse between the motion and the vote.

## **Vote of No Confidence**

### ***Option 1: No Confidence***

The Prime Minister and the Council of Ministers shall be responsible before the Iraqi National Assembly, and the National Assembly shall have the right to withdraw its confidence either in the Prime Minister or in the Ministers collectively or individually.

In the event that confidence in the Prime Minister is withdrawn, the entire Council of Ministers shall be dissolved.

In the event of a vote of no confidence with respect to the entire Council of Ministers, the Prime Minister and Council of Ministers shall remain in office to carry out their functions for a period not to exceed [X] days, until the election of a new Prime Minister and the formation of a new Council of Ministers, consistent with Article [X] above.

### ***Option 2: Constructive No Confidence***

The Iraqi National Assembly may express its lack of confidence in the Prime Minister only by electing a successor by the vote of a majority of its Members, and upon motion, requesting the Presidency Council [or President] to dismiss the Prime Minister. The Presidency Council [or President] must comply with the request and appoint the person elected.

[X] hours must elapse between the motion and the election.

### **Term of Office**

The term of office of the Prime Minister or a Minister ends in any event when a new National Assembly convenes.

The term of office of a Minister also ends on any other occasion on which the Prime Minister ceases to hold office.

### **Incompatibilities**

Neither Prime Minister nor a Minister may be a member of any other branch of government or of the government of a region/governorate.

Neither the Prime Minister nor a Minister may hold any other salaried office, or engage in any trade or profession, or belong to the management or advisory board of any enterprise conducted for profit.

### **Oath of Office**

The Prime Minister and Council of Ministers, upon assuming office, shall take the following oath before the assembled Members of the Iraqi National Assembly:

[Language for the oath]

The oath may be taken without religious affirmation.

### **Powers and Functions of the Prime Minister**

The Prime Minister shall have day-to-day responsibility for the management of the central government and execution of federal laws.

The Prime Minister determines and is responsible for the general guidelines of policy.

The Prime Minister conducts the proceedings of the Central Government in accordance with the rules of procedure adopted by the Government and approved by the Presidency Council [or President].

The Prime Minister has the right to propose bills to the National Assembly.

The Minister of Defense has the power of command of the Iraqi Armed Forces.

### **Deputy Prime Minister**

The Prime Minister shall appoint a Deputy Prime Minister.

### **Powers and Functions of the Council of Ministers**

The Council of Ministers shall adopt rules of procedure for its work and issue administrative regulations and directives necessary to enforce the laws.

Working through the Prime Minister, the Council of Ministers has the right to propose bills to the National Assembly.

Each Ministry has the right, within its competence, to nominate Deputy Ministers, Ambassadors, and other employees of special grade. After the Prime Minister approves these nominations, they shall be submitted to the Presidency Council [or President] for ratification.

## **EXECUTIVE IMMUNITY (optional)**

Members of the Executive shall not be censured for any opinions or thoughts expressed by them in carrying out the functions of their office.

No Member of the Executive shall be subject to a criminal prosecution without the permission of the Executive unless he or she is apprehended while committing the offense or in the course of the following day.

## **Executive/Legislative Structure**

### **Summary and Link to Detailed Legal Memoranda**

#### **Structuring an Iraqi Executive**

This memorandum discusses models of executive branch structure and examines the constitutions of Iraq's Arab neighbors and other post-conflict states to demonstrate how other nations have addressed the constitutional issues of executive leadership and accountability that Iraq currently confronts. Four forms of executive branch governance are examined: centralized parliamentary, centralized presidential, pluralistic parliamentary and pluralistic presidential. Using examples from constitutional executive structures in post-conflict countries and countries within the region, this memorandum evaluates the applicability of these forms to Iraq.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Executive\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Executive_June05.pdf)

#### **Establishing a Representative Iraqi Legislature**

This memorandum discusses and analyzes various models of legislative branch structure in order to identify the core elements of a legislative structure, and to identify best practices for balancing powers, and structuring a relationship between the Presidency and the Prime Minister.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Judiciary\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Judiciary_June05.pdf)

## Elections

### Electoral Systems Decision Tree

1. Procedure for electing legislature
  - A. National
  - B. Regional
  - C. Proportional, Plurality/Majority or Mixed systems
  - D. Additional mechanisms
    - i. Reserved seats (e.g., ethnic, sectarian, regional, women etc.)
  - E. Minimum threshold for representation in the legislature
  - F. Criteria to appear on ballot
    - i. Individual Candidates
    - ii. Parties
      1. Party listing (requirements – i.e. female candidate(s) or candidates from minority populations or women)
      2. Political parties law
  - G. Counting procedures
  - H. Public Education
2. Procedure for electing executive (presidential executive)
  - A. Direct election
3. Qualifications for voter enfranchisement
  - A. Age
  - B. Citizenship
  - C. Vetting (other)
4. Electoral districts
  - A. Criteria for drawing districts
    - i. Population
    - ii. Geography
    - iii. Ethnic/sectarian
    - iv. other
  - B. Number of candidates per district
  - C. Number of votes per voter
  - D. Census requirements

5. Procedure for referenda
  - A. Subject matter of referenda
  - B. Percentage vote required for passage (e.g., 50+1, super majority)
  
6. Electoral Commission
  - A. Authorities and Mandate
  - B. Selection/Appointment
  - C. Independence

## Elections

### Electoral System Decision Tree النظام الانتخابي

#### أولاً) نوعية النظام الانتخابي

- 1) نظام التمثيل النسبي  
أ) هل سيتم اقتراح لوائح مكونة من مرشحين منفردين أو من أحزاب؟  
ب) عتبة التمثيل  
ج) المعايير المطلوبة للسماح بتمثيل الأحزاب

- 2) نظام التمثيل الشبه- نسبي  
أ) مزيج من انتخاب الأغلبية المباشر والتمثيل النسبي  
\* نسبة المرشحين المنتخبين مباشرة  
\* نسبة المرشحين المنتخبين عن طريق نظام التمثيل النسبي  
\* عتبة التمثيل  
ب) الصوت الواحد الغير قابل للتحويل  
\* عدد المرشحين عن كل دائرة  
ج) التصويت التراكمي  
\* عدد المرشحين عن كل دائرة  
\* عدد الأصوات المخولة لكل ناخب

- 3) نظام الأغلبية أو الأكثرية  
أ) مناطق العضو الواحد أو تصويت الكتلة  
ب) المرشحون المنتخبون بالأكثرية, بالأغلبية, أو بالأغلبية الساحقة  
ج) في حال تعادل مرشحين بأغلبية اصوات الناخبين, يتم اعادة الانتخابات لتحديد الفائز عن المقعد من بين هذين المرشحين, أمّا في حال تعادل أكثر من شخصين بأغلبية الأصوات, تعاد الانتخابات لتشمل كل المرشحين

#### ثانياً) الدوائر الانتخابية

- 1) نظام الدائرة الموحدة  
2) النظام المتعدد الدوائر  
أ) تحديد عدد الدوائر  
ب) معايير تقسيم الدوائر جغرافياً, عرقياً... إلخ  
ج) عدد المرشحين عن كل دائرة

#### ثالثاً) القضايا الواجب التطرق إليها

- (1) المقاعد المحجوزة للنساء و المجموعات العرقية والدينية
- (2) الطلب من الأحزاب بضم النساء والمجموعات العرقية والدينية المختلفة الى صفوفها

#### رابعاً) قوائم الأحزاب

- (1) اللوائح المفتوحة أو غير المكتملة
- (2) اللوائح المغلقة أو المكتملة
- (3) عتبة التمثيل في الهيئة التشريعية
- (4) اللوائح القومية أو اللوائح الإقليمية-المناطقية

## **Elections**

### **Considerations in Designing an Electoral System** *Memorandum*

#### **Type of electoral system**

**Proportional representation:** Vote for party or list of candidates from one party; need multi-member districts.

**Semi-proportional of Mixed system:** Mix of direct majority/plurality election and proportional representation; Percentage of legislators elected directly; Percentage of legislators elected proportionally

**Plurality/majority:** Candidate with the most votes win (plurality, majority and supermajority options); need single member district or you can use the block vote method for multi-member districts.

#### **Considerations in Choosing and then Tailoring that System**

##### **Electoral Districting** (how many electoral districts are required)

Preference for Single District system: this means the whole nation is one district

Preference for Multi-district system: this means several electoral districts are needed

Defining Electoral Districts for multi-district system:

Can existing provinces, regions or governorates act as electoral districts or do new drawing new boundaries)

If redistricting and boundary drawing is required:

Size of district: larger districts with

Criteria: for establishing district boundaries: population, geography, ethnicity, history, religion, race, tribe, etc.

Timeline pressures

Census needed? Available?

Institutions and stakeholders involved

political consequences (process will increase or decrease stability)

*Note:* all the electoral systems can work with either a single or multi-district

**District Magnitude** (how many representatives will be selected from each district)

Plurality/Majority systems – one member district is enough  
voters only need to select one representative

Proportional – multi-member districts required  
voters select more than one representative  
(the more members that need to be selected; the greater degree of proportionality)

### **Additional Minority Mechanisms**

**Set Asides:** Seats reserved for women and/or ethnic, confessional, religious groups, etc.

**Party Requirements:** Requirement that all political parties include women candidates or candidates from different ethnic or confessional groups in their lists

### **Party Lists** (for proportional systems)

Should the party or the electorate control which party candidates get the seats

Open and Free Lists versus Closed Lists

### **Voter Sophistication**

Are the voting procedures and results easy to understand?

Do voters have to make more than one choice? Select preferences?

How much “political awareness” is required?

### **Party Sophistication**

Does the system promote a multi-party system or a two party system?

Does the system encourage parties with broad centrist platforms?

Does the system require well-developed political parties? Do they currently exist?

How sophisticated and developed do parties have to be to win support?

### **Constituency Representation and Loyalty**

How important is representative accountability to particular regions or districts?

Leaders beholden to a local electorate vs. to their party leaders?

[Concerns include: accountability; party loyalty; avoiding party corruption; increased regionalism or tribalism]

### **Administrative Costs and Infrastructure Needs**

Registering voters (see below)

Educating voters about voting process and the results

Administering the voting

Counting the votes (complexity of counting system, second round votes)

### **Registration and Voting:**

How will registration occur? Will a census be needed?

Will registration and/or voting be compulsory or voluntary?

