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Briefing Paper:
Iraq's New "Accountability and Justice" Law. [1]

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1. Summary

On January 12, 2008, the Iraqi parliament passed the "Law of the Supreme National Commission for Accountability and Justice." The new law replaces the earlier framework governing Iraq's De-Ba'athification policies, and is the culmination of an epic struggle between De-Ba'athification opponents and supporters lasting more than eighteen months. Pressures for reform were exerted by some Sunni political blocs and the United States Government. Opponents of reform included parliamentary supporters of political cleric Muqtada al-Sadr and the Higher National De-Ba'athification Commission (HNDBC), the body that has overseen Iraqi De-ba'athification measures to date.

The new law is not the major change that reformers had hoped. It essentially preserves the previous De-ba'athification system and extends its reach to a number of organizations not previously affected, including the Iraqi judiciary. The law also preserves the controversial Higher National De-Ba'athification Commission (HNDBC), which will be renamed rather than dissolved. Some positive changes have been made, however, mainly to do with clarification of pension rights and the level of membership at which dismissal and reinstatement procedures are to be applied. One other major development is a new requirement to dismiss some former employees of Iraq's notorious intelligence and security agencies from government service. This is likely to complicate greatly political reception of the new law.

The International Center for Transitional Justice (ICTJ) has monitored De-Ba'athification issues closely since 2003. (For more information about the Center, see www.ictj.org.) The ICTJ wrote to senior Iraqi leaders in December 2007, alerting them to concerns of potential flaws in the new law. The text approved in January 2008 differs from earlier drafts in several important aspects, most particularly because it does not dissolve the HNDBC. This and several other changes may have been the political price exerted by Sadrist parliamentarians for the law's passage.

This document is intended to provide a short summary and preliminary analysis of key aspects of the new Accountability and Justice Law. It points to some improvements, such as the expansion and clarification of pension rights, reinstatement rights, the creation of an independent appeals mechanism, and the introduction of an element of individual responsibility. It also notes continued major shortcomings. The new law continues a system that is largely based on guilt by association and will continue without any time limit. It also introduces provisions that violate the independence of Iraq's judiciary, and, as mentioned above, may strongly and quickly impact key ministries such as the Ministry of Interior and Defense. Some of the law's impact will depend upon who is appointed to the new Commission and selected to lead it, as well as on the new Commission's procedures, regulations, and methods of work. It is vital policymakers act to maximize the possibility for positive change in these areas, and implement the recommendations for action contained in section 7 of this document. Otherwise it is possible that political leaders will find that their months of negotiations have harmed rather than helped Iraqi efforts at state-building and national reconciliation.

2. What is Vetting and How Should it Be Done?

The ICTJ uses the term "vetting" to refer to a process of assessing an individual's integrity in order to determine his or her suitability for public employment. Integrity can be defined in many ways, but is used by the ICTJ to refer to a person's adherence to human rights standards and his or her financial propriety.

The ICTJ has conducted comparative research and accumulated extensive expertise on vetting in transitional societies.[2] ICTJ research reveals four key lessons for the design and implementation of vetting processes in transitional societies:

1) Vetting is merely one part of a larger process of institutional reform. Vetting processes generally need to be accompanied by, among others, reform of selection, appointment, promotion, disciplinary and dismissal procedures in order to be effective and sustainable;

2) Vetting is legally challenging and easily manipulated. International law in this area is not well-developed, but vetting processes raise very peculiar fairness questions, and generally takes place in uncertain settings. In order to avoid arbitrary and unfair proceedings it is vital that vetting processes include basic procedural guarantees and be based on individual responsibility rather than assumptions of collective guilt;

3) Vetting is very sensitive politically because it affects access to and distribution of power, resources and privileges. For this reason the system adopted must be transparent, coherent, and protected from manipulation;

4) Vetting is operationally complex, resource-intensive, and takes place in contexts in which there is strong competition over scarce resources. The vetting system chosen should have clear priorities, be practical to implement, and subject to a clear time limit.

