

Draft Law

In conformity with the provisions of the Constitution and in accordance with Article 7 First, Article 60 Second, Article 61 First and Article 73 Third and Article 135, and pursuant to what has been adopted by the Parliament and ratified by the Presidency Council, the following law has been enacted:

No. () of 2008

**(LAW OF THE SUPREME NATIONAL COMMISSION FOR
ACCOUNTABILITY AND JUSTICE)**

CHAPTER I

DEFINITIONS

Article 1

For the purposes of this law, the following terms shall have the meanings assigned to them hereunder:

- First: "The Commission": The Supreme National Commission for Accountability and Justice.
- Second: "The Commission Prosecutor": is in charge of supervising crime investigations and collecting evidence, as well as taking all necessary steps to uncover crimes
- Third: "The Cassation Chamber": is the competent body of the cassation court in charge of applying the law of The Supreme National Commission for Accountability and Justice.
- Fourth: "De-Ba'athification": The procedures taken by the Commission in accordance with the provisions of this Law in order to intellectually, administratively, politically, culturally and economically dismantle the Ba'ath Party system in Iraqi society , state institutions, and civil society institutions.
- Fifth: "Ba'ath Party": The Arab Ba'ath Socialist Party" which took power on 17/07/1968 and [was] prohibited by article (7) of the Iraqi constitution.
- Sixth: "Member": Any individual who joined the Ba'ath Party and gave an oath of allegiance to it.
- Seventh: "The defunct regime": The ruling regime in Iraq from 17 July, 1968 to 9 April, 2003.

- Eighth: “The security (repressive) agencies”: The following agencies during the the defunct regime: General Security [*al-amn al-‘aam*], Intelligence [*mukhabarat*], Special Security [*al-amn al-khas*], Special Guards [*al-hamayyat al-khassa*], National Security [*al-amn al-qawmy*], Military Security [*al-amn al-‘askary*], Military Intelligence [*al-istikhabarat al-askariyya*] and Feda’iyye Saddam.
- Ninth: “Collaborators of the regime”: are the members of the Ba’ath Party , the members of the Repressive Agencies, those cooperating with them, or those who benefited from the plunder of the wealth of the country; and were used by the defunct regime to kill, oppress and persecute people.
- Tenth: “Security ministries and agencies”: (Ministries of Defence, Interior and National Security, the Intelligence Agency and the National Security Advisor and all the other security agencies).

CHAPTER II ESTABLISHMENT AND OBJECTIVES

Article 2

- First: In accordance with this law, the designation Supreme National Commission for Accountability and Justice shall replace the designation Supreme National Council for De-Ba’athification. It shall be a financially and administratively independent body that has all the constitutional prerogatives and enjoys the same legal personality as the previous body. It is linked to the Council of Representatives and shall pursue its works in coordination with the judicial authority and the executive agencies.
- Second: The Commission is in charge of revealing those who are included in the procedures stipulated in Chapter IV of this Law.
- Third: The Chairperson of the Commission shall be responsible for the execution of its policies and tasks, and the supervision and follow up of its works. He shall have the right to adopt the necessary decisions, directives and instructions to enforce the work of the Commission and achieve its goals. The Chairperson shall practice all the powers vested in him and shall be at the rank of a minister. He shall be entitled to delegate part of his powers that can be delegated in accordance with the law to his deputy, who shall be at the level of a Deputy Minister.
- Fourth: The Commission shall be made up of seven politically and legally experienced members who will have the rank of Director General. The components of the Iraqi society should be represented in the Commission to ensure a balanced composition. This shall be conducted through a proposal from the Council of Ministers, a simple majority approval by the Council of the Representatives and ratification by the Presidency Council.