Who can vote (suffrage) (age limitations, issues of gender, legitimate disqualifications)

### **Thresholds**

Minimum level of support needed for a party to gain representation (generally more a concern for Proportional Systems where vote is for a party)

If threshold is set to high, possibility of wasted votes (many parties will not qualify)

Threshold is a political question (how inclusive does a system want to be; will it favor or disfavor giving platform in legislator to groups with small support)

## **Elections**

### **Election of Members of the Iraqi National Assembly** *Sample Language*

*The text below provides Sample Language for a unicameral legislature. It can be easily modified to apply to a bicameral legislature.*

- **Electoral Basis**

Elections for members of the Iraqi National Assembly shall be through universal, equal, direct suffrage, and by secret ballot. All citizens of Iraq who have reached the age of 18 years have the right to vote. Elections shall be prepared and conducted in a transparent manner.

- **Allocation of Assembly Members**

For the first two sessions, the members of the Iraqi National Assembly shall be apportioned among the various states. Each state shall have a minimum of [ ] Assembly members.

For all other sessions, the members of the Iraqi National Assembly shall be apportioned among the various states according to their population pursuant to a national census. Each state shall have a minimum of [ ] Assembly members.

- **Election of Assembly Members**

Elections to the Iraqi National Assembly shall be held by a national and state proportional system.

(1) [ ] members of the Assembly shall be elected by the people from one multi-member constituency, covering the entire territory of the Iraq.

National Lists of candidates for the Assembly shall be submitted only by a party or by an independent slate. The means for registering the parties and the conditions for submitting all National Lists shall be determined by the political parties' law and the electoral law.

The citizens of Iraq will vote for the National List of their choice, and each list shall be awarded seats in proportion to that list's share of the national vote.

(2) [ ] members of the Assembly shall be elected by the people from multi-member state constituencies, representing the various states in Iraq.

State Lists of candidates for the Assembly shall be submitted only by a party or by an independent slate. The means for registering the parties and the conditions for submitting all State Lists shall be determined by the political parties' law and the electoral law.

The citizens of Iraq will vote for the State List of their choice, and each list shall be awarded seats in proportion to that list's share of the national vote.

*Optional:* National and State lists must receive a minimum of [ ]% of the vote to be awarded seats in the National Assembly.

- **National and State Lists Set Asides**

Twenty-five percent of each National and State List shall be female candidate(s) and [ ]% shall be individuals belonging to the national and religious minorities of Iraq.

*Optional:* Prior to the elections for the fourth session of the Iraqi National Assembly, the Electoral Commission will conduct a study regarding the status of party development in Iraqi politics and governance. Based on the Commission's findings and recommendations, the Assembly will decide if the requirements for female and minority candidates should remain the same, be adjusted, or eliminated.

- **Reserved Seats in National Assembly**

*Permanent Reserved Seats*

There shall be reserved [ ] seats in the Iraqi National Assembly for women.

There shall be reserved a percentage of seats in the National Assembly for each national or religious minority in Iraq. The number of seats reserved for each minority will reflect the proportion of its representation in Iraqi society.

*Optional:* Prior to the national elections for the fourth session, the Electoral Commission will conduct a study regarding the status of the representation and political participation of women and the national and religious minorities of Iraq. Based on the Commission's findings and recommendations, the Assembly will decide if the number of reserved seats for women and minorities should remain the same, be adjusted, or eliminated.

## **Elections**

### **Framework for Electoral Law and Political Parties Law** *Sample Language*

#### **Electoral Commission**

An Electoral Commission shall be established in order to propose for adoption by the Iraqi National Assembly an electoral and political parties' law that is consistent with this Constitution. The Commission shall be authorized to conduct studies, publish reports, and provide guidance and recommendations to the Assembly regarding the status and effectiveness of the existing electoral and party systems as well as the need for their reform. The Commission shall be independent of the government and consist of [ ] members. The members shall be appointed by the National Assembly serving a term of [ ] years. In determining the membership on the Commission, efforts will be made to account for the geography, gender, and diversity of opinions and interests of the Iraqi people.

#### **Electoral Law**

The electoral law shall establish the rules and procedures to govern the conduct of elections in Iraq, including but not limited to the date of the elections, requirements for voter identification and registration, and mechanisms for counting votes and resolving of disputes.

The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the Iraqi National Assembly and having fair representation for all communities of the state, including the Arabs, Kurds, national and religious minorities of Iraq [(including but not limited to the Christian, Mandaean, Yazidis, Kurdes Al feleyin, Turkmen, Assyrians, Chebak, and Roman)].

#### **Political Parties Law**

To promote the right of free association and to advance political ideas and opinions, the political parties' law shall establish the conditions of organization and registration for political parties as well as the requirements for submitting all lists of candidates for elections.

The political parties' law shall aim to achieve the goal of the development of parties and electoral candidates that seek to represent the interests of all the states, communities, and citizens of Iraq in a manner that promotes national unity.

## **Elections**

### **Summary and Link to Detailed Legal Memoranda**

#### **Constructing an Electoral System**

This memorandum provides a comparative study of the electoral systems of Lebanon, Egypt, Iran, Jordan, and Turkey. In an effort to provide useful recommendations for constructing an Iraqi electoral system, it evaluates each system for its utility in Iraq. These five states were chosen because they are in close geographic proximity to Iraq, have predominantly Muslim populations, and represent a cross-section of kinds of electoral systems, which makes possible an analysis of several different types of electoral systems employed by states throughout the world.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Electoral\\_Systems\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Electoral_Systems_June05.pdf)

# Judiciary

## Judiciary Decision Tree

1. Judicial authority
  - A. Checks and balances with other branches of government
  - B. Constitutional definition of when judicial decisions final and binding on other branches
  - C. Jurisdiction (personal and subject matter)
    - i. Criminal vs.civil
    - ii. National vs. state courts
  - D. Standing (who can bring cases to the courts)
  - E. Definition of who has authority to create courts and define jurisdiction
2. Structure of judiciary
  - A. National, local and provincial courts
    - i. Jurisdiction; competency, limitations
  - B. Constitutional court
  - C. Supreme Court
  - D. Appellate courts
  - E. Lower courts
  - F. Special courts
    - i. Administrative courts
    - ii. Security courts
    - iii. Bankruptcy courts
    - iv. Personal status courts
    - v. Religious courts (i.e. Sharia courts)
    - vi. Customary Law Courts (traditional courts)
  - G. Geographic districts/circuits
3. Judicial independence
  - A. Separation of judiciary from other branches of government
  - B. Creation of judicial council
4. Judicial review of legislation
  - A. Standing to challenge legislation
    - i. Citizens
    - ii. Executive (and cabinet members)

- iii. Legislators
  - B. Timing issues (e.g., any time or only after someone has been adversely affected)
  - C. Judicial review of executive orders/decrees
- 5. Administration of the Judiciary
  - A. Number of judges on Constitutional Court
  - B. Judge selection
    - i. Nomination process and appointment
    - ii. Presidential appointment
    - iii. Cooperative selection (presidential nomination and approval of legislature)
    - iv. Judicial council
    - v. Qualifications/criteria
  - C. Tenure
    - i. Life tenure
    - ii. Until X age
    - iii. For X years
  - D. Removal of judges
    - i. Crimes of moral turpitude/high crimes
    - ii. Removal by executive
    - iii. Removal by legislature
    - iv. Cooperative removal
- 6. Judicial council
  - A. Composition
    - i. Selection of members
      - a. Judges
      - b. Representatives of other branches of government, excluding executive and in particular Ministry of Justice
      - c. Members of professional associations (e.g., bar association)
      - d. Academics
    - ii. Proportion of judicial and non-judicial membership
    - iii. Number of members
  - B. Term of service
  - C. Administration
    - i. Rules of procedure
    - ii. Budget for judicial council

- D. Authority of judicial council
    - i. Oversight of judiciary's budget
    - ii. Administration of judiciary
    - iii. Selection of lower court judges
    - iv. Training
  - E. Policy making
7. Creation of special commissions or specialized courts
- A. Property Claims Commission
  - B. Domestic war crimes courts
  - C. Others
8. Role of Religion in the interpretation of laws and as a source of law.

## Judiciary

### Judiciary Decision Tree

#### هيئة القضاء

#### اولاً) السلطة القضائية

1) سلطة هيئة القضاء على فروع الدولة المختلفة  
أ) التعريف أو التأويل الدستوري لسلطة هيئة القضاء على الفرع المختلفة للدولة

2) السلطة القضائية في المحاكم الإدارية  
أ) النزاعات ما بين الأجهزة الحكومية  
ب) التحكم بالمهام الإدارية  
ج) السلطة القضائية في المحاكم المختصة  
\* مسائل الأمن القومي

#### ثانياً) مراجعة هيئة القضاء للقوانين

1) التمتع بالقدرة لتحدي القوانين  
أ) قدرة المواطنين  
ب) قدرة رؤوس الدولة  
\* قدرة اعضاء مجلس الوزراء  
ج) قدرة المشرعين

2) متى يسمح بتحدي القوانين؟  
أ) أفي الحالات الخاصة، أو عند تضرر أحد بشكل لا إعتيادي، أو في أية وقت؟  
ب) عبر أية مستوى من الجسم القضائي؟

3) هل بالإمكان تحدي القرارات التنفيذية؟

#### ثالثاً) إستقلالية الجسم القضائي

1) هل ستخضع نواحي من عمل الهيئة القضائية لفروع مختلفة من الدولة

2) كيفية المحافظة على استقلالية القضاء

#### رابعاً) النواحي الإدارية لهيئة القضاء

1) عدد أفراد المحكمة العليا

(2) كيفية إختيار القضاة  
أ) عبر التعيين الرئاسي  
ب) عبر الإختيار المشترك  
\* من قبل الهيئتين القضائية والتنفيذية

(3) تنحية القضاة  
أ) مدة التعيين والعضوية الدائمة  
ب) عند إقتراف جرائم جنائية  
ج) عن طريق قرار تنفيذي  
د) عن طريق قرار قضائي

(4) المجالس القضائية  
أ) سلطات ووظائف المجالس  
\* إدارة الجسم القضائي  
\* إختيار القضاة  
\* الإشراف العام  
ب) كيفية إختيار المجالس  
ج) كيفية إدارة وتمويل المجالس

#### خامساً) هيكل هيئة القضاء

(1) السلطة القضائية للمحاكم الابتدائية  
(2) الدوائر الجغرافية  
(3) إختصاص المحاكم الابتدائية

#### سادساً) الشريعة والهيئة القضائية

(1) نماذج الشريعة في النظام القضائي  
أ) منفصل كلياً  
ب) متجانس أو متساهل  
ج) منسجم أو متكامل  
د) مطليبي

## **Judiciary**

### **Constitutional Court** *Sample Language*

#### **Composition of the Court**

The Constitutional Court consists of the Chief Justice, the Deputy Chief Justice and [X] other judges.