While vetting can make an important contribution to overcoming an abusive past and building an effective public service of integrity, it is only one of many necessary steps: expectations of vetting programs should not be unrealistically great. This is a particular problem in Iraq, where public expectations of De-ba'athification have been extremely high – partly because of lack of other high-profile transitional justice measures.

[2] The ICTJ recently published an edited volume that includes nine case studies and several chapters on cross-cutting themes. It has devised operational guidelines in designing vetting processes, and is advising a number of vetting-related projects on the ground. See in particular A. Mayer-Rieckh and P. De Greiff (Eds) *Justice As Prevention: Vetting Public Employees in Transitional Societies*, Social Science Research Council, New York 2007.

3. Iraq's Ba'ath Party

Members of the Iraqi branch of the Arab Socialist Renaissance Party, commonly known as the Ba'ath Party, ruled Iraq from 1968-2003. From the moment the party assumed power, its elaborate apparatus grew in parallel to, and later overtook, the normal institutions of state. The inner workings of the party were and remain secret, but Ba'ath Party members were often highly visible in their own communities, and were used as informers and to enforce extra-judicial detentions and penalties. Membership was originally highly restricted, but rules were relaxed significantly in the 1990s as the regime sought to bolster its stability and the party's membership is reported to have expanded greatly. Certain levels of membership entitled individuals to extra allowances and privileges that could make a real difference to a person's economic wellbeing. Party membership was also reportedly a condition of employment in some professions, and occasionally conferred to honor Iraqis for other reasons, as was the case for some Iraqi prisoners of war from the Iran-Iraq war. To date, there is no reliable information in the public domain about the party's structure, membership, or the duties that different levels of membership involved. Unlike post World War II Germany, the party's membership lists have never been found.

A diagram of the levels of Ba'ath Party membership is contained on page 15 of this document.

4. Iraq's De-ba'athification System 2003-2008

De-ba'athification is the name given to a number of processes initiated by the Coalition Provisional Authority (CPA) shortly after the fall of Iraq's Ba'athist regime. One was the complete dissolution of the Iraqi army as well as certain organizations (mostly security-related) that were either notorious for their role in enforcing Ba'ath Party rule, or whose resources might offer the party a means to return to power. These organizations included the Iraqi army, the intelligence services, the Olympic committee and others, dissolved by CPA order in May 2003.[3]

The other process was the dismissal of many thousands of civil service employees from their positions. This process was initiated by the Coalition Provisional Authority,[4] but later continued and was controlled by Iraq's Higher National De-ba'athification Commission (HNDBC). The dismissal procedures involved two categories of persons:

- All individuals in highest-level management positions (level of director general and above), regardless of the level of their party membership.
- All individuals who were members of the top four ranks of Iraqi Ba'ath party membership, regardless of the level of their civil service position.[5]

Individuals were not dismissed on the basis of individual deeds or other measures of integrity, but on the basis of their party rank. The assumption underpinning De-ba'athification procedures was that the elite of the Ba'ath party could not have achieved their level without committing acts

[3] Coalition Provisional Authority Order Number 2: Dissolution of Entities, CPA/ORD/23 May 2003/02
[4] Coalition Provisional Authority Order Number 1: De-Ba'athification of Iraqi Society. CPA/ORD/16 May 2003/01
[5] The CPA's characterization of senior party members was: Regional Command Member (*adw qutriyya*); Branch Member (*adw fara'*); Section Member (*adw shu'bah*); and Group Member (*adw firqa*). According to ICTJ research the characterization omitted one high level of party membership: Office Member *(adw maktab*), which was one level immediately above *adw fara'*.

that seriously violated human rights standards or were deeply corrupt. Some of those dismissed became eligible for civil service pensions – but they risked losing these if they appealed their dismissals. From the beginning there was a parallel but unclear process of exemption and reinstatement, influenced partly by technical and political needs of both the CPA and later the Iraqi government.

