

**ELECTION-BASED COMMENTS ON THE
DRAFT LAW ON “THE
LAW OF GOVERNORATES NOT ORGANIZED INTO A REGION”**

1. Introduction

A draft law on the Law of Governorates not Organized into a Region (the draft law) has been before the Council of Representative (CoR) twice and awaits its third and final reading before being adopted.

2. In a similar way as the “Law on the Formation of Regions” the draft law includes provisions related to authorities, powers and organization of the councils and some provisions related to the procedures for governorate, district and sub-district elections. The electoral provisions in the text however fail to address some key elements such as the system for election, the electoral formula and the electoral units. It is assumed and recommended that additional election legislation be adopted to regulate these key issues. It must be noted that the text of the draft law duplicates some of the elements of the Elections Law of 2005.
3. From a governance perspective with the adoption of this draft law, Iraq would have at least six levels of elected institutions: federal/regional/governorate/district/sub-district and municipal. The draft law provides for a list of competencies which do not include those services currently performed by the federal authorities but constitutionally fall under regional authority. The text however is silent on the mechanism for implementing the powers that are shared between the federal and the governorate authorities.
4. Procedurally the law defines the role of the Independent High Electoral Commission (the IHEC) as central to the implementation of the electoral process at all levels of sub-national government.¹ It provides no authority to establish an electoral management body outside that of the IHEC.
5. This commentary focuses on provisions that affect the electoral process and does not cover detailed administrative competencies and duties of the sub-national institutions. On the whole many of the issues addressed herein may be better addressed in a separate Election Law, but are nevertheless discussed if the draft law is to meet minimum best practise or operational feasibility.

6. Comments and Suggestions

Apportionment of seats: In defining the number of seats apportioned to each council the draft law states that governorate councils shall consist of 25 members with an additional one member for every 200,000 people based on the latest approved

¹ Law – article 13 (1)

statistics, provided that women's representation on the council is no less than a quarter of its members. While this defines the number of seats in each council additional clarification is needed to describe which body will provide/approve the "latest approved statistics" and what these statistics in fact are (registered voters or total population) and when they must be provided (a period of time before an election; the last published figures et cetera).²

7. The implementation of this provision is dependent upon a voter identification and registration exercise in order to have a basis for factoring the seat apportionment. This exercise will be complicated by the level of conflict-forced displacement that must be accounted for in some way in the political calculus of representation.
8. Similarly, provisions are less than clear for the apportionment of seats for the district councils – presumably the same "latest approved statistics" will be used – but are not referred to and the above comments similarly apply.
9. **Membership:** On the requirements for eligibility to be a candidate to a sub-national council the draft law mirrors language in both the Elections Law 2005 with additional residency requirements and eligibility criteria as set out in the IECI Governorate Council Elections Regulation of 2004. While the requirement of residence appears in the regulation the qualification of ten years may appear excessive. Perhaps of more concern is the difficulty the IHEC will have in implementing the requirement equitably.
10. For clarity it would be advisable to review the provision excluding individuals covered by the De-baathification Law and to clarify who is covered by the expression "contributed or participated" in the persecution of citizens.³
11. It should be noted that both the De-baathification Commission and the Public Integrity Commission appear to have become highly politicized and may not be the most suitable institutions to vet candidates. Consequently the draft law could include the need to define a protocol with the De-Baathification Commission and the Public Integrity Commission so that their authority in electoral decision making is agreed upon in cooperation with the IHEC. In addition, the IHEC will likely have to develop asset disclosure rules and information access to implement this law as well as rely upon the interpretation of the existing citizenship laws. The displacement of millions of Iraqis in recent years could have an impact on the implementation of this article. The eligibility of Iraqis to run for office who find themselves outside Iraq or their habitual/permanent place of residence could be brought into question. Additional legislation would be required to ensure the rights of these conflict forced displaced people are accounted for.

² Compare Article 15 of the Elections Law 2005 – "Each governorate is one electoral district in accordance with official borders and shall be allotted a number of seats proportional to the number of registered voters in the governorate in accordance with the elections of January 30, 2005 "based on the public distribution list."