A matter before the Constitutional Court must be heard by at least [X] judges.

#### **Status of the Constitutional Court**

The Constitutional Court is the highest court in all constitutional matters.

#### **Authority of the Constitutional Court**

The Constitutional Court may decide only constitutional matters, and issues connected with decisions on constitutional matters.

The Constitutional Court makes the final decision whether a matter is a constitutional matter or whether an issue is connected with a decision on a constitutional matter.

#### **Definition of Constitutional Matter**

A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.

#### **Exclusive Jurisdiction of the Constitutional Court**

The Constitutional Court may settle disputes between the Central Government and Region(s)/Governorate(s).

Only the Constitutional Court may decide disputes between the central and region(s)/governorate(s) governments concerning the constitutional status, powers or functions of any of those governments, their departments and agents.

Only the Constitutional Court may review the constitutionality of legislation/constitutional amendments.

Only the Constitutional Court may decide on the constitutionality of any parliamentary or region/governorate legislation. It does so only:

- after the executive expresses reservations regarding the constitutionality of the legislation,
- refers it back to parliament or region/governorate,
- the parliament or region/governorate reconsiders the legislation, and
- the executive continues to hold reservations and refers it to the Court.

Only the Constitutional Court may decide on the constitutionality of parliamentary or region/governorate legislation upon application by a member of the National Assembly or region/governorate legislature for an order declaring that all or part of an Act is unconstitutional.

Only the Constitutional Court may decide on the constitutionality of any amendment to the Constitution;

Only the Constitutional Court may decide that National Assembly or the Executive has failed to fulfill a constitutional obligation.

Only the Constitutional Court may certify a region/governorate constitution.

### **Constitutional Court Decisions Final and Binding**

The Constitutional Court makes the final decision whether an Act of the National Assembly, a region/governorate Act or conduct of the Executive is constitutional.

The Constitutional Court must confirm any order of invalidity made by the Court of Cassation, before that order has any force.

### **Standing to Bring Case before Constitutional Court**

National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court to bring a matter directly to the Constitutional Court; or to appeal directly to the Constitutional Court from any other court.

## **Judiciary**

### **Summary and Link to Detailed Legal Memoranda**

#### **Promoting Judicial Independence**

This memorandum examines the constitutions of Iraq's Arab neighbors and other post-conflict states to demonstrate how other nations have addressed the constitutional issues of judicial independence and authority that Iraq currently confronts. Specifically, it addresses judicial independence and authority, judicial review, and structures for judicial administration. It also examines the primary models for incorporating Shari'ah into a judicial system.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Judiciary\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Judiciary_June05.pdf)

## **Central Bank**

### **Central Bank of Iraq** *Sample Language*

The Central Bank of Iraq is the central and independent bank of the Nation. The primary object of the Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Iraqi nation.

The Bank is the sole authority to issue and organize currency circulation and promote the stability of a good national currency. It shall formulate and implement the monetary policy of the country. The Bank is organized, regulated and operated in accordance with the law, and shall report to the Iraqi National Assembly.

It shall have supervision over the operations of other banks throughout the nation and shall exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

The Bank, in pursuit of its primary object, must perform its functions independently and without fear, favor or prejudice, but there must be regular consultation between the Bank and the [Cabinet Minister] responsible for national financial matters.

There shall be [ ] members on the Bank's governing board appointed by the Iraqi National Assembly upon a list of candidates proposed by the Presidency Council/[Prime Minister]. Each must be a natural-born citizen of Iraq. Each shall be of known probity, integrity, and patriotism, the majority of who shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law.

The Prime Minister [Presidency Council] of Iraq shall introduce to the Iraqi National Assembly a candidate for appointment to the office of the Chairman of the Bank. The Prime Minister also submits to the Assembly proposals to relieve the Chairman of the Bank of his duties.

## Oil Resources

### Allocation of Oil Resources Decision Tree

1. Ownership
  - A. National ownership
  - B. Regional ownership
  - C. Shared ownership
2. Authority to grant concessions, licenses, production sharing agreements (PSAs) etc.
3. Responsibility over downstream oil production (i.e., extraction, refining, transporting)
4. Allocation of revenue
  - A. Principles of distribution
    - i. Equitable allocation of revenues (principles of)
    - ii. According to population
    - iii. According to location of resources (derivation)
    - iv. Some combination of the two
  - B. Responsibility over allocation: central government or regions/governorate
5. Oil funds
  - A. Stabilization fund
    - i. Percentage of revenue set aside for fund
    - ii. Purpose of fund
      - a. Reconstruction
      - b. Development
      - c. Bolster economy against price fluctuations
  - B. Intergenerational fund
    - i. Percentage of revenue set aside for fund
    - ii. Method of disbursement
      - a. Direct to citizens
      - b. To region/governorates
      - c. National savings account
    - iii. Investment of principal

6. Taxation of natural resources (region/governorate and/or central government)
7. Discovery of new natural resources
8. Treatment of renewable and non-renewable resources

## Oil Resources

### Allocation of Oil Resources Decision Tree الثروة النفطية

#### اولاً) ملكية المصادر النفطية

- 1) الملكية القومية  
أ) كيفية تقسيم الأرباح  
\* طبقاً لعدد السكان  
\* طبقاً لموقع مصدر الإنتاج  
\* طبقاً لمزيج من الطريقتين السابقتين

#### 2) الملكية الإقليمية

- 3) الملكية المتقاسمة  
أ) سلطات الحكومات المحلية ونطاق سيطرتها  
ب) طريقة تقسيم الأرباح بين الحكومة المركزية والحكومات المحلية

#### ثانياً) خلق صناديق اعتماد لعائدات تجارة النفط

- 1) صندوق اعتماد تثبيت الاستقرار  
أ) نسبة العائدات التي ستودع في الصندوق  
\* للمشاركة في اعادة الإعمار  
\* للمشاركة في حضّ النموّ الإقتصادي  
\* خلق وسادة نقدية لمواجهة تقلب اسعار سوق النفط

- 2) صندوق اعتماد الأجيال  
أ) نسبة العائدات التي ستودع في الصندوق  
ب) كيفية إنفاق أو توزيع العائدات  
\* مباشرة للمواطنين  
\* عبر الحكومات الإقليمية أو المحلية  
ج) كيفية استثمار الودائع

## Oil Resources

### Natural Resource Ownership *Sample Language*

#### *Option 1.*

- (1) The State of Iraq shall own all natural resources, to be used to benefit all the people of all the regions and governorates of Iraq.<sup>16</sup>

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<sup>16</sup> Adapted in part from the Transitional Administrative Law (TAL). *See* ALG. CONST., ch. 3, art. 17 (“Public property is an asset of the national collectivity. It encompasses the subsoil, the mines and quarries, the sources of natural energy, the mineral, natural and living resources of the different zones, the national maritime zone, the waters and the forests.”); ANGL. CONST., pt. 1, art. 12 (“All natural resources existing in the soil and subsoil, in internal and territorial waters, on the continental shelf and in the exclusive economic area, shall be the property of the State, which shall determine under what terms they are used, developed and exploited. The State shall promote the protection and conservation of natural resources guiding the exploitation and use thereof for the benefit of the community as a whole. Land, which is by origin the property of the State, may be transferred to individuals or corporate bodies, with a view to rational and full use thereof, in accordance with the law.”). In Angola, the National Assembly possesses full and sole legislative power to grant concessions for the exploitation of natural resources and alienation of State property. *Id.* at ch. 3, art. 89, cl. (m). *See also* TIMOR CONST., pt. 4, art. 139, cl. 1 (“The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone, which are essential to the economy, shall be owned by the State and must be used in a just and equitable (*igualitáia*) manner in accordance with national interests.”); INDON. CONST., ch. 14, art. 33, cl. 3 (“The land, the waters and natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.”); KUWAIT CONST., pt. 2, art. 21 (“Natural resources and all revenues therefrom are the property of the State.”); QATAR CONST., ch. 2, art. 29 (“Natural wealth and resources are owned by the State, which preserves and exploits them well according to the provisions of the law.”); SAUDI ARABIA CONST., ch. 1, art. 14 (“All the wealth inside the ground or on its surface or in the territorial waters or in the land and sea-range as well as all the resources of this wealth is owned by the State as will be shown by the system. The system means for the exploitation of the wealth, its protection and development in a manner that serves the interests of the State, and its security and economy.”); VENEZ. CONST., tit. 3, ch. 7, art. 113 (“When dealing with the exploitation of natural resources [which are the] property of the Nation or with the rendering of services of a public nature with exclusivity or without it, the State may grant concessions for a certain time, always ensuring the existence of compensations or counter-measures [*contrapartidas*] adequate for the public interest.”) and tit. 6, ch. 1, art. 302 (“The State reserves for itself, by means of the respective organic law and for reasons of national advantage [*conveniencia*], petroleum activity and other industries, operations, services and goods of public interest and strategic character. The State will promote the

*Option 2.*

- (1) The natural resources and wealth in each Governorate shall be considered the public property of that Governorate.<sup>17</sup>

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national manufacture of raw materials derived from the exploitation of non-renewable natural resources, in order to assimilate, create and innovate technologies, generate employment and economic growth, and create wealth and well-being for the people.”); and YEMEN CONST., pt. 1, § 2, art. 8 (“All types of natural resources and energy sources existing underground, on the ground, in the territorial waters and the continental shelf and the exclusive economic zone shall remain the property of the State which shall ensure their exploitation for the general welfare.”) and art. 18 (“Concessions respecting the exploitation of natural resources and public property shall be determined by law. The law may define cases of specific significance whereby concessions shall be given as provided for by law. State-owned property and movable assets shall be disposed of and conceded free of charge only by law. The same law shall provide for the manner in which local units shall be granted the right to dispose of free of charge, public property.”).

