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# OPEN PARLIAMENTARY AND LEGISLATIVE DRAFTING PROCESS IN IRAQ

June 2009

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# Legislative Strengthening Program (LSP)

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## OPEN PARLIAMENTARY AND LEGISLATIVE DRAFTING PROCESS IN IRAQ

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# IRAQ LEGISLATIVE STRENGTHENING PROGRAM

## OPEN PARLIAMENTARY AND LEGISLATIVE DRAFTING PROCESSES IN IRAQ

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## **I. Introduction**

Open and participatory parliamentary procedures are a key feature of representative democracy. Parliaments are a natural focal point for communication and interaction between non-governmental parties and their representatives and leaders. Indeed, this has been their role for centuries, in many different countries and societies throughout the world. The key lesson to be learned from this experience is that after the elections, a meaningful ongoing relationship between the governors and the governed is required to make democracy work in practice.

Many different non-governmental parties have an important role in democratizing and supporting the work of Parliament. They include citizen groups, businesses representatives, Non-Governmental Organizations, professional bodies, and independent experts. It does not matter whether Members of Parliament carry out their work through political parties or blocs, or are elected by constituents (defined geographically or by characteristics/interests). In any case, Members of Parliament have concrete obligations to promote the interests of their constituents and the general welfare, and in a transparent manner. This means working closely with non-governmental parties.

This paper discusses the rationale and means for establishing open and participatory parliamentary procedures in Iraq, with special focus on the legislative drafting process and the formulation of laws. There are also references to the Executive Branch of Government. The Executive should also govern in a transparent and representative manner, as it collaborates with Parliament during the legislative drafting process (and carries out its own institutional role). But the main issue being addressed is the special relationship between the Parliament and non-governmental parties. The key message is that Parliaments cannot successfully carry out their work, and cannot pass sound and effective laws, unless they meaningfully engage and collaborate with non-governmental parties. In addition, consensus on the part of the governed generates respect for laws and the legislative drafting process, and dramatically reduces the costs of implementation and enforcement.

## **II. Which Parliamentary Procedures Should be Open and Participatory?**

Many different aspects of the work of Parliament should be as open and participatory as possible, and benefit from being carried out in this fashion. These include:

1. Oversight of the Executive Branch of Government
2. Investigations
3. Approval of nominations and withdrawal of confidence
4. The work of Committees
5. The drafting, review, and approval of new laws

The Constitution of Iraq and By-laws of the Council of Representatives cover these functions:

AUTHORITY FOR KEY PARLIAMENTARY FUNCTIONS IN IRAQ	
SOURCE	ACTION
Constitution, Article 61	1) Parliament exercises <i>oversight of the Executive</i> , to ensure accountability 2) The Council of Representatives <i>monitors and questions officials</i> 3) The Council of Representatives <i>approves nominations</i> to judicial, administrative, and ambassadorial posts, and <i>votes to withdraw confidence</i>
By-laws, Article 32 By-laws, Chapter 10 By-laws, Article 84	1) Parliament exercises <i>oversight of the Executive</i> , to ensure accountability 2) Parliament <i>questions</i> , investigates, obtains information about activities and implementation of laws, makes site visits, and subpoenas witnesses 3) Special Investigations Committees can be formed to look into any matter
By-laws, Article 49	The Council of Representatives <i>approves the mandate</i> of the Prime Minister and other Ministers by majority vote
By-laws, Article 63 By-laws, Article 64 By-laws, Article 65	The Council of Representatives <i>withdraws the mandate</i> of the Prime Minister or any other Minister by majority vote on a motion of no confidence
By-laws, Article 87 By-laws, Article 112 By-laws, Article 120 By-laws, Article 128	1) Standing Committees have the right of <i>legislative initiative</i> , and draft laws 2) Standing Committees <i>assess and work up draft laws</i> 3) Any ten Members of the Council of Representatives have the right of <i>legislative initiative</i>

The work of the Council of Representatives is public, as per the Constitution and its By-laws:

- Article 53 of the Constitution of Iraq states: “Sessions of the Council of Representatives shall be public unless, for reasons of necessity, the Council decides otherwise”. Further, minutes of the sessions must be published.
- Article 29 and Article 40 of the By-laws provide open access to parliamentary sessions.

However, all Parliaments set limits upon the open-ness of different activities. Appropriate measures are customarily taken to protect:



National security

Confidential information

The safety of personnel and property



In Iraq, Article 53 of the Constitution refers to “reasons of necessity” for limiting access to parliamentary procedures. Article 114 of the By-laws restricts access to the work of Committees. However, these provisions do not provide details concerning their scope and application.

It is important to carefully define and limit the circumstances under which parliamentary work is conducted behind closed doors. There should be very sound justification, beyond a route desire for secrecy. Closed parliamentary procedures should be rare and exceptional. Furthermore, procedures for deciding to close parliamentary activities should be carefully structured, strictly followed, and fully documented. Lack of transparency in the work of Parliament or procedures for deciding to close the work of Parliament undermine public confidence and create suspicion.

One parliamentary function which has to be open and transparent, by its nature, is constituent relations. Members of Parliament have a number of obligations to their constituents, such as:

1. Conducting outreach, to inform and explain about parliamentary activities and affairs
2. Investigating and monitoring actual circumstances, to know the situation on the ground
3. Facilitating communication, in both directions, through diverse channels and media
4. Providing opportunities to observe and participate in governmental processes

Accordingly, Article 151 of the By-laws requires the establishment of offices that facilitate regular communication between Members and the populace. Members need to have contact with constituents on their own ground in order to represent them effectively. In addition, this complements the public right to observe Members in action at plenary sessions.



By working with and listening to constituents in an atmosphere of transparency, Members of the Council of Representatives a) strengthen democracy, b) perform their duties more successfully, c) provide better services to the people, and d) increase their prospects for re-election.

### **III. Why should Legislative Drafting be Open and Participatory?**

There are two main justifications for opening the legislative drafting process to non-governmental parties, and making the work participatory and inclusive:

1. This is sound democratic practice. Open and participatory legislative drafting processes a) build links between the government and the governed, b) bring government officials closer to the people, c) generate respect for governmental processes and laws, d) reduce alienation on the part of the governed, and e) strengthen all democratic institutions.
2. This improves the quality of laws. Open and participatory legislative drafting processes lead to better results, and improve both the legal framework and specific laws.