- Fifth: The Commission shall adopt its decisions in accordance with this law by a majority of four votes and decisions shall have immediate effect.
- Sixth: The Commission shall elect, from among its members, by a direct secret ballot, a Chairperson and a Deputy to be approved by absolute majority of the Council of Representatives.
- Seventh: The Council of Representatives by absolute majority may remove "its confidence" from the Chairperson of the Commission according to the constitutional mechanism.
- Eighth: Members of the Commission must:
- a- be an Iraqi citizen, legally competent and residing in Iraq;
 - b- hold a first university degree;
 - c- not be less than 35-year old;
 - d- not have been convicted of an offence "prejudicial to honour";
 - e- not be included in the De-Ba'athification procedures.
 - f- not be one of the collaborators of the defunct regime or proven to have enriched himself at the expense of public funds.
 - g- To be honest, of good reputation and integrity.
- Ninth: A cassation chamber shall be formed in the court of cassation called "The Cassation Chamber for Accountability and Justice," to be comprised of seven judges nominated by the Higher Judicial Council, ratified by the Council of Representatives. They shall be headed by the senior judge among them; its decisions shall be by a majority of four votes.
- Tenth: The Cassation Chamber shall consider all the claims filed by those who are subject to the stipulated procedures in this law.
- Eleventh: The Chamber's headquarters shall be in Baghdad, and the Chamber may open branches inside Iraq.

Article 3

The Commission shall aim to realize the following:

- First: Prevent the return of the Ba'ath Party to power or to the public life in Iraq whether in its ideas, culture, administration, policies or acts under any name.
- Second: Cleanse state institutions, mixed sector institutions, civil society institutions and Iraqi society from any shape or form of the Ba'ath party system.

- Third: Refer any member of the dissolved Ba'ath party and repressive agencies, who is incriminated through investigations of committing criminal acts against the Iraqi people, to the competent courts to be fairly dealt with.
- Fourth: Enable the victims of the dissolved Ba'ath party and the repressive agencies to claim compensation for the damages that have resulted from such crimes by referring to the competent authorities.
- Fifth: Participate in revealing the assets which were illegally seized by elements of the former regime whether inside or outside the country and return it back to the public treasury.
- Sixth: Serve the Iraqi memory by documenting all of the crimes and illegal practices committed by members of the Ba'ath party and its repressive agencies and provide a database regarding those elements in order to strengthen the future generations against falling into oppression, tyranny and repression.

CHAPTER THREE THE TASKS OF THE COMMISSION

Article 4

In order to achieve its goals, the Commission shall adopt the following tasks and means:

- First: Apply the provisions of this Law in accordance with the relevant provisions of the Constitution.
- Second: Submit evidence and documents available to the Commission concerning the crimes committed by the elements of the Ba'ath Party and its repressive agencies against the citizens to the Iraqi judiciary through the office of the Public Prosecutor.
- Third: Receive complaints from those affected as a result of practices and crimes committed by elements of the Ba'ath Party and repressive agencies, and to gather evidence and documents related to the aforementioned crimes and ensure follow-up.
- Fourth: Provide necessary recommendations and studies through coordination with the relevant bodies in order to amend or abolish legislations adopted by the dissolved regime which were specifically adopted for the benefit the elements of that regime excluding other segments of the Iraqi people.
- Fifth: Serve the historical memory by documenting the atrocities and suffering during the defunct regime in order to protect the coming generations from falling again in the clutches of tyranny and oppression and to disseminate the spirit of

coexistence, reconciliation, civic peace, justice, equality and responsible citizenship among Iraqis. It shall work particularly to achieve the following:

- a. Finalize the identification of individuals included in the De-Ba'athification procedures within the period of the Commission's work and to publish a list of the De-Ba'athification procedures stipulated in this Law. The list shall contain names of all individuals subject to these procedures indicating the rank of each and the date of issuing the relevant De-Ba'athification order. This list shall be kept in the dissolved Ba'ath Party archives.
- b. All files of the Dissolved Ba'ath Party shall be transferred to the Government in order to be kept until a permanent Iraqi archive is established pursuant to the law.
- c. To contribute to the developing of social and cultural programs that reaffirm political pluralism, tolerance and equality, and at the same time condemns the crimes and atrocities committed by the previous regime as well as the culture of one-party system, marginalization and exclusion.

Article 5

The Commission shall implement its decisions and directions through establishing a specific mechanism to implement its procedures that includes "investigating the identity", "written innocence" [ED: The Arabic text is itself unclear] and the commitment to refrain from resuming any party-related activity in any shape or form in accordance with the provisions of this Law.