<sup>17</sup> See U.A.E. CONST., ch. 2, art. 23 (“The natural resources and wealth of each Emirate shall be considered the public property of that Emirate.”). See also CAN. CONST., ch. 6, art. 92A (“(1) In each province, the legislature may exclusively make laws in relation to exploration for non-renewable natural resources in the province; development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and development, conservation and management of sites and facilities in the province for the generation and production of electrical energy. (2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada. (3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict. (4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of non-renewable natural resources and forestry resources in the province and the primary production therefrom, and sites and facilities in the province for the generation of electrical energy and the production therefrom, whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.”). The powers of the Canadian Federal Government over natural resources are primarily associated with inter-provincial and international oil transportation and marketing. CAN. CONST., ch. 6, art. 91, cl. 2 (the legislative authority of the Parliament of Canada includes the regulation of trade and commerce). See also Proposed KURDISH CONST., art. 3, § 1 (“The Natural Resources located on the territory of the Kurdistan Region, including water, petroleum and subsoil

- (2) The Governorate shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy.<sup>18</sup>

*Option 3.*

- (1) Natural resources may be in regional government, central government and other forms of ownership.<sup>19</sup>

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minerals, belong to the Kurdistan Region.”) and § 4 (“(a) Petroleum and minerals on or under the surface of the land of the Kurdistan Region belong to the Kurdistan Region. (b) Except for petroleum from reservoirs in commercial production on the effective date, the Kurdistan Regional Government shall regulate the exploitation and sale of petroleum and minerals in the Kurdistan Region, and shall receive the proceeds from their sale. (c) The exploitation of petroleum in the Kurdistan Region shall be managed in close coordination with relevant ministries of the Provisional Government of Iraq; (d) Petroleum from reservoirs in commercial production on the effective date may be managed by the Provisional Government of Iraq for the benefit of all the people of Iraq, provided the Kurdistan Regional Government receives from federal budget the funds specified in Article 4. (e) For the purposes of this article, commercial production means an average daily production over any consecutive twelve month period since January 1, 1998 of 20,000 barrels per day.”).

<sup>18</sup> See U.A.E. CONST., ch. 2, art. 23 (“Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy.”). See also TIMOR CONST., pt. 4, art. 139, cl. 3 (“The exploitation of the natural resources shall preserve the ecological balance and prevent destruction of ecosystems.”); KUWAIT CONST., pt. 2, art. 21 (“[The State] shall ensure [natural resource] preservation and proper exploitation due regard given to the requirements of State security and the national economy.”); VENEZ. CONST., tit. 3, ch. 9, art. 129 (“In the contracts that the Republic concludes with natural or juridical persons, national or foreign, or in the permits that are granted, which involve natural resources, the obligation or conserving the ecological equilibrium, permitting access to technology and the transference of the same in conditions mutually agreed, and reestablishing the environment to its natural state should it become altered, will be considered included even when it should not be express, in the terms that the law specifies.”)

<sup>19</sup> Adapted from RUSS. CONST., ch. 1, art. 9, cl. 2 (“Land and other natural resources may be in private, state, municipal and other forms of ownership.”). The Russian Federation protects all forms of ownership (“In the Russian Federation, private, state, municipal and other forms of ownership are recognized and enjoy equal protection.” *Id.* at ch. 1, art. 8, cl. 2.). See also RUSS. CONST., ch. 3, art. 72(c) (“The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes...issues concerning the possession, use and management of the land, mineral resources, water and other natural resources”). In general, Russia exercises national ownership over its oil, natural gas and mineral resources. The central government in Moscow, however, has worked out special

- (2) The possession, utilization and management of natural resources are freely exercised by its owners provided that it does not damage the environment or infringe upon the rights and lawful interests of other persons or the State.<sup>20</sup>

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arrangements with certain resource-rich republics, e.g., Bashkortostan and Tatarstan. Article 72 of the 1993 Russian Constitution allows the execution of bilateral treaties between the central government and subnational entities on power-sharing. For example, in 1994, the Republic of Tatarstan brokered a treaty with the central government in Moscow, where Tatarstan relinquished claim to sovereignty and accepted Russia's taxing authority in exchange for Russia accepting Tatarstan's ownership and control over oil and other natural resources and Tatarstan's right to sign economic agreements with other sovereign nations.

<sup>20</sup> Adapted from RUSS. CONST., ch. 2, art. 36, cl. 2 ("The possession, utilization and management of land and other natural resources is freely exercised by their owners provided that it does not damage the environment or infringe upon the rights and lawful interests of other persons."). *See also* RUSS. CONST., ch. 3, art. 72(e) ("The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation includes...the management of natural resources, the protection of the environment and ecological safety; specially protected natural reserves").

## Oil Resources

### **Equitable Revenue Allocation** *Sample Language*

Equitable allocation of revenues shall be carried out in accordance with the law established by the Iraqi National Assembly. Development, implementation and reform of all revenue allocation policies, laws, and formulas shall be guided by the following principles:

- the natural resources of Iraq, belongs to all the people of all the regions and governorates of Iraq;
- all central, regional and local governments are entitled to the necessary resources to carry out its functions and serve the people living within their jurisdiction;
- all citizens are entitled to equitably receive the benefits of Iraq's revenues regardless of their gender, opinion, beliefs, nationality, religion, sect or origin;
- equitable standards of living throughout all of Iraq ensure the stability and unity of the nation;
- equitable distribution does not require equal distribution;
- areas historically and unjustly deprived of revenues have particular needs;
- areas of scarce natural resources have particular needs;
- the contributions of local regions or governorates in the management and development of local natural resources (renewable and nonrenewable) shall be considered [a substantial factor];
- close cooperation among the national, regional and local governments is paramount as is the need to respect each government's role at all levels of decision-making on this matter;
- equitable distribution requires consideration of population size and particular needs;
- revenue allocation is an opportunity to promote national, regional and local development and cooperation;
- [other...]

The Iraqi National Assembly shall [have the authority] to establish by law a special committee to assist the Assembly in the development, review and

reform of revenue allocation policies, laws, and formulas. The appointment, composition, and work of the Committee shall be guided by the principles above.

## **Oil Resources**

### **Summary and Link to Detailed Legal Memoranda**

#### **Equitably Allocating Oil Resources**

This memorandum focuses on the two core issues of ownership and formulas for allocation of oil revenue, though an array of issues accompany any discussion on oil in Iraq. In other oil-producing countries, ownership of oil has been handled in one of three ways: national ownership; regional ownership; and shared ownership. These oil-producing countries have implemented numerous formulas for the allocation of oil revenue. Some apply the same formula to share oil revenue as used for other budgetary distributions, while others favor the derivation principle, whereby each subnational government's share is tied to the oil revenue originating from its territories. Still others follow different criteria for revenue allocation such as population, basic needs or unique historical circumstances. A fairly recent mechanism for oil revenue allocation and management has been to create oil funds.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Oil\\_June\\_05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Oil_June_05.pdf)

## Human Rights

### Human Rights Decision Tree

1. General Statement of Principles
2. General statement of non-discrimination and equal protection regardless of race, gender, opinion, status, religion etc...
3. List of Rights vs. Reference to International Law
  - A. List rights (of varying detail)
  - B. Incorporation and Reference to rights affirmed in international law
  - C. Mixed approach: List and Incorporate/Reference international law
4. Basic Rights
  - A. Fundamental freedoms (speech, assembly, association, belief/religion/conscience)
  - B. Non-derogable rights
  - C. Political rights
  - D. Civil Rights
  - E. Economic, Social and Cultural Rights
  - F. Permissible limitations on certain rights
    - i. Rights that can be limited in states of emergencies
    - ii. Non-derogable rights
5. Minority Rights
  - A. Language
    - i. Right to use
    - ii. Right to teach
  - B. Religion
    - i. Right to practice religion freely
    - ii. Right to have religion recognized
  - C. Culture
    - i. Right to celebrate cultural holidays and heritage
    - ii. Right to create cultural institutions
  - D. Equal rights with others, and right to equal representation
  - E. Right to be free from discrimination

F. Right to have their own institutions and customs respected

G. Subcommittee/Committee/Ombudsman on minority rights

6. Implementation and Enforcement Mechanisms

A. Human rights commission

B. Human rights ombudsman

C. Human Rights Committee in legislature

7. Women's Rights

8. Role of local governments in assisting national government in complying with international obligations regarding human rights

9. Truth and Reconciliation Commission (TRC)

## **Human Rights**

### **Protecting Human Rights and Fundamental Freedoms** *Memorandum*

#### **Articulating Basic Human Rights and Fundamental Freedoms**

*Referencing International law:* It is typical for constitutions to incorporate by reference international conventions and regional treaties on human rights and mandating that these treaties and conventions be applied domestically. Sometimes there is reference to an annex of the constitution that lists relevant human rights instruments. (A sample list of human rights treaties and conventions is included in Annex A).\*

*Listing Specific Rights:* Some constitutions list the specific human rights and fundamental freedoms that the government will protect, at times emphasizing those rights and freedoms that have been particularly violated in the past. (A list of human rights found in many constitutions is located in Annex B).\*

*Combining the Listing and Reference to International Law:* Some constitutions combine the two methods stated above by referencing international laws while also listing specific human rights and freedoms.

#### **Incorporating Human Rights into Domestic Law**

Some constitutions include provisions that expressly require the incorporation of human rights and protection mechanisms into the national legal frameworks.

#### **Ensuring the Existence of Monitoring and Enforcement Mechanisms**

Most constitutions drafted in modern times expressly require the creation of monitoring and enforcement mechanisms to ensure the protection and promotion of human rights. For instance, many include a provision requiring the establishment of a Commission on Human Rights.

Constitutional provisions establishing such a commission typically include the following:

*Commission powers:* Often the commission is empowered to: monitor, investigate, file cases, research, educate, lobby, advise, comment on and propose legislation, and report on issues concerning the promotion and protection of the rights affirmed in the constitution and recognized by the principles of international law.

*Prosecutorial Functions:* Many human rights committees have the authority to initiate and file cases in the appropriate courts on behalf of victims. Pursuant to that authority, they also have the power of subpoena.

*Clarification as to who has access to the Commission:* Typically the provisions clarify who can submit complaints and requests to the commission. Often these include governmental authorities, individuals, or civil society organizations.

*Mediate and Report on Specific cases:* Many human rights commissions have the authority to mediate solutions between the parties, visit the areas in question, and issue reports on *specific* case of violations. These reports usually include both findings and recommendations for actions to be taken by the responsible authority or private party.

*Independence and Selection of Members:* Commission provisions often affirm the institution's independence from government influence and describe the composition of its members. This includes the selection or appointment process for the commissioners and the requirements to be a commissioner (knowledge of human rights, Iraqi citizenship, integrity etc.).

