

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.
5. Public Freedoms and Democracy

As a part of these series, IHRLI is also preparing a further publication relating 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 (ISISC) 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

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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.ihrli.org; International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy www.isisc.org ; International Association of Penal Law, Paris, France www.penal.org .

Summary of Contents

Recent years have seen growing demands for democratization in large parts of the world and especially in the Middle East. The world's leading political and economic powers continue to underscore the necessity of expanding freedom, ensuring equality and non-discrimination, and enhancing rule of law.

Numerous reform initiatives have originated in Arab countries which endeavor to promote democracy and development for Arab societies. Such initiatives include the Declaration of the Tunisia Summit of the League of Arab States and the Alexandria Conference on Reform Declaration—as well as the convening of many reform-oriented conferences throughout the Arab world, including those in Jordan, Qatar, and Yemen.

Notwithstanding this global spotlight, issues of democratic governance have remained largely undefined. Little has been said of the rights, obligations and duties incumbent upon states and individuals pursuant to the democratic process.

Through this book, the International Human Rights Law Institute at DePaul University College of Law attempts to define the rights and freedoms necessary for ensuring a democratic system of government. Articles commence with a study by Professor M. Cherif Bassiouni entitled "Basic Principles of Democracy." This is followed by a commentary by Dr. Abd El-aziz Salman, Moataz Abo El-ezz, and Nefert Shihab relating to "Human Rights and Public Freedoms in Arab Constitutions, Jurisprudence, Doctrine and the Islamic *Shari'a*". Finally, legal researcher Mohammed Helal presents a discussion on the relation between public freedoms and democracy, as well as a comparative study of Arab constitutional provisions and international human rights standards.