Experience shows that open and participatory legislative drafting processes effectively:



- Define and refine governmental policies, and facilitate their implementation
- Make laws more technically sound and legally correct
- Make laws more practical, effective, and implementable
- Promote respect for and eventual compliance with new laws

This is because open and participatory legislative drafting processes obtain and take advantage of input from an incredibly valuable resource; the people who are most familiar with, most interested in, and most affected by a law. Simply stated, specialists and organizations dealing with particular issues are in an excellent position to inform and advise officials and drafters about key issues *before* laws are passed. And, an ounce of prevention is worth a pound of cure.

#### **IV. What are the Pre-requisites for Open and Participatory Legislative Drafting?**

Open and participatory legislative drafting processes do not just happen by themselves. They require time, energy, resources, and commitment from many sources. At first glance, it may seem more comfortable and expeditious to draft laws in a closed environment. After all, there will be fewer parties to consult, fewer comments to consider, and less criticism. Indeed, experts working in a closed room seem to get their work done more rapidly when there isn't any "interference" from outside parties who have different ideas and opinions.

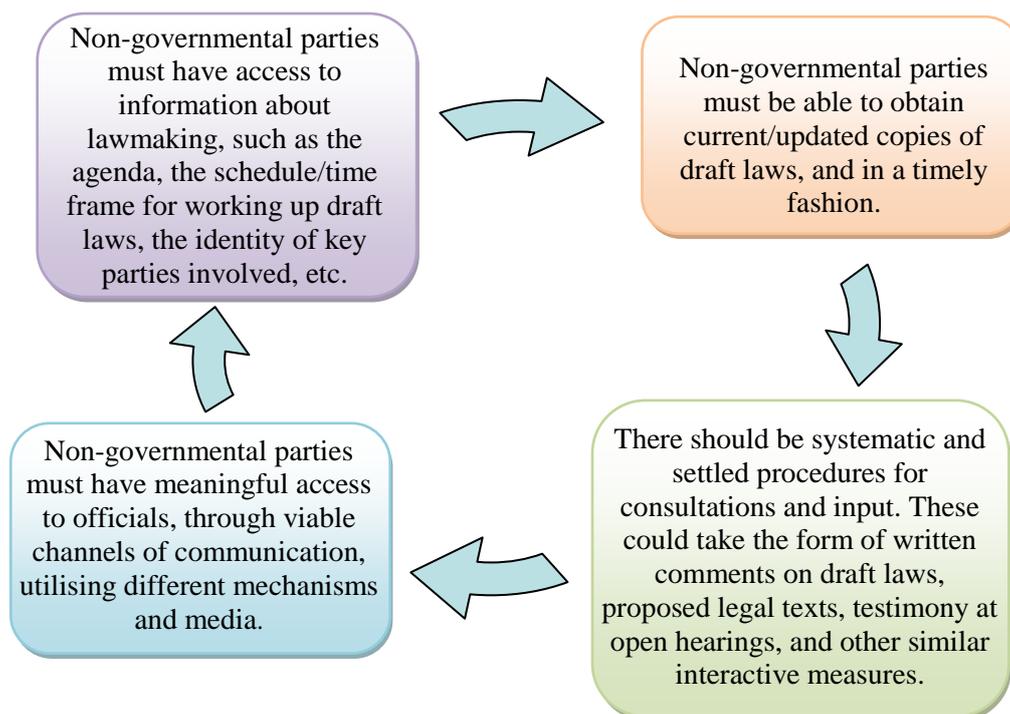
However, this contravenes the basic premises of participatory government, and undermines everything leaders do. Furthermore, and most importantly in the current context, this reduces the quality of laws. Laws are less likely to meet the goals of their proponents when outside access to the drafting processes is limited. The future consequences of a proposed law are best analyzed through exchanges between drafters and parties who know the subject and will deal with the law.

Prerequisites for open and participatory legislative drafting processes include:

1. Political will on the part of leaders and key officials. Ideally, this should start from the very top levels of government.
2. A law (such as a Law on Normative Acts), Rules of Procedure, Protocols, Manuals, Guidelines, or Instructions setting required procedures and practices. Laws have the advantage of formal and universal application, but are inflexible and difficult to modify. For a single institution, Rules of Procedure or By-laws are best. For Parliamentary Committees or Departments, an Operations Manual or Guidelines are suitable. In any event, rules should be clear, have defined scope, and be accessible to and known by all interested parties, for full monitoring and enforcement.
3. Effective and well-established communication channels linking key institutions involved in drafting laws and the non-governmental parties who should be involved.
4. Efficient Information Management. In particular, this includes the organization, updating, and dissemination of information about the legislative calendar and specific draft laws.

5. Effective utilization of Information and Communication Technology (ICT). This includes computers, databases, telephones, faxes, the Internet (Websites and E-mail), etc.
6. Sufficient resources. There should be appropriate budgetary allocations to cover expenses for skilled personnel, ICT and office equipment, office supplies, utilities, and operations.

The following diagram summarizes the requirements for open and participatory legislative drafting processes from the perspective of non-governmental parties:



## V. How Can Non-Governmental Parties Improve Laws?

Non-governmental parties can play a crucial role in making laws practical and effective. They do so by helping conduct Regulatory Impact Analysis (RIA), which determines the likely results and consequences of draft laws. Unfortunately, due to tight deadlines, government officials and legislative drafters often abbreviate their legal analysis, and do not spend enough time consulting others. This ignores the significant difference between passing a law and implementing it. It is also a short-term response to a long-term challenge, which is likely to be inefficient and counterproductive.

Government officials and legislative drafters need to realize that they face an inherent disadvantage compared to the target groups who will live and comply with their laws. Passage of a law is the end of the legislative drafting process. But it is only the start of a much longer period of time, during which different institutions and officials try to enforce the law, and different target groups react to it. Target groups have incentives, time, and resources to figure out how to respond to the law. They always look for loopholes and means to advance their own interests.

Therefore,

- Every new tax law is an opportunity for good tax lawyers to serve their clients by reducing their taxes
- Every new commercial law is an invitation for businessmen to figure out how to increase their profits
- Every new criminal statute is an invitation to clever outlaws to find a way to get what they want without legal complications

And, in comparison with the people who draft and pass laws, those who live with them have all the time in the world.