*Private and National violations:* Constitutional provisions establishing human rights commissions often clarify whether the commission is authorized to address both violations and abuses committed by government agencies and representatives, as well as those committed by private actors (i.e. private individuals, companies and institutions).

*Subcommissions:* Many human rights commissions are also authorized to establish subcommissions to assist with its work. For example, depending on the needs of the country, the commission may establish a subcommission on the rights of women or the rights of national and religious minorities.

## **ANNEX B**

### **Human Rights Treaties and Conventions**

- 1948 Convention on the Prevention and Punishment of the Crime of Genocide
- 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto
- 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
- 1957 Convention on the Nationality of Married Women
- 1961 Convention on the Reduction of Statelessness
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto
- 1966 Covenant on Economic, Social and Cultural Rights
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- 1989 Convention on the Rights of the Child
- 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- 1992 European Charter for Regional or Minority Languages
- 1994 Framework Convention for the Protection of National Minorities

## **ANNEX B**

### **Fundamental Rights**

All people are possessed of certain inalienable rights. This charter is not intended to be an exclusive list of the peoples' rights, and recognizes that people possess other rights that may not be listed in this charter, and that those rights which are not listed in the charter deserve the same protection as those that are.

#### **Civil Rights**

##### Right to life

All people have the right to life, and the right not to be arbitrarily deprived of their life.

##### Human dignity

All people deserve to be treated with dignity and respect by virtue of their humanity. This dignity is secured through the protection of certain rights, including but not limited to

1. The right of all people to bear and be registered under a name;
2. The right to be free from torture, and from cruel, unusual or inhuman treatment or punishment, and the right to have one's physical, mental and moral integrity respected;
3. The right of prisoners to appropriate treatment, as defined in Part II, Section 3 of this Charter;
4. The right to have one's honor and reputation protected from defamation;
5. The right to be free from incitement of discrimination, hatred or violence, to be protected through the prohibition of national, racial or religious discrimination;
6. The right to claim nationality and avail oneself of the protection of a person's state of residence;
7. The right to conscientiously object to perform compulsory military service for reasons of conscience or profound religious, ethnical or similar convictions;
8. The right to perform an alternative service of a civil nature in lieu of

- compulsory military service;
9. The right not to be subjected to slavery, involuntary servitude, or forced or compulsory labor, or any form of exploitation or trafficking.

### Equality

1. All people are equal, and entitled to equality before the law.
2. All people have the right not to be subjected to discrimination based on race, gender, religion, social group, political belief, or any other characteristic, belief or practice that is a fundamental part of their character, or impossible, impractical or unreasonable to change.

### Access to justice

1. All people have the right to be recognized as a person before the law.
2. All people have the right to petition the court for redress of their claims.
3. All people accused of a crime have the right to legal representation of their choice, and to be provided with representation if they cannot afford it.
4. All people accused of a crime have the right be heard and present a defense in person.
5. All people have the right to have their conviction and sentence reviewed by a higher tribunal.
6. All people accused of a crime have the right to a public trial before a competent, impartial and independent judicial authority without undue delay

### Administration of justice

1. All people have the right not to be deprived of life, liberty or property except by procedures prescribed by law, including but not limited to notice and an opportunity to contest the deprivation.
2. All people who are accused of a crime have the right to be informed of the charges against them, and are presumed to be innocent until proven guilty.
3. No one may be compelled to give evidence against themselves.
4. All people in legal proceedings have the right to access relevant information.
5. All people involved in legal proceedings have the right to adequate

- time and facilities to prepare a defense.
6. All people involved in legal proceedings have the right to privileged and confidential communication with their attorney, free from interference by the government or opposing parties.
  7. All people involved in legal proceedings are entitled to a reasonable opportunity to present their case before the court, under conditions which do not place them at a disadvantage vis-à-vis their opponent.
  8. All people accused of a crime have the right to confront and cross examine their accuser and the witnesses against them, and to challenge the evidence presented against them.
  9. All people have the right not to be tried more than once for the same offence.
  10. No one may be subjected to a heavier penalty than the one applicable at the time the offense was committed.
  11. No one may be subjected to retro-active laws.
  12. All people have the right not to be deprived of property, except according to procedures prescribed by law, including notice and an opportunity to be heard, and to receive just compensation for property taken for public use.

#### Freedom and security of persons

1. All people have the right to liberty
2. All people have the right not to be held against their will without just cause or formal charges, and the right to challenge the appropriateness of their detention.
3. All people are entitled to an effective means of redress before the authorities in case of violations of guaranteed rights and freedoms.
4. All people are entitled to be free from the protection of their fundamental rights.
5. All people are entitled to be protected from abuse of authority
6. All people have the right to be secure in one's person, home, papers, communications and effects against unreasonable searches and seizures, except upon issuance of a warrant which specifically details the nature and limits of the search or seizure.
7. All people have the right to travel and move about as they see fit, and to enter and leave the country.
8. All people have the right to live where they choose.
9. All people are entitled to obtain compensation in case of a miscarriage of justice.

- 10.No one may be subjected to medical or scientific experiments without freely and competently given consent.
- 11.No one may be imprisoned due to debt.
- 12.No one may be arbitrarily exiled.
- 13.All people have the right to receive, seek, and impart information, and the right to publish and publicize information and opinions through writing, printing, electronic media or any other means.

### **Political Rights**

1. All people have the right to freely hold opinions, including religious and political beliefs, and to freedom of conscience.
2. All people have the right to express their opinions and beliefs freely.
3. All people have the right to assemble peacefully, and to associate with others.
4. All people have the right to vote in elections.
5. All people have the right to political participation, including but not limited to campaigning for and participating in party politics.
6. People are entitled to hold free and periodic elections to choose their government.
7. All people have the right to equal access to public service, including the right to be elected to office.

### **Cultural Rights**

1. All people have the right to speak their own language, and to teach and publicly communicate in their own language.
2. All people have the right to practice the religion of their choice free from government interference, or to practice no religion.

### **Social Rights**

1. All people have the right to found a family, and to engage in family planning if they choose.
2. All people have the right to marry, and the right not to enter into marriage without giving free and full consent.
3. The family has the right to respect and protection as the fundamental unit of society
4. All people have the right to have their morals protected

## **Economic Rights**

1. All people have the right to work, and the right to choose their employment
2. All people have the right to have their health protected, including the right to prevention and control by the state of epidemic diseases.
3. All people have the right to own property.
4. All people have the right to adequate standards of living.
5. All people have the right to be educated.
6. All people have the right to social security.
7. All people have the right to insurance.
8. All people have the right to social and medical assistance.
9. All people have the right to adequate nutrition.
10. All people have the right to enjoyment of scientific advancements.

## **Rights of Women**

1. Women have the right to be treated equally to men.
2. Women have the right to receive remuneration equal to a similarly qualified man employed in a similar or identical position.
3. Women have the right to equality in marriage.
4. Women have the right to be protected from all forms of exploitation.
5. Women have the right to paid leave for working mothers during a reasonable period before and after childbirth.

## Human Rights

### Avoiding the Qualification of Human Rights *Memorandum/Draft Language*

Frequently, constitutions include phrases such as “in accordance with law” or “as determined by law” to allow for the subsequent development of more specific legislation. While appropriate in certain circumstances, the use of these phrase when discussing human rights and women’s rights may be interpreted to limit these rights.

Similarly, the phrase “in accordance with Islam/Sharia” may be appropriate in certain circumstances, but raises similar concerns when used in the context of human rights and women’s rights.

The use of these phrases is an issue that has arisen in past negotiations of other constitutions and various international instruments. In these past negotiations, the matter has been addressed by simply including *one* provision that 1) acknowledges that some rights and freedoms *can be limited* under specific circumstances, and 2) that other rights and freedoms *can never be limited* – even in times of state emergencies (that is, they can never be subject to “derogation”). Countries have found that with this one provision, most of the limiting references can therefore be removed from the final text.

The Sample Language below is based on existing examples in international law such as Article 29(2) of the Universal Declaration of Human Rights, Articles 12(3) and (4) of the International Covenant on Civil and Political Rights, and Articles 12(2) and 27 of the American Convention on Human Rights.

#### ***Sample Language:***

The fundamental rights and freedoms affirmed in this Constitution may be limited only insofar as it is in the interests of national security, public safety or health, for the prevention of public disorder or crime, or for the protection of the rights and freedoms of others.

Any law providing for the limitation of the fundamental rights and freedoms affirmed in this Constitution must be consistent with the

principles of democracy and justice, clearly specify the extent of such limitation, and identify the article or articles of the Constitution that provides the authority to enact such limitation.

The following rights shall *not* be subject to limitation or derogation, even in times of state emergencies:

- (a) Right to Life;
- (b) Prohibition on slavery and servitude;
- (c) Right to Juridical Personality;
- (d) Prohibition on torture or to cruel, inhuman or degrading treatment or punishment;
- (e) Freedom from Retroactive application of law;
- (f) Prohibition on imprisonment for failure to pay a debt;  
and
- (g) Freedom of thought, conscience and belief.

## **Human Rights**

### **Summary and Link to Detailed Legal Memoranda**

#### **Protecting Human Rights**

This memorandum enumerates the major human rights emphasized internationally and provides specific examples of how various Middle Eastern states have approached those rights. Various constitutions are examined in order to provide language that Iraq could utilize in drafting human rights provisions. The importance of enforcement mechanisms and the approaches to incorporating human rights provisions in a constitution are also addressed.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_HumanRights\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_HumanRights_June05.pdf)

## **Minority Rights**

### **Protecting Minority Rights** *Sample Language*

#### **Preambular Paragraph**

*(With listing of minority groups)*

Iraq is a country of many nationalities and it affirms that the Arabs, Kurds, national and religious minorities of Iraq (including but not limited to the Christian, Mandaean, Yazidis, Kurdes Al feleyin, Turkmen, Assyrians, Chebak, and Roman), are partners in this homeland, and that their identity and rights within the unity of Iraq are acknowledged by this Constitution

*(Without listing of minority groups)*

Iraq is a country of many nationalities and it affirms that the Arabs, Kurds, national and religious minorities of Iraq are partners in this homeland, and that their identity and rights within the unity of Iraq are acknowledged by this Constitution

#### **Equality**

All Iraqis are equal in their rights without regard to [distinction of any kind such as] gender, sect, opinion, belief, nationality, religion, or origin, and they are equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, sect, opinion, belief, nationality, religion, or origin is prohibited.