The CPA quickly lost control of De-ba'athification policy and implementation. Instead, the Iraqi Governing Council seized the initiative by creating the Higher National De-ba'athification Commission (HNDBC) in August 2003. Led by veteran politician Ahmed Chelabi, the Commission was widely criticized as secretive, all-powerful, and manipulative. The Iraqi government has at times supported its work, and at times opposed it. In addition to enforcing civil service dismissals, the HNDBC has also struck down electoral candidates and repeatedly intervened in judicial appointments at the Iraqi High Tribunal, including shortly before the release of verdicts in the *Dujail* case.[6]

De-ba'athification caused outrage and confusion amongst several constituencies. The decision to dissolve the Iraqi army has been widely criticized as a major trigger of the insurgency and a severe hindrance to improving security. Some Iraqis considered the policy as a form of collective punishment. Others were angered by an obvious impunity gap: hundreds of thousands of lower-level Ba'athists (many of whom may be guilty of abuses) retained their enviable civil service positions, and others who had been dismissed but were well-known abusers had not suffered any other penalty. By early 2007 De-ba'athification had become an important symbolic issue in political negotiations between Sunni and Shi'a factions, and the United States increasingly pressured both groups to agree on De-ba'athification reform. The result is the Accountability and Justice Law of January 12, 2008.

[6] The HNDBC sought to intervene in the Tribunal's judicial assignments from mid-2005, and actively intervened in judicial assignments related to the Dujail trial chamber and cassation chamber panels on at least three occasions, including one week before *Dujail* verdicts were released. For more information see Miranda Sissons and Ari Bassin "Was the *Dujail* Trial Fair?" in *The Journal of International Criminal Justice*, Volume 5 2007, pp 272-286.

5. Major Differences in the New System: Overview

Iraq's De-ba'athification policies were previously set out in a confusing mix of orders from the Coalition Provisional Authority, the Iraqi Governing Council, and HNDBC regulations. In addition, HNDBC practices were highly opaque. The new law establishes a clearer legal framework for dismissals and reinstatements, which may aid transparency.

It is clear, however, that the new law is a major victory for the Higher National De-ba'athification Commission and opponents of De-ba'athification reform. The new law gives the Higher National De-ba'athification Commission a new name, but preserves much of the old system. The new Supreme Commission for Accountability and Justice will have the same staff and much of the same structure as its predecessor. Its main task will be to implement De-ba'athification processes very similar to those implemented in Iraq from 2003 – 2007 – except that the Commission's powers have now been strengthened, its reach has been extended, and some of the target groups affected have changed.

There are five main differences between the new system of De-ba'athification and the old – at least on paper. Each is summarized briefly below. These and other changes discussed in greater detail in section 6.

1) Individuals who were at the level of *firqa* (group) member are now permitted to return government service. (Counting in descending order from the highest level of leadership, a *firqa* member was the sixth rank of party member.) This change is almost certainly a positive development, and will affect tens of thousands of people.

   There are two major exceptions, however:
   - *firqa* members who held the highest civil service positions may not return; and
   - *firqa* members who held or hold positions in certain sensitive ministries, the Supreme Judicial Council, and key leadership offices may not continue in or return to these positions.[7] Iraqi judges are already fearful that this exclusion may disproportionately affect the judiciary. Individuals dismissed from these institutions may work elsewhere in the civil service, however.

2) Another major difference is that most individuals dismissed are now eligible for pensions. This is also a positive development, and includes *shu'ba* members (one level above *firqa* members). Not eligible are individuals at the four highest levels of party membership (estimated to be some 1100 persons), former members of the notorious paramilitary units, the *Feda'iyeen Saddam*, and individuals proven to have been corrupt or committed crimes.

3) All former employees of Ba'ath-era security intelligence agencies must now be dismissed from government employment and pensioned off, regardless of whether they were party members. It is important to note that this affects individuals who worked at agencies notorious for their excesses and abuses, such as the secret police, the public security agency, the military intelligence service, and others. It does not apply to individuals who worked in the Ba'ath-era defense ministry, military or police forces. This change may be unpopular in some Sunni circles and is likely to complicate the law's

[7] These organizations include the President's Office, the Council of Ministers, the Parliamentary Speaker's Office, the Supreme Judicial Council, security ministries and agencies, and the Ministries of Foreign Affairs and Defense.

political reception, although it may also have a positive long-term impact on Iraq's security and intelligence practices. Because of the number of individuals involved, it may well create capacity problems at those institutions most heavily affected, such as the Ministry of Interior and Ministry of Defense.