The only way for government officials and legislative drafters to resolve this dilemma is by consulting outside parties who will provide an honest assessment of what will really happen with a law after it is passed. These parties include representatives of Non-Governmental Organizations, legal experts, law professors, lawyers, representatives of commercial enterprises and chambers of commerce, lobbyists, trade unionists, scientists, specialists, leaders of professional associations, community leaders and activists, Iraqi expatriates living abroad, and other parties who are knowledgeable about the issues being addressed.

The Organisation for Economic Cooperation and Development (OECD) has developed a Checklist for assessing laws. It presents key issues relating to substantive soundness (such as legal sufficiency and effectiveness) and technical soundness (such as format and quality of drafting). The Checklist has ten questions:

- 1. Is the problem correctly defined?**
- 2. Is government action justified?**
- 3. Is regulation the best form of government action?**
- 4. Is there a legal basis for the regulation?**
- 5. What is the appropriate level (or levels) of government for this action?**
- 6. Do the benefits of the regulation justify the costs?**
- 7. Is the distribution of effects across society transparent?**
- 8. Is the regulation clear, consistent, comprehensive, and accessible to users?**
- 9. Have all interested parties had the opportunity to present their views?**
- 10. How will compliance be achieved?**

While some aspects of these questions are technical, and others political, non-governmental parties can shed light on almost all of the issues raised. The only exception is Question Number Nine (which addresses the sufficiency of the consultative procedures).

Non-governmental parties are in an excellent position to provide information, analysis, counsel, advice, ideas, and recommendations concerning:

- Enforcement and implementation (including costs, institutional and administrative capacity, technical resources, human resources, sources of corruption, etc.)
- Financial impact on the State and local governmental authorities
- The distribution of effects amongst different target groups (who wins and who loses)
- How human health and welfare will be affected
- Environmental impact and the protection of natural resources
- How local and community interests will be affected
- Communication requirements and obstacles
- Information resources (including requirements, collection, management, dissemination)
- How target groups will determine what is expected of them, and comply
- Loopholes, and difficulties which might arise over time
- Unintended consequences



Finally, it is important to point out that meaningful dialogue concerning draft laws depends upon the capacity of non-governmental parties to serve as partners in the drafting process. For this to happen, Parliaments must promote their development. This can only be done by facilitating their work, and giving them opportunities to gain experience defining policy, analyzing draft laws, preparing comments, networking, and testifying. Through experience, non-governmental parties enhance their level of expertise, and become more adept at their roles. Increased skills and professionalism make them more valuable for Members of Parliament and legislative drafters, and strengthen their contribution to the legislative drafting process.

Appendix “B” contains information concerning “How to Testify in Parliament”, which has already proven useful for non-governmental parties in several jurisdictions.

## **VI. When Should Consultation with Non-Governmental Parties Take Place?**

The optimal timing for consultations with non-governmental parties depends upon the substantive issues being addressed and the type of input which is required. Sometimes it is extremely advantageous to involve outside parties early in the process, at the policy development stage. Mistakes in policy and design of a law compromise the entire drafting process, and render the ultimate product counterproductive and incapable of serving the interests of society.



Outside assistance with Regulatory Impact Analysis (and consideration of the issues raised in Section V above) is helpful any time during the drafting process. However, different institutions might conduct different kinds of Regulatory Impact Analysis at different stages of the drafting process. Outside parties should always be given a chance to review laws before final deliberation by Parliament.

But at this stage, it is usually too late to make major changes, and special measures may be needed to ensure that input is fully considered.

Accordingly, the best practice is for Parliamentary Committees and Members to consult non-governmental parties a) when they start work on draft laws submitted by the Executive, and b) at different stages of the drafting process when they initiate their own laws. This approach is most likely to make laws practical and effective, and avoid the need for corrective amendments.

## **VII. How can Legislative Drafting in Iraq be Made More Open and Participatory?**

Many different procedures and mechanisms are available for opening the legislative drafting process, and making it more transparent and participatory. The choice amongst them depends on actual circumstances and requirements, and what is most feasible, appropriate, and beneficial.

The first step is to carefully consider the roles and functions of the Council of Representatives:

<b>AUTHORITY FOR LEGISLATIVE DRAFTING PROCESSES IN IRAQ</b>	
<b>SOURCE</b>	<b>ACTION</b>
By-laws, Article 31	The Council of Representatives <i>considers draft laws</i> proposed by the Presidency Council, Council of Ministers, its Committees, and Members
By-laws, Article 90	The Legal Committee has direct responsibility for <i>drafting laws</i> , particularly those involving the judiciary and legal system
By-laws, Article 112 By-laws, Article 122	All draft laws are referred to the Legal Committee by the Speaker of the Council of Representatives, for “ <i>review and checking</i> ”
Constitution, Article 60 By-laws, Article 87 By-laws, Article 112	Standing Committees have the right of <i>legislative initiative</i> for matters within their jurisdiction  Standing Committees have the <i>right/duty to study draft laws</i> affecting matters within their jurisdiction
By-laws, Article 128	The Standing Committees <i>study and render opinions on draft laws</i> prepared by the Executive, before they are formally submitted to the entire Council of Representatives
Constitution, Article 60 By-laws, Article 120	Any ten Members of the Council of Representatives enjoy the right of <i>legislative initiative</i>

These procedures and allocations of responsibility set the stage for the Council of Representatives to open the legislative drafting process in Iraq. As mentioned previously, Article 53 of the Constitution, and Article 29 and Article 40 of the By-laws, specifically authorize open access to parliamentary sessions, including the legislative drafting processes outlined above.

The following formal mechanisms, which are regularly utilized in a number of jurisdictions, should be given the fullest possible consideration and application in Iraq:

### **A. Legislative Working Groups**

Working Groups are formed by one or more ministries having jurisdiction over a proposed law. Members of Parliament or representatives from different Parliamentary Committees can also form Working Groups. When ten Members of the Council of Representatives decide to jointly exercise the right of legislative initiative, they are forming a *de facto* Working Group.