#### **Minority Protections**

All Iraqis belonging to national or religious minorities shall have the right to the full and effective exercise, [individually, as well as in community with others], of the rights affirmed by this Constitution and recognized by the principles of international law. Such rights include, but are not limited to the right to:

- (a) maintain their distinct identities and characteristics and pass these on to their children;

- (b) practice and pass on their cultural traditions and customs;
- (c) practice and pass on their spiritual and religious traditions, customs and ceremonies;
- (d) use and pass on to future generations their languages (including the right to educate their children in their language and the right to understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation); and
- (e) maintain their own institutions (including local governing, juridical and educational institutions) to the extent that they are consistent with this Constitution.

### **Human Rights Commission and Subcommittee on Minority Rights**

There shall be established by law an Iraqi Commission on Human Rights. The Commission shall have the power to monitor, investigate, file cases, research, educate, lobby, advise, comment on and propose legislation, and report on issues concerning the promotion and protection of the rights affirmed in this Constitution and recognized by the principles of international law.

To assist in carrying out these functions, within the Commission there shall be established the Iraqi Subcommittee on the Rights of National and Religious Minorities.

### **Minority Representation in the National Assembly**

There shall be reserved in the National Assembly at least one seat for a representative of each of the national and religious minorities in Iraq

All political parties shall include in their party lists [ ] candidates belonging to a national or religious minority in Iraq.

## **Women's Rights**

### **Protecting Women's Rights** *Memorandum/Sample Language*

#### **Clarify the Neutrality of the Gender-specific Language in the Constitution**

##### *Sample Language:*

Gender-specific language in this Constitution shall apply equally to male and female.

#### **Provide Special Protections in the Electoral Provisions**

##### *Sample Language:*

##### **Party List Set Asides** (*assumes proportional electoral system*)

Twenty-five percent of each Party List shall be female candidate(s).

*Optional addition (given the suggestion by some to remove the set asides entirely):*

Prior to the elections for the fourth session of the Iraqi National Assembly, the Electoral Commission will conduct a study regarding the status of party development in Iraqi politics and governance. Based on the Commission's findings and recommendations, the Assembly will decide if the requirements for party list set asides for women should remain the same, be adjusted, or eliminated.

##### **Reserved Seats in National Assembly**

There shall be reserved [ ] seats in the Iraqi National Assembly for women.

*Optional addition (given the suggestion by some to remove the reserved seats entirely):*

Prior to the national elections for the fourth session of the Iraqi National Assembly, the Electoral Commission will conduct a study regarding the status of the representation and political participation of women in the Iraqi legislature. Based on the Commission's findings and recommendations, the Assembly will decide if the number of reserved seats for women should remain the same, be adjusted, or eliminated.

### **Include a Clear Non-discrimination and Equal Protection Clause**

#### *Sample Language:*

All Iraqis are equal under the law without distinction of any kind, such as race, colour, sex [gender], language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>21</sup> Discrimination is forbidden on such distinctions. Equal opportunities are granted to all Iraqis in accordance with the law.

### **Address Potentially Limiting Language**

Frequently, constitutions include phrases such as “in accordance with law” or “as determined by law” to allow for the subsequent development of more specific legislation. While appropriate in certain circumstances, the use of these phrase when discussing human rights and women’s rights may be interpreted to limit these rights.

Similarly, the phrase “in accordance with Islam/Sharia” may be appropriate in certain circumstances, but raises similar concerns when used in the context of human rights and women’s rights.

The use of these phrases is an issue that has arisen in past negotiations of other constitutions and various international instruments. In these past negotiations, the matter has been addressed by simply including *one* provision that 1) acknowledges that some rights and freedoms *can be limited* under specific circumstances, and 2) that other rights and freedoms *can never be limited* – even in times of state emergencies (that is, they can never be subject to “derogation”). Countries have found that with this one

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<sup>21</sup> The references to “without distinction of any kind...or other status” comes directly from Article 2 of the United Nations Universal Declaration on Human Rights.

provision, most of the limiting references can therefore be removed from the final text.

The Sample Language below is based on existing examples in international law such as Article 29(2) of the Universal Declaration of Human Rights, Articles 12(3) and (4) of the International Covenant on Civil and Political Rights, and Articles 12(2) and 27 of the American Convention on Human Rights.

***Sample Language:***

The fundamental rights and freedoms affirmed in this Constitution may be limited only insofar as it is in the interests of national security, public safety or health, for the prevention of public disorder or crime, or for the protection of the rights and freedoms of others.

Any law providing for the limitation of the fundamental rights and freedoms affirmed in this Constitution must be consistent with the principles of democracy and justice, clearly specify the extent of such limitation, and identify the article or articles of the Constitution that provides the authority to enact such limitation.

The following rights shall *not* be subject to limitation or derogation, even in times of state emergencies:

- (a) Right to Life;
- (b) Prohibition on slavery and servitude;
- (c) Right to Juridical Personality;
- (d) Prohibition on torture or to cruel, inhuman or degrading treatment or punishment;
- (e) Freedom from Retroactive application of law;
- (f) Prohibition on imprisonment for failure to pay a debt;  
and
- (g) Freedom of thought, conscience and belief.

**Referencing Islam**

If there is a growing consensus that the Constitution will specify that the exercise of certain rights and the adoption of all laws must be consistent with the religious and cultural values of the Muslim

majority, two options are available. First, any such reference could be to Islam rather than Shari'a given that Islam is perceived as a broader more flexible term. Two, the reference could be to "the universal principles of Islam" rather than simply "Islam". This phrase allows for an even broader and more flexible interpretation and application of the Constitution. In doing so meet the diversity of the population and changing circumstances over time.

## **Constitutional Amendments**

### **Constitutional Amendments Decision Tree**

1. Amendment by legislative action
2. Amendment by popular referendum
  - A. 50+1
  - B. Super majority
3. Limitations on provisions subject to amendment, if any
4. Setting higher standards for approval of amendments to certain issues (i.e. Fundamental rights or changes in state structure)
5. Constitutional Committees charged with ongoing review; public education; power to suggest reforms
6. Constitutional Conventions/future review processes

## Constitutional Amendments

### Constitutional Amendments *Memorandum and Sample Language*

A typical provision for amending a constitution will include one or more of the following:

- a general statement that amendments are possible;<sup>22</sup>
- a statement defining who can propose an amendment (the President, the Parliament, the public) and if they need a specific level of support to have that amendment considered;<sup>23</sup>

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<sup>22</sup> Macedonia, Art. 129 (“The Constitution of the Republic of Macedonia can be changed or supplemented by constitutional amendments.”)

<sup>23</sup> Lebanon, Art. 76 (“The Constitution may be revised based upon an initiative by the President of the Republic, and so, the Government introduces a bill to the Chamber of Deputies.”)

Mauritania, Art. 99 (“The initiative for revision of the Constitution belongs jointly to the President of the Republic and to the members of Parliament. No proposed revision presented by the members of Parliament may be debated if it has not been signed by at least one third (1/3) of the members of one of the assemblies.”)

Norway, Art. 112 (“If experience shows that any part of this Constitution of the Kingdom of Norway ought to be amended, the proposal to this effect shall be submitted to the first, second or third Storting[legislature] after a new General Election and be publicly announced in print. But it shall be left to the first, second or third Storting after the following General Election to decide whether or not the proposed amendment shall be adopted.”)

Macedonia: Art. 130-131 (“A proposal to initiate a change in the Constitution of the Republic of Macedonia may be made by the President of the Republic, by the Government, by at least 30 Representatives, or by 150,000 citizens.”)

Russia, Art. 134: “Proposals on amendments and revision of constitutional provisions may be made by the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation, legislative (representative) organs of the subjects of the Russian Federation as well as by groups of deputies numbering not less than one-fifth of the total number of deputies of the Federation Council or the State Duma.”

Afghanistan, Art. 149: “Considering new experiences and requirements of the time, other contents of this Constitution can be amended by the proposal of the President or by the majority of the National Assembly in accordance with the provisions of Articles 67 and 146 of this Constitution.”

Greek Cypriot State, Article 128 (“Within the limits of the Constitution of the United Cyprus Republic any provision of this Constitution may, subject to paragraph 2 of this

- a statement about how much legislative or public support is needed to adopt a draft law that effectively amends the constitution (this may include references to public debates and public referendums);<sup>24</sup>
- a statement about prohibitions on amendments dealing with specific provisions or principles (such as provisions about fundamental rights and freedoms and the form of governance) and/or prohibitions under certain circumstances (such as states of emergencies or when an interim president is sitting);<sup>25</sup> and

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Article, be amended, whether by way of variation, addition or repeal, by a Law passed by a majority vote comprising at least three-fifths of the total number of members of the House of Representatives. Provided that no Bill introducing constitutional amendments may be introduced without the signature of at least one fifth of the total number of Representatives.”)

<sup>24</sup> Norway, Art. 112, amendments require 2/3 vote of the Storting (legislature) for adoption

Mauritania, Art. 99-101, allows for passage by the legislature by 2/3 majority in both houses and then adoption by public referendum through a simple majority; and it allows for adoption without referendum if the President of the Republic has decided to submit it to the Parliament convened in congress and it is approved by (3/5) majority of the votes.

Macedonia, Art. 129, (“The draft amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate. The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.”)

Lebanon, Art. 65: requiring a 2/3 majority of its Council of Ministers.

<sup>25</sup> Norway, Art. 112: “Such amendment must never, however, contradict the principles embodied in this Constitution, but solely relate to modifications of particular provisions which do not alter the spirit of the Constitution”

Russia, Art. 135 (“ The provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation cannot be revised by the Federal Assembly.”) *Articles 1, 2 and 9 deal with fundamental rights, the description of state as a federal democratic republic, and protection of natural resources and various forms of property ownership.*

Afghanistan, Art. 149 (“The amendment of the fundamental rights of the people is permitted only in order to make them more effective.”); Arts. 67 (“The First Vice-President while acting as the interim President cannot perform the following: 1. Amend the Constitution...”) & Art. 146 (“The Constitution shall not be amended during the state”).

Mauritania, Art. 99: (“No procedure for revision may be initiated if it challenges the existence of the State or undermines the integrity of the territory, the republican form of government or the pluralistic character of Mauritanian democracy.”)

