

# October 6, 2005: USCIRF Analysis of Proposed Iraqi Constitution: Ambiguities in Text Threaten Human Rights Protections

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Anne Johnson, Director of Communications, (202) 523-3240, ext. 27 WASHINGTON - As part of its ongoing work with U.S. policymakers and others involved in Iraq's political transition, the U.S. Commission on International Religious Freedom (USCIRF) has released its analysis of human rights provisions from Iraq's final draft permanent constitution, which is scheduled to be voted upon by the Iraqi people in a referendum on October 15, 2005. Iraq's final draft constitution incorporates positive provisions related to human rights protections and makes significant improvements over previous drafts. The Commission, however, finds that several provisions remain cause for concern. While the number of judges on the Federal Supreme Court and their mode of appointment will be established by a two-thirds vote of the members of Iraq's Council of Representatives, the constitution allows for the appointment to Iraq's highest court of experts in Islamic jurisprudence who may not have any training in civil law or other relevant subjects. "This provision in the draft increases the possibility of a court in which restrictions in the name of Islamic law will be permitted to limit fundamental freedoms, including the right of every Iraqi as an individual to freedom of thought, conscience, and religion or belief," said USCIRF Chair Michael Cromartie. Similar constitutional provisions allowing for the appointment of Islamic experts to the Supreme Court are found in Saudi Arabia, Iran, and Afghanistan. Appointing judges whose sole expertise is Islamic law to the Court threatens the constitution's human right protections, in turn threatening the fundamental rights of individual Muslims, members of religious minorities, non-religious individuals, and women, to dissent from state imposed religious orthodoxies. The Commission recommends that the U.S. government urge Iraq's Council of Representatives, after it is elected, to ensure that any enabling legislation concerning the appointment criteria for judges to the Federal Supreme Court not be based solely on an individual's training in Islamic jurisprudence, but rather should require, at a minimum, that all judges have adequate training in civil law. "Given the short amount of time left to educate Iraqi voters on the content of the draft constitution, much will depend upon the composition of Iraq's next government and assembly, and the direction these bodies will take with respect to implementing legislation, particularly with regard to the formation of Iraq's Federal Supreme Court. The United States and the international community therefore should launch an education campaign so that the Iraqi electorate will be better able to understand their rights and ascertain how political parties intend to reconcile the principles of Islam with Iraq's international human rights obligations," Cromartie noted. USCIRF has stressed repeatedly that the successful restoration of freedoms and building of democracy in Iraq would require, at a minimum, the inclusion of guarantees for every Iraqi of the right to freedom of religion or belief and other related human rights in Iraq's permanent constitution, in accordance with international standards which Iraq has pledged to uphold. According to a recent USCIRF study, Islam can coexist with guarantees protecting freedom of thought, conscience, and religion or belief. The Commission continues to stress that this fact must form the centerpiece of U.S. and international engagement on Iraq's political transition, including its permanent constitution. The Commission's analysis calls particular attention to the following provisions in the constitution: Article 2

First: Islam is the official religion of the State and it is a fundamental source of legislation:

- A. No law that contradicts the established provisions of Islam may be established.
- B. No law that contradicts the principles of democracy may be established.
- C. No law that contradicts the rights and basic freedoms stipulated in this constitution may be established.

Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice such as Christians, Yazedis, and Mandi Sabeans. The Commission remains concerned that the constitutional arrangement establishing a role for Islam as a fundamental source of legislation, as in the case of Iraq's Transitional Administrative Law, may be used by judges to abridge international human rights standards, particularly with respect to the rights of political and social reformers, those voicing criticism of prevailing policies, religious minorities, women, and others. This concern is amplified by the fact that the draft constitution currently allows for the appointment of "experts in Islamic jurisprudence" to the Supreme Federal Court, which will be the highest judicial body charged with interpreting the constitution. Article 89

...Second: The Federal Supreme Court shall be made up of number of judges, and experts in Islamic jurisprudence and law experts whose number, the method of their selection and the work of the court shall be determined by a law enacted by a two third majority of the members of the Council of Representatives. This article enables the appointment of experts in Islamic jurisprudence to Iraq's highest court, the Federal Supreme Court. According to the draft, these experts are not required to have any traditional civil law training. Opening the Court to individuals whose only background is in religious law will place Iraq's highest court in the company of Iran, Saudi Arabia, and Afghanistan-some of the only countries in the world to allow individuals without traditional legal training to serve as judges in matters pertaining to civil law. Article 39 Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices and that shall be regulated by law. The provision does not specify what system of law- religious or civil-will apply, or how or by whom the alternate system may be invoked. The Commission recommends that any enabling legislation explicitly establish that civil law will apply to personal status matters, unless the full and informed consent of both parties is obtained before submitting the dispute to a religious court, and finally, make religious court rulings subject to final review

by Iraq's civil courts. The use of religious courts may lead to rulings that are in violation of Iraq's international obligations with respect to the prohibition of religious coercion, or discrimination on the grounds of religion, gender, or social status. Article 100

The High Commission for Human Rights, Independent Electoral High Commission and Commission on Public Integrity are independent commissions, which shall be subject to monitoring by the Council of Representatives. A law shall regulate their functions. Provides for a High Commission for Human Rights but subject to monitoring by the Iraqi parliament, and without any specific reference to the UN's Paris Principles as the basis for the High Commission's mandate and independence. Copies of the analysis prepared by the Commission are available for download from the Commission's website, <http://www.uscirf.gov>.

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