The best way to diversify input to Working Groups is by including non-official experts. Their participation could be formal (as official members, with drafting and voting rights) or informal (as counsel, entitled to attend meetings, review drafts, and make suggestions, but not vote on the final output). The authority which forms the Working Group should carefully consider how to diversify membership. Legal experts, professors, representatives of think tanks or NGOs, and former officials can participate. In addition, experts working on development projects financed by international organisations and multi-lateral or bilateral donors can provide technical assistance to Working Groups, and help at other stages of the legislative drafting process. The objective is to produce the best possible law, by a) accessing high-quality independent expertise, and b) putting this expertise to the best possible use at the most appropriate times.

### **B. Specialized Drafting Institutions**

Members of Parliament need technical support for analyzing and revising draft laws submitted by the Executive, and for preparing their own laws. In either case, this includes a) drafting provisions, b) making sure the draft law is technically sound, c) assessing compliance with the Constitution, legal framework, and international requirements, and d) determining how to make the law practical and effective. When exercising their right of legislative initiative, Members of Parliament also require support for policy development, and design and structure of the law.

The Executive receives this support from Legal Departments. They are usually attached to the Office of the President, the Council of Ministers, and ministries playing a prominent role in the drafting process (such as the Ministry of Justice). In some countries, most particularly members of the Commonwealth having “common law” traditions, there are specialized legislative drafting institutions attached to the Parliament. Prominent examples include the Parliamentary Counsel Offices in the United Kingdom, Australia, New Zealand, and Canada. In the United States, both the Senate and House of Representatives have an Office of Legislative Counsel, as do legislatures in almost all of the individual States. Provincial legislatures in Canada and Australia also have their own specialized drafting institutions.

In Iraq, Members of Parliament rely upon the Legal Committee and the Research Department. These institutions, in turn, are now reaching out to non-governmental parties and experts. The Center for Parliamentary Development, currently being set up, can assist with this work. It is not necessary to centralize all functions in one location. But there must be high quality services and broad coverage. For this purpose, significant human resources, information resources, and legislative drafting expertise are required, along with good access to non-governmental contacts.



Unfortunately, specialized legislative drafting institutions often find it difficult to obtain sufficient resources to carry out their work and keep their experts. Drafters face considerable pressure from excessive workloads and very short deadlines. This makes it difficult for them to collaborate with outside parties. Members of Parliament do not always critically assess their own policy objectives, or communicate them to drafters. There are almost always challenges associated with access to information and information management.

Therefore, it is important for the Council of Representatives to allocate additional resources, and take steps to build institutional capacity for providing legislative drafting services. Mechanisms need to be put in place to ensure that drafting services are professional, organized, and objective. Outreach between drafting professionals and non-governmental parties needs to be formalized and systematized. Finally, it should be noted that the demand for legislative drafting services is going to increase greatly in the near future, as the Council of Representatives becomes more actively engaged in revising the work of the Executive and initiating its own drafts.

### **C. Committee Procedures**

Committees at the Council of Representatives are a natural focal point for opening the legislative drafting processes to non-governmental parties. They perform detailed analysis of draft laws within their jurisdiction, and are in an excellent position to develop on-going relationships with knowledgeable outside experts. Many Committees are already benefiting from outside expertise, by communicating regularly with non-governmental parties and holding open and consultative meetings. The Committees handling socio-economic matters (health, education, welfare, family, and environmental issues) are most active in this regard. However, some measures still need to be taken to standardize and regularize open procedures at the Committee level. A number of suggestions were presented at a Roundtable with prominent NGOs, which was held on 11 June 2009 (see Appendix “C”).

The following steps are recommended for opening legislative drafting at the Committee level:

1. Committees need to regularly disseminate information concerning their responsibilities and activities pertaining to draft laws. It is important for non-governmental parties to know what Committees are doing with draft laws, and when they are doing it, so they can present expertise and input at appropriate times. Committees can use different communication channels to share information about which draft laws they are handling, the status of their work, and the schedule for key

activities or events. When Committees schedule an open hearing or similar event, it is important for the Secretary to contact the Media Directorate, to place an announcement on the Council of Representatives Website, and send information by email to parties registered on the electronic mailing list.

2. Communication between non-governmental parties and Committees needs to be registered, tracked, and answered. It is important to ensure that non-governmental parties always receive responses to their written recommendations and petitions concerning draft laws. To promote public accountability, written submissions to Committees need to be registered, tracked, answered, and archived in databases.
3. Committee work on draft laws should be open to the widest possible range of non-governmental parties. At the present time, it is difficult for non-governmental parties which lack personal contacts inside the Council of Representatives to make their voices heard. Committees need to have mechanisms for expanding participation to include any and all non-governmental parties which can offer valuable information and expertise. NGO registration issues should not be allowed to prevent experts from providing input.
4. There should be key focal points for channeling input from non-governmental parties. Article 108 of the By-laws gives the Standing Committee on Civil Society Organizations responsibility for ensuring “development and activation” of the role of CSOs. And it is already playing an active role facilitating input into the legislative drafting process. But it deserves greater support, and its activities can be strengthened and streamlined. Suggestions include a) systematizing electronic communication and the use of “hot lines” for working with non-governmental parties, b) answering requests for information, and c) keeping copies of input concerning draft laws that is presented directly to other Committees, and d) following up on this input when appropriate. In addition, this Committee can recommend experts for work with other Committees, and help NGO representatives increase the quality and utility of their input.
5. When Committees or Members exercise their right of legislative initiative, it is best practice to include non-governmental parties in the Working Groups. As indicated in Section VII (a) above, this is one of the most effective ways to incorporate a wide range of expertise into the legislative drafting process.



6. When Committees or Members exercise their right of legislative initiative, it is best practice to involve non-governmental parties in the policy making stage. At the present time, expertise from non-governmental parties is usually confined to the review of draft laws. However, outside expertise can be extremely valuable during the crucial stage of policy development and the design of draft laws. After all, *there is little point in improving individual articles in a law which does not properly address key issues in the first place.*
7. Committee Hearings and Plenary Sessions considering draft laws should be open to non-governmental parties. While fully addressing security concerns, the Council of Representatives and individual Committees can open their work and make it more accessible to outside parties who are interested in draft laws. In-person attendance is best, and is an important exercise of civic rights, but broadcast media can also be utilized.
8. Committees need to engage in outreach. Committee Secretaries can play a key role, working directly with outside contacts and the media, and by going through the Media Department and Committee on Civil Society Organizations. Secretaries can publicize the Committee schedule and agenda, provide information concerning the status and importance of their work, and facilitate input concerning draft laws.