Turkish Cypriot State, Art. 162 (The provisions of Article 1 of this Constitution prescribing the basis and characteristics of the state cannot be changed.”)

- a statement that certain provisions or principles can only be amended through a specific and more stringent process. (This may include greater legislative support or even a Constitutional Assembly or Constitutional Convention).<sup>26</sup>

### *Sample Language*

#### **Changes to the Constitution**

The Constitution of the Iraq can be changed or supplemented by constitutional amendments.

#### **Initiative**

A proposal to initiate a change to the Constitution may be made by the President, at least [one-fifth] of the members of the Iraqi National Assembly, or by the Constitutional Committee.

The amendment of the fundamental rights and freedoms of the citizens of Iraq as affirmed in this Constitution is permitted only in order to make them more effective.

Amendments to the Constitution shall not be initiated, nor the Constitution amended, during a state of emergency.

The Vice-President while acting as the interim President, cannot initiate a proposal to amend the Constitution.

#### **Process**

The decision to initiate a change in the Constitution is made by two-thirds majority of the Assembly.

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<sup>26</sup> Russia, Art. 135 (“If a proposal to revise any provisions in Chapters 1, 2 and 9 of the Constitution of the Russian Federation is supported by three-fifths of the total number of deputies of the Federation Council and the State Duma, a Constitutional Assembly shall be convened in accordance with the federal constitutional law.”)

A draft law to amend the Constitution shall then be publicly announced in print and considered during three readings in the Assembly, whereby the interval between the first and second readings shall be at least three months, and the interval between the second and third readings shall be at least one month.

The draft law to amend the Constitution must receive the support at the first session, of the majority of the members of the Assembly.

The draft law to amend the Constitution must then receive the support at the second session, without amendment, of two-thirds majority of the members of the Assembly.

A draft law to amend the fundamental rights and freedoms affirmed in this Constitution or change the inherent relationship between the central government, regions and the governorates, shall also require adoption by general referendum where it receives the support of a majority of the voters in Iraq and two-thirds of the voters in three or more governorates do not reject it.

### **Proclamation**

The law to amend the Constitution shall be proclaimed by the President and it shall enter into force on the date determined by the same law, but not earlier than three months after its proclamation.

### **Limit to Re-Introduction**

An amendment to the Constitution dealing with the same issue may not be re-introduced within one year of the rejection of the respective draft by the Assembly.

### **Constitutional Committee**

There shall be established a Constitutional Committee of the Iraqi National Assembly. Such Committee shall: (1) receive and comment on proposals to initiate changes to the Constitution; (2) regularly review national, regional and local measures effecting the implementation of the Constitution; (3) gather public opinion regarding the operation of the Constitution; (4) create mechanisms to

educate the public and facilitate dialogue between and among Iraqi citizens, the Committee, and the Assembly about the Constitution; and (5) consistent with this section, recommend areas for possible legislation and constitutional reform.

The Committee shall be composed of [12] Assembly members that fairly reflect both the ethnic and religious diversity of the nation as well as national, regional and local interests. To assist in carrying out its mandate, the Committee shall be authorized to establish advisory group(s) composed of independent experts and representatives from civil society.

## Constitution Checklist

### Constitution Checklist

#### General Provisions

Description of State

Republic

Federal or unitary

Capital city

Physical boundaries/makeup

Constituent units

People

Character of state (Arab nation, other)

Independent

Official religion (e.g., Islam)

Islam/Shari'a as a/the/principal source of law

Source of sovereignty (e.g., people)

Citizenship and Nationality (can be here or in section on fundamental rights)

Qualifications

Benefits and privileges of citizenship

National flag, symbols, anthem etc.

#### Executive

Structure

Presidential

Election process

Plurality/Majority

Proportional

Presidential Selection of cabinet

Who nominates candidates?

Subject to approval by legislature?

## Parliamentary

### Selection of Prime Minister

Simple majority of legislature

Super majority of legislature (e.g., 2/3)

Secret ballot voting

Open roll call voting

Bicameral legislature → Prime Minister selected from upper or lower house

### Selection of cabinet

Ministers selected from within the legislature

Ministers selected from outside the legislature

Prime Minister selects cabinet

Subject to approval of legislature (if bicameral, which house)

### Separate, ceremonial Head of State (President)

Role of Head of State

## Pluralistic

Number of executives

Selection of executive

Powers and authorities of the executives vs. the Parliament

Presidency council

Selection of Prime Minister

Decision-making process/procedure

Unanimous

Majority

## Qualifications of executive

Age and citizenship

Reputation, integrity etc.

Vetting and other

## Selection Process of Executive

General Election

Appointment

Terms in office

Removal: impeachment, death, resignation

## Cabinet

Selection Process

## Ministries

Ministry of Foreign Affairs  
Ministry of Defense  
Ministry of Justice  
Ministry of the Interior  
Ministry of Oil  
Ministry of Finance  
Ministry of Education  
Ministry of Public Works  
Ministry of Health  
Ministry of Trade/Commerce  
Ministry of Communication  
Ministry of Displacement and Migration  
Ministry of Culture  
Ministry of Water Resources  
Ministry of Labor

Authority of ministries to create administrative rules and regulations

Other Authorities and powers

Right of ministries, within its competence, to nominate deputy ministers, ambassadors and other employees of special grade

Powers/competencies of the executive (depends on system chosen)

- Power to veto any legislation passed by legislature
- Power to send legislation to Constitutional Court for determination of constitutionality
- Negotiate international treaties and agreements
- Recommend passage of laws to legislature
- Commander-in-chief of Armed Forces (Ceremonial purpose; no command authority, Command authority)
- Day-to-day responsibility for management of government
- Execute laws passed by legislature
- Nominate Prime Minister
- Signs every law, other than those relating to its powers
- Receives reports on government on its meetings
- Accredits, receives and appoints foreign diplomats

- Signs foreign treaties
- Power to pardon offenders and reduce penalties
- Appoints, dismisses judges, civil servants, officers and noncommissioned officers

In States with presidents of more expansive powers:

- presides over Council of Ministers;
- sanctions and promulgates laws;
- summons and dissolves Parliament;
- calls for a referendum
- proposes Prime Minister candidates
- makes civil and military appointments
- declaring war, states of emergencies

## Legislature

Number of legislative bodies

Bicameral  
Unicameral

Composition of bodies

Elected vs. appointed  
Number of legislators in each body

Election of legislators

National election  
Regional election  
Majority/Plurality, Proportional of Mixed system  
Reserved seats/set asides (e.g., ethnic, sectarian, regional etc.) and party list requirements  
Appointed by constituent units

Qualifications

Age and citizenship  
Education  
Residency  
Vetting and other

Term of service

X years

- Limit on number of terms
- Procedures for removing before end of term
  - For cause (e.g., moral turpitude, high crimes)
  - Without cause

Legislative immunity, if any

Rules of procedure

- Procedure for initiating and passing legislation
  - Proposed legislation initiated in either house or only one (if bicameral)
  - Veto power over other house (if bicameral)
  - Hearing/public hearings
- Procedure for conducting business (not related to initiating and passing legislation)
- Number necessary for a quorum
- Number of votes required to pass legislation and/or make a decision
- Voting process and procedure

Creation of committees, subcommittees, etc.

- Authority and powers

Powers/competencies

- Declaration of war
- Elect or Appoint President, Prime Minister, Cabinet Ministers
- Enact legislation
- Finances
  - Power to tax and collect revenue
  - Regulate commerce among the states and foreign nations
  - Issue currency and keep it stability
  - Approve a budget;
  - Raise and support military
  - Supervise national treasury
- If bicameral, checks and balances between upper and lower house
  - Powers and competencies of the upper and lower house
  - Upper house vested with more power than lower house (or vice versa)
- Non-legislative functions (e.g., confirmation hearings, judicial appointments, impeachment hearings, etc.)

## **Judiciary**

### Judicial authority

- Checks and balances with other branches of government
- Constitutional definition of when judicial decisions final and binding on other branches
- Jurisdiction (personal and subject matter)
  - Criminal vs.civil
  - National vs. state courts
- Standing (who can bring cases to the courts)
- Definition of who has authority to create courts and define jurisdiction

### Structure of judiciary

- National, local and provincial courts
  - Jurisdiction; competency, limitations
- Constitutional court
- Supreme Court
- Appellate courts
- Lower courts
- Special courts
  - Administrative courts
  - Security courts
  - Bankruptcy courts
  - Personal status courts
  - Religious courts (i.e. Sharia courts)
  - Customary Law Courts (traditional courts)
- Geographic districts/circuits

### Judicial independence

- Separation of judiciary from other branches of government
- Creation of judicial council

### Judicial review of legislation

- Standing to challenge legislation
  - Citizens
  - Executive (and cabinet members)
  - Legislators

Timing issues (e.g., any time or only after someone has been adversely affected)

Judicial review of executive orders/decrees

## Administration of the Judiciary

Number of judges on Constitutional Court

Judge selection

Nomination process and appointment

Presidential appointment

Cooperative selection (presidential nomination and approval of legislature)

Judicial council

Qualifications/criteria

Tenure

Life tenure

Until X age

For X years

Removal of judges

Crimes of moral turpitude/high crimes

Removal by executive

Removal by legislature

Cooperative removal

## Judicial council

Composition

Selection of members

Judges

Representatives of other branches of government, excluding executive and in particular Ministry of Justice

Justice

Members of professional associations (e.g., bar association)

Academics

Proportion of judicial and non-judicial membership

Number of members

Term of service

Administration

Rules of procedure

Budget for judicial council

Authority of judicial council

- Oversight of judiciary's budget
- Administration of judiciary
- Selection of lower court judges
- Training
- Policy making

- Creation of special commissions or specialized courts
  - Property Claims Commission
  - Domestic war crimes courts
  - Others

Role of Religion in the interpretation of laws and as a source of law.

## **Electoral System**

Procedure for electing legislature

- National

- Regional

- Proportional, Plurality/Majority or Mixed systems

- Additional mechanisms

  - Reserved seats (e.g., ethnic, sectarian, regional, women etc.)

