

*A Compilation of Arab Constitutions
and a Comparative Study of International
Human Rights Standards*

Introduction

Iraq now faces a historic moment in which the country should reflect on its legacy of authoritarian rule while envisioning a free democratic society based on a respect for fundamental human rights and the rule of law. The new constitution represents one of the foundational elements of this complex social and political process. In this way, the new constitution is an important opportunity for the nation to build on its unique heritage, unite its multiple ethnicities, and create the blueprint for future peace and stability.

The drafting process for the constitution is outlined in the Transitional Administration Law (TAL). The drafting is to take place after the election of the National Assembly and the Presidential Council (consisting of a President and two Vice-Presidents) and the appointment of the Prime Minister and the Cabinet. The National Assembly forms a constitutional drafting committee that is charged with presenting a draft of the new constitution by the end of August 2005. By the end of the year, the constitution should be affirmed by the Iraqi people, signaling the end of the transitional period.

Drafting a new Iraqi Constitution requires a thorough understanding of Iraq's rich constitutional history. This includes a careful reflection on the nation's successive constitutions from the Basic Law of 1925 through the Draft Constitution of 1990. It is also valuable to consider the constitutions of the other twenty-one Arab states as well as the relationship of all these foundational documents to international human rights standards.

Therefore, in an effort to assist the Iraqi people in the process of creating a new constitution, the International Human Rights Law Institute at DePaul University (IHRLI), the National Democratic Institute (NDI) and the

American Bar Association (ABA) have prepared a series of publications to support the vital process of drafting the new Iraqi Constitution. These publications include:

1. Iraqi Constitutional Studies Regarding Basic Principles for the New Iraqi Constitution;
2. A Compilation of Iraqi Constitutions and a Comparative Study of International Human Rights Standards;
3. A Compilation of Arab Constitutions and a Comparative Study of International Human Rights Standards; and
4. A Compilation of Legislative Laws and Regulations of Select Arab Legal Systems.

As a part of these series, IHRLI is also preparing two further publications, the first of which pertains to constitutional guarantees of public freedoms in the Arab World and the second relates to the protection of women's rights in the Iraq and Arab World.

Since 2003, IHRLI has, with funding from the US Agency for International Development (USAID), also conducted the Iraqi Legal Education Reform Project, which ranks among the earliest reconstruction programs in Iraq.

This project has concentrated on the following areas:

- Rule of Law and Good Governance
- Legal Curricula Reform
- Rebuilding and Equipping Libraries with the Latest Technologies
- Clinical and Practical Education Programs

As part of this project IHRLI also organized four seminars on subjects such as the new Iraqi Constitution, property claims, ethics of legal professions, and the implementation of principles of international criminal justice in Iraq. IHRLI also oversaw the rebuilding of the law libraries in Baghdad, Basra, and Suleimaniya Universities, as well as provided books, journals, computers and internet access.

In collaboration with the International Institute of Higher Studies in Criminal Sciences (ISIS) in Siracusa, Italy, IHRLI organized a series of training workshops for Iraqi jurists, law professors, and members of the Iraqi Judiciary.

To conclude, the staff at IHRLI hopes that these studies and projects prove to be valuable to the Iraqi people during this complex transitional moment. Finally, it is appropriate to recall the following verses from the Holy Quran:

“We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of Our Creation.”¹

“O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full Knowledge and is well-acquainted (with all things).”²

“And consult them in affairs (of moment). Then, when thou hast taken a decision, put thy trust in Allah. For Allah loves those who put their trust (in Him).”³

“Those who hearken to their Lord, and establish regular prayer; who (conduct) their affairs by mutual Consultation; who spend out of what We bestow on them for Sustenance”⁴

M. Cherif Bassiouni*

Professor of Law and President, International Human Rights Law Institute, DePaul University; President, International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy; Honorary President, International Association of Penal Law, Paris, France.

¹ Holy Quran, Surat al-Esra'a number 17, Aya number 70.