CHAPTER FOUR "PROCEDURES"

Article 6

The Commission shall follow the following procedures against those who were members of the Ba'ath Party and the repressive agencies before 09/04/2003 in order to realize the goals of the Commission and accomplish its mission:

- First: Dismiss all employees who were at the rank of section member (*adw shu'ba*) and refer them to retirement in accordance with the Employment and Retirement Law.¹
- Second: All civil servants occupying any of the special levels (equivalent to or above Director General) who were at the rank of group member in the Ba'ath Party (*adw firqa*) shall be referred to retirement in accordance with the Employment and Retirement Law.

¹ Ed: The English terminology referring to Ba'ath Party levels of membership is in accordance with that used by Coalition Provisional Authority Order Number One: De-ba'athification of Iraqi Society. CPA/ORD/16 May 2003/01. We have preserved Arabic terminology in brackets for the convenience of the bilingual reader, as it is more exact.

- Third: End the service of all the members of the (repressive) security agencies and refer them to retirement in accordance with the Employment and Retirement Law.
- Fourth: Feda'iyee Saddam shall not be allowed to benefit from any pension/retirement rights that may arise from their service the mentioned agency.
- Fifth: All employees who did not occupy "special levels" posts and who were holding the rank of group member (????p ? (*adw firqa*) or below in the Ba'ath Party, shall be allowed to return to their previous departments or remain in their jobs.
- Sixth: Group members ?????p ? (*adw firqa*) shall not be allowed to return to service or remain in their service in the three leadership bodies [Ed: literally, "presidential bodies:" used to refer to the Presidency Office, the Prime Ministerial Office and associated institutions, and the Office of the Speaker of Parliament and associated institutions], the Supreme Judicial Council, security ministries and agencies, and the Ministries of Foreign Affairs, and Finance.
- Seventh: Pensions or grants shall not be paid to any person who was a member of the dissolved Ba'ath party after 3/20/2003, and was granted political or humanitarian asylum in any country.
- Eighth: Any one who occupied the rank of member and above in the Ba'ath party and enriched himself at the expense of public funds shall not be allowed to hold special levels posts, equivalent to and above Director General and Director of Administrative Units [Ed: technical term used to denote district leaders, mayors, and governors.]
- Ninth: All those not covered by the Employment and Retirement Law shall be assigned to work in government institutions except the three leadership bodies, ministries, security forces, and the foreign and finance ministries. Excepted from this [Ed: words missing, presumably "are those covered by"] paragraph 1 of the article above.
- Tenth: Anyone judicially proven to have committed crimes against the Iraqi People and gained wealth at the expense of public funds will lose all rights stated in the previous paragraphs

Article 7:

- First: All persons eligible for retirement under the provision of Article 6 of this law shall submit official requests to be referred to retirement during 60 days from date this law comes into force, for those who are inside Iraq, and 90 days for those who are abroad, otherwise their pension rights shall become null and void.
- Second: All person who are eligible under the provisions of Article 6 of this law for return to their jobs shall submit official requests to return to their jobs within 60 days from the date this law comes into force, for those who are inside Iraq, and 90 days

for those who are abroad, otherwise their rights of return to their jobs shall become null and void.

Article 8:

Any former member of the dissolved Ba'ath Party who benefited from this law and was later found by a judicial decision that he submitted false information, joined or returned to organizations of the banned parties, provided assistance or promoted these parties; shall be deprived of all the exceptions and rights and dismissed from service for dishonorable conduct. He shall be requested before the judiciary to reimburse all the entitlements and money that he received

Article 9

All the employment ranks, military ranks, decorations and titles enjoyed by the members of groups *furūq* (furūq), sections (*shu'ab*) and branches *furū'a* (furū'a) and the national and regional bureaus of the dissolved Ba'ath Party; shall be forfeited.

Article 10:

Any member (of any ranks) of the Ba'ath Party, the repressive agencies or the armed forces, who committed crimes against the Iraqi people or gained wealth at the expense of the public money, shall be referred to the court to be duly prosecuted for their crimes against the Iraqi population.

Article 11:

The dissolved Ba'ath party shall be prosecuted as a party and a system for committing crimes against the Iraqi people.

Article 12

The Council of Ministers has the right to consider and examine the exceptional cases of re-appointment for those who are covered by this law and in accordance with the requirements of the public interest, upon the request of the competent minister and in coordination with the Commission. The Council of Ministers shall take appropriate decisions on these cases which can only come into force after the approval of the Council of Representatives.