4) The new law introduces a welcome element of individual responsibility into the De-ba'athification system. If an individual belongs to a category of membership that would benefit from the new law but is convicted by a court of having committed crimes or embezzled public funds, then he or she will forfeit their pension and/or return rights. The new Commission will have a public prosecutor's office to investigate alleged crimes: although the mechanism may be flawed (see below), it is possible that the creation of the prosecutor's office may mean that some party members who have committed crimes are more likely to be brought to justice.

5) Finally, the new system also attempts to create an independent appeals mechanism, called the Cassation Chamber. Individuals who have steps taken against them are able to appeal the Commission's decision to a panel of seven judges. Panel members will be nominated by the Supreme Judicial Council and, crucially, the panel will function as a part of Iraq's Cassation Court – it will not be housed in, or answerable to, the Commission. Under the old system there was no independent appeals mechanism, and individuals who appealed gave up their right to a pension, although HNDBC officials have told ICTJ that this provision was often waived on humanitarian grounds. In another welcome innovation, individuals to be dismissed are not immediately sacked from their positions, but are placed on paid leave until the cassation chamber has given a final decision.

There is no reliable information on the numbers of people who will be affected by the new law: for example, official estimates of the number of Iraqis who were *firqa* members range from 30,000 to 60,000 individuals, although a more common figure is roughly 38,000. Actual numbers of returns may be far less, however, because the HNDBC has undertaken a major wave of reinstatements since late 2006. Iraqi officials have reportedly stated that the new provisions affecting employees of the previous regime's security agencies will affect at least 7,000 individuals currently working in the Ministry of Interior and elsewhere.

6. The Accountability and Justice Law: Detail

What - The Commission:

- Reformist efforts aimed at dissolving the Higher National De-ba'athification Commission (HNDBC) have been defeated. The HNDBC is simply being renamed - to become the "Supreme National Commission for Accountability and Justice". (Articles 2 (First) and 28). This is a major and unfortunate change from the draft submitted to parliament in December 2007, which envisaged the immediate dissolution of the HNDBC after a separate new Accountability and Justice Commission was established.

- Efforts to set a time limit for De-ba'athification procedures were unsuccessful. The new Commission has no deadline by which to complete its work. (Articles Four (Fifth) A and Article Twenty-Five). This is another major difference from the draft law submitted to parliament in December, which had sought to bring procedures to an end within one year. Extraordinary dismissal and reinstatement procedures such as those used in De-ba'athification are always destabilizing and resource intensive. For this reason they cannot continue indefinitely and should always be subject to a clearly defined time period.

- Formal leadership structures have changed. Under the old system, the HNDBC was led by the Chairman of a committee that was appointed by the Iraqi Governing Council. Under the new law seven commissioners are to be nominated by the Council of Ministers, approved by parliament, and ratified by the Presidency Council. Commissioners will elect a Chairman, who will have powers equivalent to those of a government minister. Commissioners will vote on Commission decisions, which are to be decided by simple majority. In theory this will give individual commissioners the power to challenge or otherwise influence the actions of the Commission's Chairman. Unless there is a sharp departure from previous Iraqi practices, considerations of sectarian balance will likely determine the nomination of Commissioners and subsequent election of Chairman. If this is the case, it is probable that Commissioners will be unlikely to exert a significant influence over De-ba'athification processes.

- The Commission's powers of enforcement are more clearly specified, and an attempt has been made to strengthen them (Article 13). A wide range of government institutions now have an affirmative obligation to implement Commission decisions. Individuals who refuse to implement the Commission's decisions are now technically subject to criminal accountability, although the text lacks any reference to a specific provision of the penal code, and how such accountability might operate in practice is unclear. Under the former system the Commission lacked clearly-specified enforcement powers. It would notify Ministries of the employees who were to be dismissed and reinstated, and could order the Ministry of Finance to withhold their salary payments. The HNDBC experienced enforcement difficulties, but was also adept at using the lack of clarity to its political advantage.