² Holy Quran, Surat al-Hujurat number 49, Aya number 13.

³ Holy Quran, Surat Al-Imran number 3, Aya number 159.

⁴ Holy Quran, Surat al-Shura number 42, Aya number 38.

* See also the following web pages, International Human Rights Law Institute, DePaul University www.iharli.org; International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy www.isisc.org ; International Association of

Summary of Contents

Many Arab constitutions are similar in their general approach. However, a number of significant discrepancies exist between different Arab constitutions corresponding to differences in the countries' respective national political systems. Thus, the constitutions of both the United Arab Emirates and Sudan enact a federalist system of government, the Tunisian constitution, on the other hand, defines a centralized system while Egypt's constitution features a republican system. Even among the constitutions of Arab monarchies discrepancies exist. For example, Jordan is a constitutional monarchy while Saudi Arabia's Basic Law defines a traditional hereditary monarchy.

Disparities also exist as to the constitutional amendment procedures, wherein some states amendments require conducting referendums or the consent of the legislature. In other states Heads of State are allowed to issue constitutional amendments through decrees.

The majority of Arab constitutions include extensive guarantees for civil rights and public freedoms, illustrative examples of which are the prohibition on discrimination, equality before the law, sanctity of the house and personal correspondence, as well as the rights to privacy, freedom of opinion, expression, thought, conscience, and religion, fair and public trial before an independent, competent and impartial tribunal, and intellectual property rights. Moreover, some Arab constitutions incorporated special provisions as guarantees of justice mirroring those appearing in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

It is also worth noting that while most Arab constitutions include references to the Islamic *Shari'a* Law, different nations have applied Islamic law in distinct ways. For example, the Basic Law of Saudi Arabia adopts the Holy Quran as its constitution with Royal decrees understood to be a practical application of this basic legal commitment. Egypt's constitution affirms that the *Shari'a* is the principal source of legislation, while other countries maintain that Islamic law is only a source of legislation. Still other countries, such as Libya have avoided the use of a

formal constitution, relying instead on the Green Book by Colonel Muammer Gaddafi and the subsequent 'popular authority' declaration as the foundation of legal practice and governance in the country.

Arab constitutions generally reflect the division of powers between the legislative, executive and judicial branches of government and support systems of checks and balances, such as judicial review.

While Arab constitutions are a relatively recent phenomenon, Arab constitutional thought is grounded in a rich legal and jurisprudential history resulting from the numerous civilizations emanating from this region, including from Mesopotamia, the Levant, Yemen, and the Nile Basin, in addition to the three monotheistic religions that were revealed in the Middle East. In fact, the first codified constitution in the Arab region was the Medina Statute in the first Hijra year which was contracted by Prophet Muhammad (PBUH) between immigrants from the Quraysh tribe and Al-Ansar, members of the Aws and Khazraj tribes, and local Jewish residents. This Statute represented a basic social contract that provided protection for a number of public freedoms including equality before the law, rule of law without discrimination, and freedom of religion.

Diversity in parliamentary practice and experience has also varied in Arab countries, depending on the respective dates of independence. Thus, Egypt's parliamentary experience commenced in the mid-1800's with the establishment by Muhammad Ali Pasha of the basis of modern governmental institutions. On the other hand, other Arab countries instituted parliamentary institutions in the late 1970's of the 20th century.

This publication presents a compilation of all Arab constitutions, followed by a comparative study written by Professor M. Cherif Bassiouni, entitled "Due Process within the Criminal Procedure: Comparative Study for the International, Regional, and

Constitutional Standards”. This article highlights basic due process protections within regional criminal procedures as analyzed in relation to international, regional, and general constitutional standards. The publication also includes a series of guiding principles regarding the basic rights enshrined in international human rights instruments prepared by Judge Mohamed Abd El-Aziz Gad El-Hak and Mr. Ahmed Fathy Khalifa, both legal researchers at IHRLI.

M. Cherif Bassiouni
June 18, 2005