Article 13:

First: The three leadership bodies, the Supreme Judicial Council, the ministries, the departments which are not linked with a ministry, the independent bodies and all civil society organizations, shall be obliged to implement the decisions and instructions of the Commission established by this law.

Second: The official or competent public servant, who refuses to implement the decisions and instructions of the Commission, shall be subject to criminal accountability in accordance with the penal code.

Article 14:

The Public Prosecutor shall receive complaints regarding crimes attributed to the members of the Ba'ath Party, the repressive agencies and the "collaborators" of the defunct regime and initiate legal proceeding before the competent courts when probative evidence is available.

CHAPTER FIVE

(OBJECTIONS)

Article 15

All persons covered by the provisions of Article 6 of this law, the departments they have joined, the Governorate Council and the government of the province in which the department is located and the office of the public prosecutor of the Commission shall have the right to appeal against the decisions issued by the Commission before the Cassation Chamber within 30 days from the notification of the decision to the concerned person or the date on which he/she is considered notified, in accordance with the notification rules of the Code of Civil Procedure.

Article 16:

Civil servants subject to the procedures of Article 6 of this law by virtue of a decision issued by the Commission shall be considered on a normal leave with full pay during the period in which they are entitled to submit an appeal and until the final decision of the Cassation Chamber in accordance with Article 17 of this Law.

Article 17:

The Cassation Chamber shall issue its final decision on the appeal it receives within a period of sixty 60 days. The decisions shall be final and definitive.

**CHAPTER SIX
COMMISSION STRUCTURE**

Article 18:

First: The following Departments are attached to the Chairperson of the Commission:

- 1) **Office of the Chairperson of the Commission:** Shall be run by an employee with the title of Director who shall organize the correspondence, of the Chairperson, his/her appointments and meetings in addition to any other duties assigned by the Chairperson of the Commission.

- 2) **Deputy Chair of the Commission**: is a special level staff with a Deputy Minister level.

Second: The Commission's Departments: Each Department of the Commission shall be chaired by a Director General and consists of:

- a. **The Public Prosecutor's Office**: it consists of three prosecutors, seconded to serve in the Commission by the Higher Judicial Council, known for their integrity, competence and good reputation, and not included in the procedures set in Article 6 of this Law. This Office shall receive complaints on crimes allegedly committed by members of the Ba'ath Party and its repressive agencies; collect relevant evidences and initiate legal proceedings before the competent courts.
- b. **The Legal Department**: Shall be headed by a Director General with at least a primary university degree in law and no less than ten year of experience. This Departments shall receive information on those individuals included in De-Ba'athification procedures and the crimes they committed, conduct investigations about them and submit relevant recommendations; review return to work requests, exemption requests and retirement requests; represent the Commission before the competent courts; notify the Commission's decisions; review the legislations enacted by the ousted regime for the particular benefit of its members and elements and submit the relevant proposals and recommendations in this respect to ensure justice and equality.
- c. **The Follow up and Implementation Department**: Shall be headed by a Director General with at least a primary university degree and no less than ten year experience. This Department shall follow up and implement the decisions of the De-Ba'athification Commission.
- d. **The IT Department**: Shall be headed by a Director General with at least a primary university degree and no less than ten year experience. This Department shall collect and archive available information on members of the Ba'ath Party and its repressive agencies as well as available information on the crimes they committed against the people and the money they illegally usurped. It shall further provide the relevant authorities with this information for appropriate action.
- e. **The Administration and Finance Department**: Shall be headed by a Director General with at least a primary university degree and no less than ten year experience. This Department shall provide administrative services to the staff. It shall further be responsible for finances, annual budget preparation and financial report of the Commission.
- f. **Financial and Economic Legal Proceedings Department**: Shall be headed by a Director General with at least a primary university degree and no less than ten year experience. This Department shall prepare statistics and assessment of the financial and economic assets seized by elements of the ousted regime; to locate

such properties and assets inside and outside Iraq; and submit recommendations to the relevant authorities for the purpose of recovery.