Finally, these important Committee procedures concerning open legislative drafting should be set forth in formal documents, such as Protocols or a Committee Operations Manual. To systematize and regularize the Committee procedures outlined above, it is important that they be included in organic documents which govern Committee operations. This will help ensure that requirements concerning open procedures are fully documented, widely known, and regularly fulfilled.

#### **D. Information Management, Communications, and Outreach**

Cooperative information management and sound communication procedures are important for opening the legislative drafting process and standardizing good practice. Many of the recommendations presented in Section VII (c) above relate to this subject. However, other steps need to be taken by the Council of Representatives as an institution. In addition, geographical outreach is extremely important, to bring in expertise and input from the Governates, including local NGOs and regional officials. The media has a key role to play in these processes.

The following steps are recommended for improving information management, communications, and outreach:

1. Publication and widespread dissemination of the Government Legislative Program. Non-governmental parties need to be fully apprised of the legislative agenda, so that they can track draft laws in their areas of interest from the earliest stages.
2. Publication and dissemination of the legislative calendar. All interested parties should be able to track the schedule for drafting and passing laws, the general parameters of drafting assignments, deadlines for completing laws, and dates of readings and hearings. It is also important to be able to identify responsible parties. The work schedule of the Council of Representatives is already placed on the Website and regularly updated. However, it changes frequently, and sometimes without notice. This can make it difficult for non-governmental parties to precisely identify the status of draft laws.
3. Dissemination of draft laws. Full access to the latest versions of draft laws is a *sine qua non* for the participation of non-governmental parties in the legislative drafting process. Ideally, there should be access before the First Reading. Then, it is necessary to establish procedures for disseminating the latest/current version of draft laws, even when different parties are working on them. Websites, electronic communication, publications, and the media can all be recruited into this process. Automatic dissemination of draft laws through emails to non-governmental parties who register for this service would greatly facilitate and systematize outside participation in the legislative drafting process.
4. Preparation and dissemination of the Minutes of Plenary Sessions, Committee meetings, and hearings. Minutes of all non-confidential business meetings need to be carefully taken, and then made available to all interested parties. This documents the handling of issues and the positions of parties. It promotes transparency, and ensures accountability for the final text/contents of draft laws.
5. Full use of Explanatory Memoranda. Explanatory Memoranda are descriptive documents which accompany draft laws. They are designed to standardize and disseminate crucial information concerning the objectives, affects on exiting laws, obstacles to implementation, potential costs and benefits, etc. Article 115 of the By-laws specifically provides for the preparation of “stipulations/provisions” and “Explanatory Notes” concerning laws. The content and responsible parties must be further elaborated.

6. Geographical outreach. When Members of the Council of Representatives take their work to the people, this also includes Governates and regions outside of Baghdad. It is possible to hold sessions and events outside of government buildings and outside of the capital city (security permitting), as specified in Article 21 of the By-laws. Meetings in localities are particularly appropriate for addressing local issues. Liaison points for providing input into the legislative drafting process could be very helpful. There are also ways to bring regional parties to the Council of Representatives. This includes NGO representatives, local experts, and representatives of provincial and municipal governmental entities.



7. Video conferencing. Input from non-governmental parties, particularly those in different geographic locations, can be secured through Voice Over Internet Protocol and videoconferencing services. It is relatively easy to hold virtual meetings over the Internet. No time is lost traveling, there are no travel costs, and there are no security concerns. Indeed, many of these services are free of charge to Internet users.



8. Establishment of Comment Periods. Natural and legal persons can be given a defined period of time for providing feedback concerning draft laws, before they are enacted. Procedures should be settled, known, and regularly followed. Comment periods are particularly appropriate for secondary laws (regulations) which are being prepared by Executive institutions.

9. Media Relations. The Council of Representatives already has excellent outreach to different media, through the diligent work of its Media Department. Still, some supplemental mechanisms could be employed to provide detailed information concerning the legislative drafting process to interested parties. Newspapers, television channels, radio, and other media can publish the calendar and schedule of legislative activities, and the text of important draft laws. They can become more involved in promoting public awareness. There are also possibilities for special mechanisms (such as websites and forums) dedicated to outreach to and feedback from NGOs.



By approaching these measures in a strategic and systematic manner, it is possible to make significant progress towards open legislative procedures, in a relatively short period of time, without significant cost.

## **E. Open Hearings**

The most prominent example of an open legislative process is the open or public hearing. Open hearings are formal and structured events arranged by a governmental body to give official and non-governmental parties an opportunity to present their views. This is done through testimony and written statements. Open hearings can be used by all levels of government to solicit input from different parties concerning any important issue. But they are most frequently employed by Parliamentary Committees, and are most effective for evaluating draft laws. Open hearings allow many aspects of an issue to be addressed simultaneously, by a variety of informed parties. Through interactive exchanges of information, the presentation of diverse opinions, and question and answer sessions, officials and participants can learn what they really need to know.



The By-laws of the Council of Representatives establish all of the necessary pre-conditions for open hearings. Article 29 provides that parliamentary sessions are open (unless otherwise designated), and Article 40 allows citizens and the media to attend sessions (unless they are secret). Article 76 gives Committee Members the right to call any government official, “expert”, or “specialist”, to “solicit their input and decision”. Article 78 provides that Standing Committees may obtain any documents or information they need from any governmental department or civil society organization, with the notification of the Presidency Commission.

Non-Governmental Organizations can play a very special role in open hearings. Parliamentary oversight of the Executive and testimony from government officials concerning draft laws are extremely important for democracy. However, they are really exercises in “inter-governmental” relations. When NGOs participate in open hearings, it is a direct exchange between the governors and the governed. This enables NGOs to fulfill their mandate to provide input concerning public affairs, and it puts them (and their representatives) in the spotlight. Further, transcripts of open hearings serve as permanent records of their involvement and expertise.

Appendix “A” contains sample “Guidelines for Holding Open Hearings”. Variations of these Guidelines have already proven useful for holding open hearings in several jurisdictions.