- Minimum threshold for representation in the legislature

- Criteria to appear on ballot

  - Individual Candidates

  - Parties

    - Party listing (requirements – i.e. female candidate(s) or candidates from minority populations or women)

    - Political parties law

- Counting procedures

- Public Education

Procedure for electing executive (presidential executive)

- Direct election

Qualifications for voter enfranchisement

- Age

- Citizenship

- Vetting (other)

## Electoral districts

- Criteria for drawing districts

  - Population

  - Geography

  - Ethnic/sectarian

  - other

- Number of candidates per district

- Number of votes per voter

- Census requirements

## Procedure for referenda

- Subject matter of referenda

- Percentage vote required for passage (e.g., 50+1, super majority)

## Electoral Commission

- Authorities and Mandate

- Selection/Appointment

- Independence

## **Fundamental Rights / Human Rights**

### General Statement of Principles

General statement of non-discrimination and equal protection regardless of race, gender, opinion, status, religion etc...

### List of Rights vs. Reference to International Law

- List rights (of varying detail)

- Incorporation and Reference to rights affirmed in international law

- Mixed approach: List and Incorporate/Reference international law

### Basic Rights

- Fundamental freedoms (speech, assembly, association, belief/religion/conscience)

- Non-derogable rights

- Political rights

- Civil Rights

- Economic, Social and Cultural Rights

Permissible limitations on certain rights  
Rights that can be limited in states of emergencies  
Non-derogable rights

## Minority Rights

Language  
Right to use  
Right to teach

Religion  
Right to practice religion freely  
Right to have religion recognized

Culture  
Right to celebrate cultural holidays and heritage  
Right to create cultural institutions

Equal rights with others, and right to equal representation

Right to be free from discrimination

Right to have their own institutions and customs respected

Subcommittee/Committee/Ombudsman on minority rights

## Implementation and Enforcement Mechanisms

Human rights commission  
Human rights ombudsman  
Human Rights Committee in legislature

## Women's Rights

Role of local governments in assisting national government in complying with international obligations regarding human rights

Truth and Reconciliation Commission (TRC)

## **Natural Resources**

Ownership

- National ownership
- Regional ownership
- Shared ownership

Authority to grant concessions, licenses, production sharing agreements (PSAs) etc.

Responsibility over downstream oil production (i.e., extraction, refining, transporting)

Allocation of revenue

- Principles of distribution

  - Equitable allocation of revenues (principles of)

  - According to population

  - According to location of resources (derivation)

  - Some combination of the two

- Responsibility over allocation: central government or regions/governorate

Oil funds

- Stabilization fund

  - Percentage of revenue set aside for fund

  - Purpose of fund

    - Reconstruction

    - Development

    - Bolster economy against price fluctuations

- Intergenerational fund

  - Percentage of revenue set aside for fund

  - Method of disbursement

    - Direct to citizens

    - To region/governorates

    - National savings account

  - Investment of principal

Taxation of natural resources (region/governorate and/or central government)

Discovery of new natural resources

Treatment of renewable and non-renewable resources

## **State Structure and Allocation of Powers**

Centralization or Decentralization of powers

Detailing powers exclusively held by the Central Government

Detailing powers held by the Central Government but can be shared or assumed with local governments

    Process for assuming these powers

    Process for settling disputes between governments

(Constitutional Court)

Detailing powers held exclusively by local governments, provinces, regions, etc.

Process for ensuring cooperation between the center and the periphery

## **Central Government Powers**

Foreign affairs

    Conduct foreign policy and international affairs

    Establish international trade relationships

Defense – defend against external threats

Economy

    Establish and implement monetary and fiscal policy

    Authorize national system of taxation

    Manage financial equalization

    Manage international credit and debt

    Manage State property

    Establish and implement customs and tariff policy

    Manage inter-regional transportation and national infrastructure

Citizenship and immigration

    Border control/customs

    Issue citizenship and passports

    Regulate immigration, refugee and asylum policy

    Census

National law enforcement

Civil aviation

National telecommunications and postal service

Weights, measurements and standards

### **Regions/Governorates/Provincial Powers**

Organization of institutions of regional and local government

Establish regional and local symbols, flags, anthems etc.

Regional and local taxation

Health care

Education

Preservation and promotion of regional and local languages and culture

Social policy

Regional and local public works

Regional and local infrastructure, telecommunications and transportation

Regional and local economic policy

Regional and local courts

### **Municipal Governments**

Provision for regional/local power

Provisions for local elections

### **State of Emergency**

Circumstances constituting a state emergency

Procedure for declaring emergency

Procedure for ending emergency

Description of emergency powers

Allowance for restriction and derogation of rights, if any

### **Additional Special Commissions, Committees, Auditors etc.**

Auditor General

Human Rights Commissions

Commissions on Corruption

Commissions on Public Appointments

Electoral Commission

Others...

### **Central Bank**

Powers, authorities and responsibilities

Nomination, appointments, election of Governing Board

### **Procedure for Amendment of Constitution**

Amendment by legislative action

Amendment by popular referendum

50+1

Super majority

Limitations on provisions subject to amendment, if any

Setting higher standards for approval of amendments to certain issues  
(i.e. Fundamental rights or changes in state structure)

Constitutional Committees charged with ongoing review; public education; power to suggest reforms

Constitutional Conventions/future review processes

**Compilation of Summaries of detailed legal memoranda available on PILPG.org ([www.pilpg.org/areas/peacebuilding/simulations/iraq/](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/))**

**Structuring an Iraqi Executive**

This memorandum discusses models of executive branch structure and examines the constitutions of Iraq's Arab neighbors and other post-conflict states to demonstrate how other nations have addressed the constitutional issues of executive leadership and accountability that Iraq currently confronts. Four forms of executive branch governance are examined: centralized parliamentary, centralized presidential, pluralistic parliamentary and pluralistic presidential. Using examples from constitutional executive structures in post-conflict countries and countries within the region, this memorandum evaluates the applicability of these forms to Iraq.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Executive\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Executive_June05.pdf)

**Establishing a Representative Iraqi Legislature**

This memorandum discusses and analyzes various models of legislative branch structure in order to identify the core elements of a legislative structure, and to identify best practices for balancing powers, and structuring a relationship between the Presidency and the Prime Minister.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Judiciary\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Judiciary_June05.pdf)

**Promoting Judicial Independence**

This memorandum examines the constitutions of Iraq's Arab neighbors and other post-conflict states to demonstrate how other nations have addressed the constitutional issues of judicial independence and authority that Iraq currently confronts. Specifically, it addresses judicial independence and authority, judicial review, and structures for judicial administration. It also examines the primary models for incorporating Shari'ah into a judicial system.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Judiciary\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Judiciary_June05.pdf)

**Protecting Human Rights**

This memorandum enumerates the major human rights emphasized internationally and provides specific examples of how various Middle Eastern states have approached those rights. Various constitutions are examined in order to provide language that Iraq could utilize in drafting human rights provisions. The importance of enforcement mechanisms and the approaches to incorporating human rights provisions in a constitution are also addressed.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_HumanRights\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_HumanRights_June05.pdf)

### **Constructing an Electoral System**

This memorandum provides a comparative study of the electoral systems of Lebanon, Egypt, Iran, Jordan, and Turkey. In an effort to provide useful recommendations for constructing an Iraqi electoral system, it evaluates each system for its utility in Iraq. These five states were chosen because they are in close geographic proximity to Iraq, have predominantly Muslim populations, and represent a cross-section of kinds of electoral systems, which makes possible an analysis of several different types of electoral systems employed by states throughout the world.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_ElectoralSystems\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_ElectoralSystems_June05.pdf)

### **Resolving of Property Claims**

This memorandum outlines an equitable and efficient mechanism for resolving property claims in Iraq. While the main objective of this memorandum is to facilitate the creation of a process to secure, protect and restore Iraqi Kurdish property rights, it is useful to conceptualize the issue in the context of overall property disputes, as other ethnic groups within Iraq have similar claims. Canvassing other post-conflict property restitution efforts offers insightful lessons and flags pitfalls to avoid: property claims in post-conflict cannot be resolved in one or two years; an apolitical and independent administrative body is necessary to ensure non-ethnically based determinations on property claims; and close cooperation among regional, national and international actors is integral to facilitate successful property restitution.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_propertyclaims\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_propertyclaims_June05.pdf)

## **Refugee and IDP Return**

This memorandum outlines the mechanism for promoting the return of Iraqi Kurdish refugees and internally displaced persons (IDPs). There are many issues and concerns that are either delaying or preventing their return: property disputes; lack of reconciliation for past wrongs; potential for ethnic conflict between the returning IDPs and other ethnic groups; and security concerns due to landmines. Seven steps are recommended, which addresses the main concerns listed above: 1) establish objectives for return of refugees and IDPs; 2) make a commitment to the return of refugees and IDPs; 3) create the Joint Commission on Refugees and IDPs; 4) create a mandate of the Joint Commission; 5) phase the return of refugees and IDPs; 6) communicate with the public; and 7) create the Refugees and Internally Displaced Persons Fund.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_RefugeeIDPs\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_RefugeeIDPs_June05.pdf)

## **Equitably Allocating Oil Resources**

This memorandum focuses on the two core issues of ownership and formulas for allocation of oil revenue, though an array of issues accompany any discussion on oil in Iraq. In other oil-producing countries, ownership of oil has been handled in one of three ways: national ownership; regional ownership; and shared ownership. These oil-producing countries have implemented numerous formulas for the allocation of oil revenue. Some apply the same formula to share oil revenue as used for other budgetary distributions, while others favor the derivation principle, whereby each subnational government's share is tied to the oil revenue originating from its territories. Still others follow different criteria for revenue allocation such as population, basic needs or unique historical circumstances. A fairly recent mechanism for oil revenue allocation and management has been to create oil funds.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_Oil\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_Oil_June05.pdf)

## **Integrating the Peshmerga into a New Iraqi Defense Structure**

This memorandum aims to present various options on how to maintain a core Peshmerga security force as well as participate in other Iraqi security

operations. While the focus of the memorandum limits itself to a discussion of the Iraqi Kurds' Peshmerga, the options presented may also provide relevant guidance on addressing other subnational groups with militias. There are five options for the Iraqi Kurds to maintain their Peshmerga within the framework of the Iraqi state: 1) turn the Peshmerga into a non-military security force to aid in reconstruction and provide emergency response services; 2) create a regional military force which operates within a larger national security framework; 3) turn the Peshmerga into a border security service; 4) maintain a force comprised of Peshmerga operating in the interim period, which then merges with the Iraqi national army; or 5) join other regional military forces in serving under a larger "umbrella" force that integrates various militia groups currently existing in Iraq.

[http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG\\_SecurityForces\\_June05.pdf](http://www.pilpg.org/areas/peacebuilding/simulations/iraq/PILPG_SecurityForces_June05.pdf)