- g. **Information/Communication Department:** Shall be headed by a Director General with at least a primary university degree and no less than ten year experience. This Department shall cover and highlight the importance of the activities of the Commission and disseminate it through the media; contribute to the development of social and educational programs that promote political pluralism, tolerance and equality and at the same time condemn the crimes and atrocities committed by the ousted regime as well as the culture of the one-party system, marginalization and exclusion.
- h. **Department of the General Inspector:** Shall be headed by a Director General with at least a primary university degree and no less than ten years' experience. It will monitor the Commission's work.

CHAPTER SEVEN GENERAL AND FINAL PROVISIONS

Article 19:

The Commission shall submit a quarterly report on its activities and measures it has taken to the Council of Representatives.

Article 20:

Measures taken by the Commission prior to the date of coming into force of this Law shall be considered as valid as long as they comply with the provisions of the laws in force when they were taken and do not violate the provisions of this Law.

Article 21:

The provisions of the Civil Service Law No. 24 of 1960 (Amended) and the provisions of State Employee Disciplinary Law No. 14 of 1991 shall apply to the Commission employees.

Article 22:

The Commission Staff shall be paid hazard allowances equal to fifty (50) percent of their monthly salaries.

Article 23

The Commission shall publicize through the media the names of those covered by the procedures of Article 6 of this law, their Party ranks, employment posts and the date the measures [of Article 6] were adopted.

Article 24

The Commission shall establish an archive that includes all those covered by the procedures of Article 6 of this law, their Party ranks, employment posts, and dates the measures were adopted. The mentioned archive shall be referred to the Council of Ministers to be circulated to all ministries, departments not attached to a ministry, independent institutions and civil society organizations.

Article 25

The Council of Representatives will dissolve the Commission upon the completion of its task by an absolute majority vote in accordance with the Constitution. The secondment of judges and public prosecutors shall end and they shall return to work in the Higher Judicial Council unless they reach the age of retirement prior to the dissolution of the Commission. The members of the Commission shall be transferred, at the same level and with the same job titles, to the staff of the three leadership bodies, the ministries, the security agencies, the Ministry of Justice or the Ministry of Finance, they shall continue to enjoy their financial allocations which they used to receive in the institution one year after the transfer.

Article 26

The Chair of the Commission and the General Directors working in it shall be referred to the ministries or institutions as needed or they shall be referred to retirement according to their service in the departments of the State.

Article 27

The Chair of the Commission shall issue the policies and procedures rules that regulate the work in the Commission within 30 days of assuming his position.

Article 28

The designation "Supreme National Commission for Accountability and Justice" shall replace the designation "Supreme National Council for De-Ba'athification".

Article 29

Laws that contradict with the provisions of this law shall not be applied.

Article 30

This law shall come into force as of the date of its publication in the Official Gazette.

Necessitating Reasons/Justification of the Law

This law was legislated due to:

- The suffering of Iraqis over 35 years during which they were subjected to the worst kinds of persecution, oppression and deprivation on the hands of the most totalitarian, aggressive and criminal of regimes.
- The major role that was played by the Ba'athist leadership of that regime and those who worked in its repressive agencies in oppressing the Iraqi people and attempting to weaken their sense of citizenship and national identity.
- Taking into consideration the evident sense of serious concern by the Iraqis towards the risk that is represented by the continuation of the participation of the dissolved Ba'ath party and its elements in public life.
- Awareness of the pressing necessity to refer elements of the dissolved party who are proved to have committed crimes against Iraq and its people to the relevant courts to receive their fair punishment.
- Enable those affected by the Ba'ath party and the repressive agencies to go to relevant courts to seek compensation for damages that were inflicted upon them as a result of illegal practices by the Party and the mentioned authorities.
- Take into consideration the existence of bogus memberships in the Party of some segments of the populations who do not believe in the Ba'ath dictatorial ideas and its oppressive practices.
- Continue the procedures taken by the Supreme National Independent Commission for De-Ba'athification to cleanse the Iraqi society and the State institutions from the dissolved Ba'ath party system.
- The desire to document intricate details about groups covered by the De-Ba'athification procedures in order to establish a database that would constitute a historic reference to the crimes and atrocities of the dissolved party and Saddam's regime and the extent of the suffering of the people as a result of the practices of the mentioned party.

THIS LAW WAS ENACTED