



COALITION PROVISIONAL AUTHORITY
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8 December 2003

FOR: CPA Senior Advisors
CPA Governance Teams
CJTF-7

FROM: THE ADMINISTRATOR

SUBJECT: De-Ba'athification: An Iraqi Process

Attached is CPA Memorandum Number 7, which delegates authority to the Iraqi Governing Council and any entity it designates to establish and implement de-Ba'athification for all Iraqi government employees, consistent with CPA Order Number One. Order Number One removed from their positions and banned from future employment in the public sector full members of the Ba'ath Party holding ranks of Firqah and above; it also prohibited anyone holding the lesser position of full (amil) party member in the Ba'ath Party from holding a job in the top three tiers of any ministry.

De-ba'athification is now an Iraqi process. CPA civilians and Coalition Military personnel are no longer responsible for de-ba'athification. You should therefore immediately cease any involvement in de-Ba'athification.

The Governing Council is in the process of developing procedures necessary to fully implement its authority. In this interim period before such procedures are formulated and publicized, you should refer questioners to the relevant ministry where the individual worked or to the Governing Council.

Memorandum No. 7 ratifies the Governing Council's decision of September 14, to the extent that it is consistent with CPA Legal Order No. 1, which called for all Firqah and above government employees to be immediately dismissed with an option to appeal at a later time.

Consultations: The Governing Council shall coordinate with the Ministry of Finance before taking actions on matters with fiscal consequences, and with the CPA on actions where the number and/or concentration of Iraqi citizens affected may raise security concerns.

Appeals: All dismissed employees will have basic due process rights of written dismissal notification, an opportunity to respond to the factual allegations upon which the dismissal is based, and a two-step process of appeals. At the local level, ministers will form local de-

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ba'athification committees. Those denied reinstatement can then appeal to the Governing Council's Higher National De-Ba'athification Commission.

Reinstatement: Reinstated employees will receive back pay, retroactive to the date they were dismissed.

Exemptions: Exemptions previously granted by CPA Administrator Bremer, and only those granted by CPA Administrator Bremer, will remain in effect unless and until termination on a case-by-case basis by the Governing Council's Higher National de-Ba'athification Commission. After consultations with the Governing Council, Ambassador Bremer reserves the right to reinstate employees removed under de-Ba'athification; he will only exercise this right in unusual circumstances.

Special Cases: Allows the Governing Council to establish procedures for exempting groups, such as POWs from the Iran-Iraq War, who acquired high-level Ba'ath Party status by default.

Property and Assets: Allows the Governing Council to seize and manage Ba'ath Party assets. (To date, the GC has issued no instructions on how this process will be implemented.)

Effective date: November 5, 2003.

FAQs:

Pensions: To date, decisions on whether to award pensions have been unevenly implemented in the ministries. The Governing Council has not yet decided if/how they will award pensions to employees who have lost their jobs through de-Ba'athification.

Reinstatement Order: On September 29, the Governing Council issued Decision No.51, which called for the immediate reinstatement of all those government employees who had lost their jobs for political reasons under Saddam. The GC has not yet developed procedures to implement this order. The order was put on hold in a GC press statement, which said that ministries should make a list of petitioners and the issue would be reconsidered at a later time.

Who is in charge: This is a national policy, and Governing Council decisions on de-Ba'athification take precedence over the wishes of mayors, governors or other local officials. The relevant ministers, through their directorates general, are leading this process. The GC, however, is required to operate in accordance with the procedures laid out in the legal order, including those to provide due process and those to ensure adequate consultation with the CPA before decisions having financial or security implications are taken.

COALITION PROVISIONAL AUTHORITY MEMORANDUM NUMBER 7

**DELEGATION OF AUTHORITY
UNDER DE-BAATHIFICATION ORDER NO. 1
(CPA/ORD/16 May 2003/01)**

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 (2003),

Recognizing that the Iraqi people have suffered large scale human rights abuses and deprivations over many years at the hands of the Baath Party,

Noting the grave concern of Iraqi society regarding the threat posed by the continuation of Baath Party participation in the public sector, including in particular the education system,

Observing that under the prior regime some Iraqis may have become affiliated with the Baath Party for reasons not primarily related to their ideological beliefs,

Recognizing that organizing and expediting de-Baathification is an urgent task that is necessary to put Iraq on the path towards reconstruction and renewal,

Acknowledging that the Governing Council has created a Higher National De-Baathification Commission in order to contribute to a secure, stable environment that will sustain freedom and democracy for the Iraqi people,

Recalling the steps already taken in CPA Order Number 1, De-Baathification of Iraqi Society (CPA/ORD/16 May 2003/01),

I hereby promulgate the following:

**Section 1
Delegation of Authority**

- 1) The Governing Council is hereby empowered to carry out the de-Baathification of Iraqi society consistent with CPA Order No. 1, De-Baathification of Iraqi Society (CPA/ORD/16 May 2003/01). To the extent consistent with CPA Order No. 1 (CPA/ORD/16 May 2003/01), Decisions 1 and 2 of the Higher National De-Baathification Commission, made on September 14, 2003, are hereby ratified. Notwithstanding such ratification, any action taken by the Administrator pursuant to Section 1(6) of CPA Order No. 1 (CPA/ORD/16 May 2003/01) shall remain in effect unless and until terminated on a case-by-case basis by the Higher National De-Baathification Commission.