- The law has notionally given the new Commission multiple aims, including dismissing employees, pursuing criminal accountability, preserving historical memory, helping victims obtain reparations, and safeguarding data (Article 3). This is a reflection of the huge expectations that many Iraqis have of De-ba'athification, as well as the need for

effective mechanisms to fulfill victims' claims to justice.[8] In reality, however, the law is almost totally concerned with the Commission's dismissal and reinstatement powers. While it is positive that issues such as preserving memory have not been forgotten, it would be impossible, and indeed undesirable, for any single organization to fulfill all the aims listed in this article. For example, it is particularly important that the Commission does not confuse the ordinary procedures of data collection with the far broader task of preserving historical memory (as is the case in Article Four (Fifth); Article Eighteen (Second) (G); and Article 24.) The task of documenting and preserving historical memory requires an entirely different set of resources, experts, and actions to the task of organizing sensitive personnel records for dismissal, reinstatement, and pension purposes. (See also the point on personal information, below.)

- The decisions of the old Commission will be considered valid on two conditions: if they complied with laws in force at the time, and do not contradict the provisions of the new law (Article Twenty). It is therefore likely that new Commission will be able to overturn previous decisions it considers in conflict with the new law.

Who – Those Dismissed or Reinstated

Three main groups of people are affected by the changes in the new law. The first is former party members at the *firqa* level, often translated as group members. This is a broad category that includes employees working in many institutions. The second is *shu'ba* members, former party members one rank higher than *firqa* member, often translated as section members. The third group affected is former employees of Ba'ath era security agencies:

1) *Firqa* Members

Under procedures introduced by the previous commission, all *firqa* level members were dismissed from their jobs – although many were reportedly exempted from dismissal or reinstated in the last eighteen months. The HNDBC has previously estimated there were some 38,000 *firqa* level members in Iraq in 2003. The new law permits former *firqa* members to return to work or continue in their current positions, with two exceptions (Article Six (Fifth)).

The first exception applies to *firqa* members who held the most senior bureaucratic positions (at the level Director General or above.) Any such individuals remaining in government service must be dismissed, and those already dismissed are not permitted to return to work. All, however, are entitled to pensions (Article Six (Second)).

The second exception applies to *firqa* members who worked in a select number of elite organizations, including the presidency council, the prime ministerial council, and parliamentary speaker's council, all of which include a number of other organizations and offices; the Supreme Judicial Council; and the ministries of foreign affairs and defense. These individuals may not continue employment but it appears they may be reassigned to

[8] While Iraq created some transitional justice institutions, such as the Iraqi High Tribunal or the two foundations intended to provide victim reparations, Iraq has not pursued a coordinated transitional justice strategy – nor has the government conducted effective outreach about the mechanisms that already exist. The majority of victims' expectations and claims for justice have not been met. A coordinated strategy would involve a process of public consultation and encompass actions related to reparations, prosecutions, truth-telling, institutional reform, and historical memory, sequenced and coordinated in such a manner that they reinforced but did not undermine one another. That is not currently the case.

civil service positions elsewhere (Article Six (Ninth)). The law does not state if they are entitled to pensions.

The clear legal entitlement to reinstatements is a welcome development, although in practice reinstatements have been occurring for at least the last fifteen months. It is also positive that the new law has clarified and expanded pension rights, with the exception of criminals and the corrupt. Under procedures introduced by the previous commission, *firqa* members had limited rights to appeal dismissal decisions, but risked losing pension entitlements if they did so.

The new restrictions on service in elite organizations, however, means that a number of powerful high level bureaucrats who had previously received exemptions from De-Ba'athification procedures or had been untouched by procedures may now be vulnerable to reassignment or dismissal. This will complicate the political reception of the law, and may create short-term capacity problems inside some key institutions.