## **F. Electronic Governance**

Open legislative drafting processes are intimately related to “Electronic Governance”. This involves the use of electronic communication, automated computer functions, and databases to speed up governmental operations and reduce paperwork. The term “Electronic Governance” sounds “futuristic”, and even intimidating. However, many of the applications are essentially informational exchanges using basic computer functions.

Indeed, many of the communications and outreach mechanisms outlined above can be categorized as Electronic Governance. Interactive Websites, electronic mailing lists, video-conferencing, and computerized databases are basic components of Electronic Governance.



In order to take fuller advantage of the benefits of Electronic Governance, the Council of Representatives will need to significantly upgrade its information and communications technology. To effectively carry out the information management and outreach activities identified above, it is necessary to have high-speed internet connections, an electronic calendaring system, an electronic system for tracking draft laws, Website facilities providing full access to the latest versions of draft laws, website pages directly serving the interests of non-governmental parties, and videoconferencing capacity.

For this purpose, strategic planning is required. It is important to note that all of these measures will be taken sooner or later. It is only a question of time. But the order and procedures for implementation need to be decided now. In addition, it is necessary to consider how Electronic Governance will change and improve governance, not merely automate current practice. For this purpose, business re-engineering principles will have to be applied.

In the near future, Electronic Governance will greatly facilitate participatory processes and information dissemination, and thereby improve the quality of laws. These benefits can be realized at low cost, and without compromising security. However, no matter how effective, rapid, and inexpensive electronic communication becomes, it can not be used to avoid or fully replace personal contact.

### **Additional Important Note:**

The mechanisms identified in Sections VII (a) through (f) above, and the related comments and suggestions, are directed towards primary laws. However, participatory procedures should also be employed for the preparation of secondary laws, and for determining the relative roles of primary and secondary laws. Secondary laws include regulations, bye-laws, and various kinds of administrative orders. Techniques that have proven effective in many

democratic countries include the dissemination of drafts, notice and comment procedures, and open meetings. In some countries, draft regulations must be subjected to a defined period of public comment before they can enter into force. In addition, the results (percentage of support for the draft regulation) are often published, possibly with a sampling of specific comments. Clearly, draft regulations also benefit from input from non-governmental parties and outside experts.

## **VIII. Conclusion**

Open legislative drafting processes are an important aspect of good government, particularly for Parliaments. This is because of their crucial role in promoting democratization, the Rule of Law, and economic development. Open legislative drafting processes build links and dialogue between leaders and citizens, inform citizens, enable citizens to better understand how government works, empower citizens to participate in governance, increase confidence in all democratic institutions, and enhance transparency. Of most importance in the current context, they are also one of the best ways to improve the quality of laws.

It is necessary to take a strategic and systematic approach to opening the legislative drafting process. This includes:

- Fulfilling all pre-requisites
- Determining how to best engage the most appropriate non-governmental parties
- Identifying optimal types of input and expertise
- Arranging for the most advantageous timing of consultations
- Putting in place the most suitable mechanisms (such as Working Groups, specialized drafting institutions, open hearings, and Electronic Governance)
- Setting up sound information management, communication, and outreach practices, and
- Monitoring and evaluating the results being achieved, to strengthen what works well and take remedial steps to correct what does not work so well

By proceeding as suggested herein, it is possible to make significant progress in opening the legislative drafting process in Iraq, and thereby improve the quality of laws.



## **APPENDIX “A”: SAMPLE GUIDELINES FOR AN OPEN HEARING**

- 1) **Quorum**. It is not necessary to have a quorum for an Open Hearing if no official action is taken.
- 2) **Rulings**. The Chairperson of the Committee organizing the Open Hearing is empowered to make Rulings concerning all procedural issues and points of order. For a joint Open Hearing involving two Committees, the Chairpersons can a) decide that one of them will act as leader for all or part thereof, or b) make Rulings jointly, by consensus, after consultation. The terms “Chairperson” and “Committee” in these Guidelines should be understood to include the plural “Chairpersons” and “Committees” in cases of joint Open Hearings.
- 3) **Opening Statements**. The Chairperson has the right to make a brief opening statement. Members of the organizing Committee can only make an opening statement with express approval from the Chairperson.
- 4) **Participation**. Any Member of Parliament can attend any Open Hearing. All Members of the organizing Committee are entitled to participate equally and ask questions. Members of Parliament who are not on the organizing Committee need to submit questions in writing to the Chairperson of the Committee. The Chairperson decides whether to ask the question. The Chairperson can choose to ask the question, or can authorize the Member of Parliament to ask the question.
- 5) **Public Announcements**. The Chairperson shall prominently announce the location and time of the Open Hearing at least one week in advance. The Chairperson shall announce the identity of witnesses at the Open Hearing and the order of their testimony at least three working days in advance. All witnesses should be notified directly.
- 6) **Testimony**. The final identification of witnesses who will testify, the final determination of the order of testimony, and decisions concerning whether witnesses will testify individually or as part of a panel are the responsibility of the Chairperson, after full consultation with Committee Members and other appropriate parties. Additional witnesses will be included if they are requested by at least one-third of the Members of the Committee.
- 7) **Testimony**. The order of witnesses should generally be: a) representatives of Ministries which have had a role in drafting the law, b) members of the Working Group which has drafted the law, c) Members of Parliament who want to testify d) independent experts or representatives of interested organizations. Factors that should be considered in the selection of witnesses from the latter category include status, level of expertise, interest in the subject matter, and diversity of viewpoint.
- 8) **Testimony**. Each witness is allotted a maximum of ten minutes to present his/her testimony.
- 9) **Questions**. Each Committee Member shall have a maximum of five minutes with each witness for questions and answers.
- 10) **Questions**. The Chairperson has the right to ask questions first or last. Committee Members question witnesses in order, based on their level of seniority on the Committee. In cases of equal seniority on the Committee, priority will be given on the basis of seniority in the Council of Representatives, and in cases of further equality, on the basis of age (oldest person first).

11) Testimony. The Chairperson is entitled to limit the testimony and the question and answer session for any witness to an overall total of forty-five minutes, if this is necessary to ensure that all scheduled witnesses have an opportunity to testify. In such cases, the amount of time granted to Committee Members for their questions will be reduced equally and proportionally. If there is sufficient time, witnesses may be called back at the end of the Open Hearing. Witnesses are always permitted to answer additional questions in writing.