³ Draft Law Articles 5 (2) and 5(3).

12. The draft law is silent on whether a member of the councils needs to be a registered voter. This factor should be added to the nomination criteria.
13. The draft law is also silent on preventing a candidate running for the governorate council from also running in another election held at the same time – for example there is nothing to prevent a candidate from running for Governor, winning that race and also taking a seat on the governorate council. This would clearly be a conflict of interest. A provision similar to that enunciated in the IECI Regulation should be included for completeness – “In addition to the above, any candidate for the governorate council must not be a contestant for any other office in this round of elections.”⁴ Ideally there should be some reference to “prohibited offices” that a candidate can not hold simultaneously – either by reference to a civil service grade or by individual itemization.
14. Of note the requirements found under the IECI regulatory framework do limit candidates participation in electoral events by ensuring candidates must “not be a contestant for any other office in this round of elections.”⁵
15. Similar criteria apply to candidates for the position of governor (Article 19) – the same comments above would also apply.
16. **Competencies:** While removal of the Governor of a Governorate and his/her deputies is defined in some detail the provision covering the election of the Governor is less than clear. Given the highly politicised nature of such an election it would be advisable to include as much clarity in the present law as possible – elect by majority (simple or absolute) et cetera.
17. Significantly the Council has the authority to approve administrative alterations in the districts, sub-districts and villages in respect to merger and creation, and in name, headquarters and boundary changes. Exact details of how such “approval” is sought and implemented is unclear.
18. **Procedures for forming Councils and Local Councils:** It would be good practise to provide for the IHEC to publish an electoral calendar (a number of days (e.g. 120 or 60 days) prior to election day) that sets out key electoral dates and deadlines in the electoral process.
19. While the nomination timeline is defined, the role of the IHEC should be further detailed – if only to state that the IHEC will vet candidates. Publication (by the IHEC) of a provisional list of candidates would be good practise; thereafter followed by a challenge and complaints period; and after such challenges have been adjudicated by the IHEC, publication of a final list of candidates. Appeal procedures from decisions of the IHEC should be referred to and be consistent with the IHEC law.

⁴ Article 4.2.2 IECI Regulation 08/2004

⁵ IECI Regulation 08/2004 Article 4.2.2

20. Under Article 13 (4) [and subject to translation] it appears that the qualification for candidacy of a council defines “being from a governorate” (article 5(8)) as the “regular place of residence.” Again this may have significant impact in the current humanitarian and displacement context and cause implementation difficulties for the IHEC. It also appears from the current translation that an individual can only candidate themselves in one “administrative unit”; the text should probably read - if they have nominated in more than one place, then the place they first registered prevails.
21. The text includes a provision for withdrawal of a candidate nomination up to seven days prior to election day. Operationally hinders the possibility of removing the candidate’s name from the ballot paper. Additional provisions could provide greater clarity, such as, if a candidate wishes to withdraw his or her name for the purposes of excluding his or her name from the ballot paper, the candidate must notify the IHEC in writing prior to a date specified by the IHEC in any electoral calendar. This must also be harmonized with existing IECI procedures that currently allows the IECI to set the date for nomination.
22. In addition if a candidate does withdraw but not in good time, or dies and it is not possible to remove their name from the ballot, then it should be stated that any votes for that candidate will not be counted.
23. The law does not define the electoral formula for the allocation of seats on the councils. The current formula is set out in IECI regulation 08/2004 and defers to the system of single constituency proportional representation (Article 2.4). Preservation of this system appears in doubt given the uncertainty of the developing federal framework within Iraq – governorate based versus regional. While the provision in Article 13 defines parameters for the system of representation it confines the options to be implemented. The reference to a candidate winning membership if they obtain the majority of correct votes cast implies a first-past-the-post system. While alteration to “the most voted candidates shall be awarded seats” would allow further definition of the electoral system either within the current legal context or in separate legislation.
24. **Membership Termination:** The term “majority” throughout Article 14 requires further definition –absolute or simple. Article 14 (5) refers to “absolute” and it therefore assumed that when reference is made to a majority it is referring to an absolute majority – clarification should be sought.
25. **Voters List:** There is no reference to the voters list in the draft law, and this may be better placed in a separate election law. Nevertheless the IHEC should be charged with certifying a voters list or segments of it to be used in the elections and make it available for public inspection at least 15 days prior to an election date, in public places determined by the IHEC.