Of particular concern is the new law's impact on the Iraqi judiciary. The new Commission's powers have been extended to include the Supreme Judicial Council, and all employees who were former *firqa*-level party members must be dismissed. (Article Thirteen (First) and Article Six (Sixth)). These provisions clearly violate the independence of the judiciary, which requires that procedures related to the qualification, appointment, and dismissal of judges operate without political interference by the executive branch and legislature. The Supreme Judicial Council had previously conducted its own "cleansing" process in 2005-7, and earlier measures had been been applied in 2003-4. Vetting measures that affect the judiciary should continue to be under judicial control. Iraq already suffers a shortage of judges and it is possible the new law may exacerbate matters further. The ICTJ will continue to research this important question.

*Firq*a members who return to service will not be allowed to occupy civil service posts at the level of Director General or District Leader and above.

2) Members Higher than *Firqa* Level

Any individuals formerly at the level of *shu'ba* member (one level above *firqa* member) who remain in government service must be dismissed immediately but are now entitled to pensions. The pension entitlement is a positive change. The HNDBC has previously estimated that some 7,000-8,000 Iraqis were *shu'ba* level members in 2003 – but it is not known what proportion of these worked as civil servants (Article Six (First)). Members holding ranks above the *shu'ba* level do not receive any benefits under the new law.

3) Former Employees of Ba'ath-era Security and Intelligence Agencies

Under the new law all former employees of the Ba'ath-era security and intelligence agencies who are still in government service are to be referred to retirement. (Article Six (Third)). Members of the notorious paramilitary group the *Feda'iyeen Saddam* are the exception: they have no pension rights (Article Six (Fourth)).

It is important to note that this affects individuals who worked at abusive agencies such as the secret police, the public security agency, the military intelligence service, and others. It does <u>not</u> apply to individuals who worked in the Ba'ath-era defense ministry, military or police forces. The new law represents a strengthening of measures against former security

service employees. They had been dismissed from service, but not prevented from re-employment. Previous HNDBC regulations had simply banned them from occupying senior bureaucratic positions.

The language that was finally adopted on this issue is stronger than that of earlier drafts, some of which would have allowed former security employees to seek employment in ministries other than defense, interior, foreign affairs, and finance. Iraqi officials have been cited as saying some 7,000 current employees of the Ministry of Interior are likely to be affected.

In addition to the three main groups discussed above, two smaller groups of people are also affected:

- First, individuals who held any form party membership at the time the coalition invasion commenced and who have since fled the country are not eligible for retirement benefits – this may affect genuine refugees as well as Ba'athists who fled for political reasons (Article Six (Seventh)). Likewise, individuals who held any form of party membership and were corrupt are barred from holding senior bureaucratic posts. (Article Six (Eighth); and
- Second, any individual who would otherwise benefit from the new law but is convicted of a crime or misuse of public funds will lose any rights to entitlement or pensions (Article Six (Tenth)).

The latter provision introduces a welcome element of individual responsibility into a system that otherwise continues to be based on group membership rather than individual wrongdoing. Such programs are often only partially effective because they use the wrong criteria to catch wrongdoers: they are too wide (dismissing innocents who were mere members but not involved in serious wrongdoing) and too narrow (failing to dismiss those abusers who were not members). They create resentment, are unfair, and lack credibility. It is important to note, also, that the acts of individuals reinstated or dismissed are not all investigated: instead, the Commission's public prosecutor will act to gather evidence about cases in which he or she receives information about alleged criminal activities (Article Eighteen (Second) A).

How – Due Process and Procedures

- In a major positive development, efforts have been made to introduce an independent appeals process, called a cassation process. Under the new law, individuals against whom the Commission has issued a decision can now appeal to an external independent appeals body made up of judges nominated by the Higher Judicial Council but approved by parliament. This is an innovation compared to the previous system, where appeals were made to an administrative body inside the HNDBC. (Article Two (Ninth)).