12) Time Management. The Chairperson is empowered to enforce all time limits.

13) Record Keeping. The Committee Secretary is responsible for organizing stenography, taking minutes, preparing a transcript, and designating an individual who will monitor/track the time taken by each witness. These tasks are to be carried out in cooperation with Parliamentary Departments having expertise in these matters.

14) Decorum. Only the Chairperson is allowed to interrupt Members of Parliament during questioning. This can be done to enforce time limits or maintain order. Witnesses can only be interrupted by the Chairperson or the Member of the Committee questioning them.

15) Decorum. The Chairperson has the right to exclude any individual who is acting in an unprofessional manner or who disrupts the Open Hearing.

16) Written Statements. All interested parties are entitled to submit a written Statement before or at the Open Hearing, provided that they comply with all requirements concerning its format and length, and follow all procedures concerning its submission.

17) Written Statements. All witnesses who testify, with the exception of government officials and Members of Parliament, must submit a written Statement at least 48 hours before the Open Hearing. Witnesses who fail to comply with this requirement will not be permitted to testify.

18) Written Statements. Written Statements must be less than five pages long, double-spaced, with normal font and margins. Written Statements must have a one-page cover sheet that clearly states the law or subject matter being commented upon and the professional background and contact information of the author. Written Statements should be in both printed and electronic format.

19) Written Statements. Written Statements are submitted to the Secretary of the organizing Committee. The Secretary is responsible for making copies and distributing them to all Committee Members.

20) Hearing Record. The Hearing Record consists of a verbatim transcript of the entire proceeding, plus all written Statements and documentary submissions. The Chairperson of the Committee has the right to exclude materials that are inappropriate or irrelevant.

21) Hearing Record. The Hearing Record shall be made available within seven days after the Open Hearing, but in no event less than two days before final consideration of the draft law by the Committee.

22) Hearing Record. The Hearing Record shall be made available to all interested parties, and placed on the Council of Representatives Website. Printed copies should be provided free of charge to Members of the Council of Representatives and witnesses who testify. Other parties

may be obliged to pay a nominal fee for transcripts, corresponding to the actual costs of reproduction.

23) Delegation of Responsibilities. The Chairperson of the Committee has the power to delegate responsibilities to another Committee Member in the event of necessity. This should be done only after consultation with other Committee Members.



## **APPENDIX “B”: HOW TO TESTIFY IN PARLIAMENT**

### **ADVANCE PREPARATIONS**

**1) Understand the purpose of the hearing.** It is extremely important to understand why Members of Parliament are holding the hearing, and what they are looking for. What legal, economic, and social issues are being addressed? What are the positions and motivations of the key parties? Find out the context for the hearing. Relevant information can be obtained from the announcement for the hearing, public statements, party platforms, and reference documents. The most effective testimony is that which answers the questions Members of Parliament want answered.

**2) Consult with officials such as Parliamentary Staff in advance of the hearing.** Contacts with Parliamentary Staff in advance of the hearing can yield valuable information concerning which issues are most important and for whom, the personalities and political considerations involved, the identity of other witnesses, the Guidelines/format for the hearing, and how to communicate most effectively. No attempt should be made to obtain confidential or internal information. However, Parliamentary Staff should legitimately share much of this information. After all, they have an interest in making the hearing valuable and efficient for the Members of Parliament.

**3) Prepare and submit a concise and precise written statement or summary of testimony.** Written statements or summaries of testimony must be submitted prior to the hearing, so that they can be reviewed in advance. Preparing the statement helps to organize the testimony and improve advocacy. Simplicity, brevity, and clarity are necessary, and organization is paramount. It should be easy to determine at a glance what the writer sees as the main problems and the most effective solutions. State the position being advocated, and explain the rationale. Use short sentences, tight paragraphs, and bullet points to cover key details. Use bold print and/or underlining to highlight key phrases with compelling data and conclusions. Use concrete facts, but make sure they are summarized and accurate. It is acceptable to use illustrative examples, but they should be short, on point, and not distract the reader.

**4) Fulfill all administrative requirements.** All Parliamentary Guidelines concerning the format and timing of written submissions and oral testimony should be carefully followed. All rules and procedures for testimony should be understood and adhered to. In case of any doubt, ask.

**5) Carefully prepare the testimony.** Be thoroughly familiar with the issues, facts, and contents of the testimony. Rehearse the testimony several times, starting a few days in advance, until every point is familiar. It should be possible to give the testimony by heart. However, prepare and bring excellent notes, for organizational purposes, and to help stay on track. Notes should be in the form of a short summary/outline, to trigger memory. Key themes should be listed in bold type or be capitalized, with substantive matters in bullet points, or color coded. The goal of such materials is to make sure that all main points are covered, in order, and on time. Never read anything longer than two sentences. Write out any quotes, but make sure that they are very short and directly on point. Supplemental materials should be well organized, so time is not wasted going through them to find something. It is very important to know exactly how long the testimony will take, and how much leeway there is. Time the practice testimony carefully. One of the most common mistakes witnesses make is wandering off-track and getting behind in timing.

## PRESENTING TESTIMONY

**1) Arrive at the hearing early.** Use the time to walk around, become familiar with the set-up, talk to officials who are present, and read available documents. Be sure to attend the testimony of prior witnesses, and listen carefully to what they have to say. It may be necessary to refer to prior testimony, or even to refute it. This should always be done in a respectful manner. Any show of disrespect undermines credibility. Listen carefully to questions presented to prior witnesses. They provide valuable clues concerning the interests/perspectives of Members of Parliament.

**2) Pay strict attention to the audience, and how you are perceived.** The witness is like an actor on stage, but with a very special audience and a very concrete message. Being a good advocate is important, but all aspects of communication should receive attention. This includes dress, manner, posture, body language, facial expressions, tone of voice, and eye contact. In fact, it is estimated that as much as half of all communication occurs through body language. Therefore, it is important to know which gestures communicate understanding, confidence, and authority. Speak clearly, at a reasonable pace, and avoid monotones. Be assertive without being overbearing. Maintain interest by being animated and enthusiastic, and using examples and imagery. Avoid technical language, jargon, gimmicks, and planned jokes. Be sure to adjust the style of testimony to the characteristics of the specific audience.