26. Dissolution of the Councils: The only sub-national elections to date have been at the governorate level. Governorate council elections were originally referred to in the TAL to be held simultaneously with the elections for the Transitional National Authority (TNA) in 2005. Whereas the TNA was transitional, and the TAL specifically regulated for its dissolution and re-election (after the constitutional referendum of 2005), no such transitional arrangements were put in place for the governorate councils. This was not an oversight as at the time political thinking anticipated achievement of a more stable environment at the sub-national level with a tier of governance that was established over a longer period of time. As a result the governorate councils elected in 2005 were not subject to re-election after the constitutional referendum. Consequently the term of office of the current councils does not expire until 2009. To hold new elections for governorate councils the current bodies must be legally dissolved.

The draft law includes provision for dissolution of each council:

- By a request from either 1/3 of the council members or an absolute majority of the CoR (upon a request from the Governor) - and then a decision to dissolve taken by an absolute majority vote within the council;
- Or the CoR may adopt a causative decision by a majority vote within the CoR (absolute or simple not defined) – but ONLY if there has been a gross violation of the council’s duties or for gross breach of the law; or if majority of its members loose membership eligibility; or upon request of 1/3 of the council’s members.

27. Once dissolved an interim council is formed and shall remain in office until a new council is elected. This election must take place within 60 days from the date of issuing the “dissolving decision.” The law is then unclear on the exact term of this interim council’s office. Article 15 (4) is either poorly drafted or poorly translated or both.

28. Article 15 (6) further confuses the situation providing for the Speaker of the CoR to call on governorate councils to hold elections within a maximum period of 30 days from the dissolving decision. Again this may be bad translation – and may intend to read that the Speaker calls on the IHEC to set a date within 30 days of dissolution of the council (the date would have to be 60 days from the decision according to the earlier article).

29. Article 49 appears inconsistent with the rest of the law insofar that it provides for governorates not affiliated with a region to start announcing the election of councils within 60 days of the validity of the governorate law and through the IECI. Not only should this read the IHEC, but even if this is interpreted as setting a date rather than holding an election, in conjunction with earlier articles it makes no sense. Question whether this is an attempt to fill the gap left by previous legislation that did not provide for transitional councils, and thereby attempting to set/force an election date.

30. In addition this article would technically allow for governorate council elections to be held on different days – in the longer term, while not in itself problematic – for more immediate reasons it may be prudent to have elections on the same day. This will undoubtedly be a political decision and one guided by the IHEC. Consequently this article may not be suited for inclusion in the current draft. Conversely the law is silent on provisions that would call for election dates for other sub-national elections (district and sub-district).
31. Article 34 allows a Governor to refer a decision of a council back to the council and in default to appeal it to the Supreme Court. It is not clear if this right/avenue of appeal would apply to dissolution decisions that were “inconsistent with the State’s general plan.” With the politicization of many of these types of decisions it could affect the dissolution of a council and hence any new election.
32. The potential concern here is that each council will have to be legally dissolved before new council elections can take place. Given that the current councils were elected institutions the CoR has little authority to disband them without using the mechanism articulated in the draft.
33. **Administrative units:** While the law is clear on who can instigate changes in the administrative boundaries (Governor) and approve them (Council), it is noteworthy that this mechanism could have an impact on the technical preparation for any referendum in Kirkuk or other disputed territories.
34. **Financial resources and competencies:** The law refers to a number of financial sources that benefit the governorate (Article 25) - particularly to “donations and grants given to the councils.” Further definition should be included to limit personal donations (size or source) or funds derived from illegal activities. Funds derived from “international non-governmental organizations” (INGO) should probably include reference to “registered” INGOs.

March 5, 2007
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Baghdad, Iraq