- In another welcome innovation, individuals to be dismissed are not immediately sacked from their positions, are placed on paid leave until the appeals process has taken place (Article 16). It is unlikely, however, that the appeals processes can take place within the sixty day limit that the new law prescribes – and setting such a limit may infringe on the independence of the judiciary (Article Seventeen).

- A prosecutor's office has been created inside the new Commission to investigate complaints of Ba'athist crimes, conduct relevant investigations, and initiate resulting legal proceedings. While it is positive that an element of individual responsibility has been created in the De-ba'athification process, the creation of the public prosecutor's office also has some worrying features. The prosecutor's office is part of the Commission and its Director-General answers to the Commission's Chairman, even though the prosecutors are technically on secondment (Article Eighteen (Second) A). In the past the HNDBC has used the media to smear individuals' reputations prior to undertaking any actions against them. Given these practices it is possible that the prosecutor's office may develop into a mechanism for conducting highly public smear campaigns prior to any formal judicial investigation. The ICTJ had previously urged Iraqi legislators to consult with the Supreme Council of the Judiciary in order to create an impartial and effective investigative mechanism. (Article One (Second) and Article Eighteen (Second) A).

- Despite the addition of an independent cassation body the law still lacks some important basic fairness guarantees, including in particular an individual's right to have knowledge of or access to their De-ba'athification file, the right to submit relevant materials to that file; and the right to contest dismissal or other decisions, including at a hearing rather than in purely written form.

- Exemptions/exceptional reinstatements will most likely become more difficult to obtain, as they must now be proposed by the Council of Ministers and approved by the Council of Representatives. This is likely to have positive and negative impacts. High level bureaucrats who previously received exemptions from De-ba'athification may become subject to dismissal. There are no clear criteria specified for exemptions/exceptional reinstatements, nor have there ever been. This lack of criteria may permit even notorious violators to be reappointed to their positions should they garner sufficient political support (Article Twelve).

- The sixty-day time limit set for individuals to apply to return to government service or receive their pensions is very short, and may be impractical. Eligible persons outside Iraq have ninety days.

- The law creates several mechanisms to collate, organize, and publish personal information about many thousands of individuals – but it does not impose any controls regarding access to this information. Opportunities for misuse, slander, and blackmail are rife, and countries such as Germany have suffered bitter controversy over access to personal data. It is vital that the new Commission put strict procedures in place to protect sensitive materials and information from misuse.

In general, Iraq still lacks well-designed selection, appointment, promotion, or disciplinary procedures that apply to all public positions based on merit and integrity. Such procedures would prevent individuals who have committed severe human rights violations from being appointed to government service, or provide for their dismissal if he or she already holds a government position. Such selection, appointment, promotion, and disciplinary procedures are vital for Iraq's future. Rather than concentrating purely on the past, it is vital that Iraqis begin to develop a forward-looking agenda to build strong, transparent and accountable public procedures and institutions.

7. Overall: The Bottom Line

Based on ICTJ's preliminary analysis, the new law contains a number of significant improvements compared to Iraq's existing De-ba'athification procedures. Many of the shortcomings of the previous system and Commission remain. Not least of these is the continued reliance on membership as opposed to individual deeds or other measures of integrity as the main criteria for dismissal. Additionally, some of the law's innovations – such as new focus on the judiciary or the introduction of an in-house prosecutor function – risk exacerbating these flaws, rather than improving them.

In the coming weeks the new law must be ratified by the Presidency Council, and be published in the official gazette. The next steps will be to choose the new Commissioners and elect the new Commission Chairman, who has thirty days to issue the Commission's new procedures and internal regulations. Public reaction to the new law has been muted, but controversy may increase once people have had a chance to absorb the law's contents and the new Commission takes its first steps towards implementation.

Some outcomes will depend on the Commission's new leadership and the new internal regulations it develops. It is possible that, if political will existed, the Commission could make major improvements in crucial areas such as the protection of confidential data, clarity of dismissal and reinstatement procedures, and in defining exemption criteria. It is also possible — though not likely—that the Commission might improve its transparency in dealing with other government institutions and wield its powers in a clearer and more predictable manner.