- 2) The Governing Council is further authorized to seize and manage property and assets of the Baath Party, consistent with CPA Order No. 4, Management of Property and Assets of the Iraqi Baath Party, May 25, 2003. The Governing Council shall consult with the CPA in developing procedures to ensure that such property is seized and managed fairly and judiciously.

Section 2 Terms and Conditions

The authority delegated under Section 1 of this Memorandum shall be subject to the following terms and conditions:

- 1) The Governing Council may further delegate the authority conferred under Section 1 of this Memorandum to the Higher National De-Baathification Commission or other organization established by the Governing Council.
- 2) To the extent practicable, factual determinations regarding an Iraqi citizen's affiliation with the Baath Party, or involvement with the Special Security, National Security, Special Protection for the Presidency, Military Intelligence, Feda'iyeen Saddam, General Security or Mukhabarat, should be made at the governorate (or equivalent) level of government or below, by individuals selected on the basis of their ability to analyze information objectively and render fair and judicious determinations. These factual determinations shall be made in accordance with policies and procedures to be established by the Governing Council for uniform application throughout Iraq.
- 3) The Governing Council, in coordination with the concerned Minister or equivalent official, may establish special de-Baathification procedures for application to particular professions or groups of individuals. Such procedures may concern the process of making factual determinations and the consequences of such determinations. Consistent with this paragraph, the Governing Council shall authorize the continued employment of current or recently discharged Iraqi civil servants who were:
 - a) held as a POW by Iran during the period September 4, 1980 through June 1, 2003;
 - b) released and repatriated to Iraq by Iran after being held in that status; and
 - c) granted 'Udw Firqah' status following his or her release and repatriation to Iraq and because of his or her status as a former POW.

An Iraqi civil servant's eligibility for an exception to the de-Baathification policy under this provision may be established through official documentation issued by the International Committee of the Red Cross, or other independent organization or government organization. If the Higher National De-Baathification Commission

determines that credible information establishes that an Iraqi civil servant who seeks or has been granted an exception under this delegation of authority was promoted to the rank of 'Udw Firqah' for reasons other than his or her status as a former POW, or that his or her involvement in the Baath Party was incompatible with continued service as a civil servant, the Higher National De-Baathification Commission may deny or at any time rescind an exception for that individual

- 4) Any Iraqi citizen who is dismissed from his or her position of employment as a result of the exercise of the authority conferred herein shall be entitled to:
 - a) advance written notification explaining the grounds for dismissal and the procedures for appealing that dismissal;
 - b) a reasonable opportunity to respond to the notification in writing or in person and present evidence; and
 - c) a reasonable opportunity to appeal immediately any adverse decision, in writing or in person, to a fair and impartial entity independent of the individual or organization that rendered the adverse decision, which shall promptly render a written decision in the case.
- 5) In any case in which a dismissed employee's appeal is denied, the dismissed employee shall have the right to request further review of the matter by the Higher National De-Baathification Commission or a national committee established by the Higher National De-Baathification Commission for this purpose.
- 6) If an appeal results in an employee's reinstatement, the employee shall be paid back pay from the date of dismissal to the date of reinstatement.
- 7) Following consultation with the Governing Council, the Administrator may reinstate an employee if he concludes that it is in the interests of the Iraqi people or that failing to reinstate the employee would be fundamentally unfair.
- 8) The Governing Council shall coordinate with the Minister of Finance before exercising the authority conferred under this Memorandum in a manner that will significantly affect the national budget of Iraq.
- 9) The Governing Council shall consult with the Administrator, or his designee, with respect to the use of de-Baathification procedures in any area identified by the Administrator where the number and/or concentration of Iraqi citizens affected by the procedures may raise security concerns.
- 10) The Higher National De-Baathification Commission shall provide monthly reports to the Administrator of the CPA and the Governing Council describing the manner in which the authority delegated herein has been exercised. Such reports shall include the names and

positions of any Iraqi citizen dismissed from a position of employment as a result of this delegation, and the names of any Iraqi citizens hired to replace a dismissed employee.

**Section 3
Transition Provisions**

CPA Order Number 5, Establishment of the Iraqi De-Baathification Council (CPA/ORD/25 May 2003/05) is hereby rescinded.

**Section 4
Effective Date**

This Memorandum shall enter into force on the date of signature.

**L. Paul Bremer, Administrator
Coalition Provisional Authority**