

# *A Compilation of Iraqi Constitutions And Comparative Studies 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 (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.”<sup>1</sup>*

*“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).”<sup>2</sup>*

*“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).”<sup>3</sup>*

*“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”<sup>4</sup>*

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<sup>1</sup> Holy Quran, Surat al-Esra’ a number 17, Aya number 70.

<sup>2</sup> Holy Quran, Surat al-Hujurat number 49, Aya number 13.

<sup>3</sup> Holy Quran, Surat Al-Imran number 3, Aya number 159.

<sup>4</sup> Holy Quran, Surat al-Shura number 42, Aya number 38.

<sup>\*</sup> See also the following web pages, International Human Rights Law Institute, DePaul University [www.ihrl.org](http://www.ihrl.org); International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy [www.isisc.org](http://www.isisc.org); International Association of Penal Law, Paris, France [www.penal.org](http://www.penal.org).

## Summary of Contents

This publication by the International Human Rights Law Institute (IHRLI) presents an overview of the evolution of Iraqi constitutional thought from 1925 to the present. The publication is divided into two sections: the first presents the texts of the nation's basic laws and constitutions and the second presents a comparative analysis of these documents as well as a review of Iraqi Constitutions in relation to international human rights law standards.

This book commences with Iraq's first constitutional document, the Basic Law of 1925, which was promulgated with its independence from the Ottoman Empire and with the ascendancy of the Hashemite family to the Iraqi throne. Subsequently, Iraq experienced a series of military *coups d'etat* followed by the rise to power of Saddam Hussein and the Ba'ath party. During this process, the government sought to legitimize its rule through a succession of interim constitutional instruments including the Constitutions of 1958, 1964, 1968, and 1970. In 1990, a draft constitution was prepared but never promulgated due to the onset of the second Gulf War. In 2003, following the invasion of Iraq, the Transitional Administrative Law (TAL) was issued, providing a legal basis for governance during the transitional period pending the election of a national assembly and the drafting of a new Iraqi Constitution.

Alongside the texts described above, this publication includes a series of analytic charts prepared by Judge Mohammed Abd El-Aziz Gad El-Hak, a legal researcher with IHRLI. This material reviews the historical evolution of Iraqi constitutional instruments and provides a comparison of their provisions. It also includes a review of how Iraqi Constitutions conform to international human rights standards.

In preparing this publication, IHRLI aims to contribute to reasoned debate and the discussion of key constitutional questions in Iraq and to support the Iraqi people in managing their historic transition to democracy.

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