In other areas amendments to the law or other actions may be needed. The International Center for Transitional Justice strongly urges Iraqi legislators and future Commission leaders to address the following areas, including the need to:

a. Nominate Commissioners based on their professionalism, integrity, and fairness, and so build a new and more credible Commission leadership;

b. Set a firm time limit on dismissal and reinstatement efforts. Such procedures have a highly destabilizing effect and cannot go on forever;

c. Urgently consult with the Supreme Council of the Judiciary regarding the law's violation of judicial independence and possible impact on judicial capacity, and revise the law accordingly;

d. Remove areas not related to the dismissal/reinstatement of employees and tracing of funds from the purview of the Commission. The goals outlined in Article 3 are critically important, but impossible for a single organization to fulfill. In the case of reparations, other organizations already exist to fulfill them;

e. Establish a separate, independent and professional organization to preserve historical memory, and systematically uncover, reveal, and acknowledge the atrocities of the Ba'ath regime;

f. Amend the sixty days time limits for filing retirement and reinstatement requests as well the issuing of appeals decisions;

g. Define and publicize clear criteria and procedures for dismissals, reinstatement, and retirement processes in accordance with international fairness standards. Individuals subject to the process should: be informed of the specific accusations against them; have access to the file used to prepare those accusations, and to submit materials to it;

and have the right to contest the findings of the Commission in a hearing before an independent and impartial body, rather than through written submissions only. It is also a requirement that individuals be assessed according to known and reasonable criteria, rather than ad-hoc criteria that are continually adjusted according to political considerations.

h. Define and publicize clear criteria and guidelines for exemptions/exceptional reinstatements;

i. Set clear controls over Commission practices to prevent the misuse of sensitive data;

j. Require the Commission's reports to parliament be made public, and to include up to date statistical information on numbers and characteristics of individuals subjected to Commission procedures; and

k. Address victim desires and expectations by initiating a coordinated transitional justice strategy, rather than the current ad-hoc and low priority approach.

8. Chart of Ba'ath Party Membership Levels

The ICTJ has developed the following chart of Ba'ath Party membership levels based on field research from 2005-7 and academic sources.[9] The diagram below represents the classic hierarchy of Ba'ath Party ranks, in which potential members would have to undertake long periods of training and service before being accepted for membership.

Anecdotal evidence indicates that some of the lowest level categories of association were reportedly consolidated in the 1990s in keeping with the regime's policy of easing access to membership—but training and probationary periods were always required before a membership oath could be taken. Estimates of total party membership prior to 2003 are in the region of one and a half to two million members.

It is important to note that there are no standardized English translations of the Arabic terminology, which causes a great deal of analytic confusion. For this reason the ICTJ prefers to refer to party ranks with their Arabic names. The English terminology in this paper has been standardized to accord with the terminology in the ICTJ's provisional English translation of the Accountability and Justice Law, and that of Coalition Provisional Authority Order Number One.

Level in Party Hierarchy	**Rank - English Title**	**Rank - Arabic Title**
Highest level - symbolic only	National command member	Adw qiyada qawmiyya
Highest level of Iraqi leadership *(In Ba'ath terminology "region" referred to a country, and "nation" referred to the entire Arab world.)*	Regional command member	Adw qiyada qutriyya
Offices could be geographical or professional: e.g Office of Students. This level of membership was omitted from CPA orders.	Office member	Adw maktab
↑	Branch member	Adw fara'
	Section member	Adw shu'ba
The level from which most De-Ba'athification measures have been applied since 2003	Group member	Adw firqa
Actual membership commenced	Active member	Adw 'amil
	Trainee member	Adw mutadarib
↑	Candidate	Murashah lil adwiyya
	Advanced Partisan	Nasir mutaqadam
	Partisan	Nasir
Lowest level of association	Supporter	Muwayyid

[9] Hanna Batatu *The Old Social Classes and the Revolutionary Movements of Iraq: A Study of Iraq's Old Landed and Commercial Classes and of its Communists, Ba'thists, and Free Officers* (Princeton University Press, 1978; Saqi Books London 2004, pp. 44-748.