**3) Use audio-visual materials sparingly and with great care.** It can be cumbersome and time-consuming to set up and use audio-visual aides. "Technical difficulties" can disrupt the hearing and create a negative impression. Be very attentive to logistical issues. Carefully consider the benefits and alternatives. A multi-colored chart handed to each Member of Parliament may work better.

**4) Prepare for an effective dialogue, and use the statement to set the stage.** A major part of advocacy in open hearings is effectively answering the questions that are presented. A cogent and forceful statement, which is precise and brief, can provoke serious questions, which enable the witness to sway opinions. It is a good idea to anticipate and prepare for questions in advance. Listen very carefully to the questions, and respond concisely and on-point. Leave time for follow-up questions. If uncertain about the answer to a question, it is best to admit this, and then explain the parameters for the answer or indicate where to find it, without being overly equivocal. As all good salespeople know, the substance and tone of questions/objections reveal exactly what must be done to convince the customer to buy. Be sure to make eye contact when answering questions. The best practice is to look at the party who is asking a question, but provide the answer to everyone.



## **FOLLOW-THROUGH AFTER THE HEARING**

**1) Pay attention to important post-hearing measures.** It may be necessary to submit additional information, or answer supplementary questions in writing. Be prepared to promptly review the hearing transcript, if this is allowed. Follow the further progress of the law or issues addressed. Do not be afraid to contact Parliamentary Staff for their appraisal of how things went. Carefully consider the results, so that adjustments and improvements can be made. Remember that by improving your skills, you increase your capacity to effectively advocate positions and help Members of Parliament, and enhance your chances of being invited to testify again.

## **APPENDIX “C”: RECOMMENDATIONS FOR OPENING THE LEGISLATIVE DRAFTING PROCESS, PRESENTED AT THE NGO ROUNDTABLE ON 11 JUNE 2009**

**I. Introduction** In order to obtain input and recommendations concerning how to open the legislative drafting process at the Council of Representatives, the Iraq Legislative Strengthening Program organized a roundtable with prominent Non-Governmental Organizations (NGOs). It took place on 11 June 2009 at the Al Rasheed Hotel in Baghdad. The participating NGOs, actively engaged in a wide range of socially oriented activities, had significant experience working with the Council of Representatives. This included meetings with Members and senior personnel on key committees, discussions concerning draft laws, and the submission of written recommendations and petitions.

This document presents a synopsis of the recommendations made at the Roundtable. The categorization of the recommendations is purely for organizational purposes, since they are complementary and sometimes overlap. The order of the categories and the recommendations does not indicate priority. No formal voting was held, so the recommendations should be considered an informal consensus of the participants. This document has been shared with the participants after the Roundtable, to give them a chance to comment.

### **II. Recommendations**

#### **A. Information Management and Dissemination**

1. Draft laws should always be placed on the Website of the Council of Representatives. NGOs should have access to updated versions of draft laws, in order to present their input. This should always take place before the First Reading.
2. The legislative calendar and agenda should be placed on the Website of the Council of Representatives. To provide meaningful expertise and input, NGOs require information concerning the general legislative program and the exact calendar for handling specific draft laws (including the dates of hearings and the identity of responsible parties).

#### **B. Committee Procedures at the Council of Representatives**

1. Communication between NGOs and Committees should be registered and tracked. NGOs should receive responses to their written recommendations and petitions concerning draft laws. Submissions and responses should be documented and archived, along with information concerning how the recommendations were handled and reviewed.
2. Committees should include a wide range of NGOs in the legislative drafting process. The right to participate in legislative drafting should be extended to all NGOs, not only those which have personal contacts inside the Council of Representatives. Also, Committees should overlook technical issues relating to NGO registration and status, so bureaucratic procedures at the Ministry of Civil Society do not create barriers to participation.
3. There should be a focal point for receiving input from NGOs. This includes an E-mail address and a “hot line” for direct communications from NGOs concerning draft laws, to answer requests for information, and ensure that input into the legislative drafting process is properly handled, documented, and placed on a Website. The role and

activities of the Committee on Civil Society Organizations in this regard should be strengthened.

4. Committees should resist pressure from the Executive Branch concerning their work. The Executive Branch should not be allowed to get involved in procedural aspects of draft laws before the Council of Representatives.
5. When Committees or Members initiate laws, they should include NGOs in Working Group activities. In addition, the Council of Representatives should informally encourage the Executive Branch to follow this best practice.
6. When Committees or Members initiate laws, they should include NGOs in policy making. Outside expertise should be used to develop policy and design laws.
7. Committee Hearings and Plenary Sessions considering draft laws should be open to NGOs. While addressing security issues, the Council of Representatives should open its work and make it accessible to NGOs interested in draft laws. Committees should make it easier for NGOs to enter the Council building, work with Members, and attend hearings.
8. Committee Procedures for Open Legislative Drafting Processes should be specified in formal documents, such as the Parliamentary By-laws or operational manuals. Procedures for open legislative drafting should be documented and implemented.

### **C. Outreach**

1. It is important for the Council of Representatives to engage the media in information dissemination. Newspapers, television channels, radio, and other media should be utilized for publishing the calendar and schedule of legislative activities, publishing important draft laws, and promoting public awareness.
2. It is necessary for the Council of Representatives to expand media operations to include regular interactions with NGOs. Media professionals should maintain regular contacts with NGOs, and broadcast points of interest to NGOs on a television channel.
3. Participation in the legislative drafting process by NGOs outside of Baghdad should be regularized and facilitated. Regional offices in the Governates should be utilized for providing input and organizing this purpose. Liaison points for providing input into the legislative drafting process could be established.
4. Video conferencing services should facilitate NGO input concerning draft laws. They should be used to hold virtual meetings, without travel costs or security concerns.

### **D. Information Technology**

1. It is important for the Council of Representatives to start planning for Electronic Governance. This will enhance information management and dissemination, facilitate input from NGOs, and improve the quality of laws.
2. The Council of Representatives needs to upgrade its information and communications technology, to carry out the information management and outreach activities identified above. This includes an electronic calendaring system, an electronic system for tracking draft laws, Website facilities for accessing draft laws, website pages that specifically serve the interests of NGOs, and videoconferencing capacity.

**III. Conclusion:** By following these recommendations, the Council of Representatives can open the legislative drafting process to expertise from NGOs, and thereby improve the quality of laws.