

**Iraq Democracy Watch Calls for Constitutional Amendments That  
Guarantee human and Democratic Rights**

(February 2006)

The Iraq Foundation and Freedom House organized a workshop in Amman last November for a group of Iraqi civil society leaders to, among other objectives, critically examine a set of possible constitutional amendments that could improve the language of the Iraqi constitution and strengthen the human and democratic rights guaranteed to Iraqis. Iraq Democracy Watch (IDW) was formed as an outcome of this workshop.

After several meetings at the Foundation's offices in Baghdad, the group prepared a number of suggestions to amend the constitution and help Iraqis achieve a permanent constitution that would guarantee that they enjoy the essential rights and freedoms that are stated in the universal declaration. IDW hopes that the Iraqi Constitution Amendment Committee takes these suggestions into consideration.

**Constitutional Amendments**

The purpose of the following amendments is to make the constitution a source that would guarantee the rights and freedoms of all Iraqis.

**First Amendment:**

IDW proposed replacing the constitution's preamble with the following introduction:

The Iraqi people, who are unified by their belief in one God and one homeland are adamant to build a modern state based on mutual understanding, brotherhood, and justice. They have taken an oath to ensure that they remain united and have acknowledged their diverse cultures, origins, races, religions and ethnicities. They assert that this diversity is a source of richness for Iraq and Iraqis and will never work against Iraq's unity. The state of Iraq deals with all Iraqis, males and females, and those of different ethnicities and religions on the basis of citizenship, allowing every individual the right to practice their own personal life provided it does not interfere with the public national interests that are based on patriotism and qualifications. This is to be based on one steady principle: The efforts and knowledge of all will be taken into consideration.

Iraqis have agreed to defend their freedom and reject any form of foreign or internal oppression and hegemony. They also reject all forms of violence and believe that democracy is a human tradition and life ideology, and a peer of the responsible freedom. Practicing democracy will not contradict with the higher teachings of the Iraqi society, which is a combination of spiritual, social, moral, and cultural values which provides a public cover and controls the Iraqi individual. This is where this constitution gets its ethical legitimacy from.

**Modernizing Iraq intellectually, politically, socially, and economically in a manner consistent with our values is an unavoidable goal. Iraq, as part of the international community, is a peace-loving country, and respects the international agreements and conventions of rights, and it builds its relations with other countries on the basis of understanding, friendship, and common interests.**

Article 2:

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

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

Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandeans Sabians

**IDW's suggested amendments:**

**1- There is no need to have "second" in this item because it relates to the religious rights and freedoms, and article 2 addresses the sources of legislation.**

**2- The phrase (No law may be enacted) which is repeated in first section of this item is an uncommon phrase in constitutions. If it is insisted that this phrase is included in the constitution, then we (IDW) suggest that this item be rephrased as follows:**

**(Islam is the official religion of the state and is one of the main sources of legislation. No law should be passed that contradicts neither the principles of Islam that have been agreed on nor the principles of democracy and human rights that are stated in the universal declaration.)**

Article 9:

First:

A- The Iraqi armed forces and security services will be composed of the components of the Iraqi people with due consideration given to their balance and representation without discrimination or exclusion. They shall be subject to the control of the civilian authority, shall defend Iraq, shall not be used as an instrument to oppress the Iraqi people, shall not interfere in the political affairs, and shall have no role in the transfer of authority.

B- The formation of military militias outside the framework of the armed forces is prohibited.

C- The Iraqi armed forces and their personnel, including military personnel working in the Ministry of Defense or any subordinate departments or organizations, may not stand for election to political office, campaign for candidates, or participate in other activities prohibited by Ministry of Defense regulations. This ban includes the activities of the personnel mentioned above acting in their personal or professional capacities, but shall not infringe upon the right of these personnel to cast their vote in the elections.

D- The Iraqi National Intelligence Service shall collect information, assess threats to national security, and advise the Iraqi government. This Service shall be under civilian control, shall be subject to legislative oversight, and shall operate in accordance with the law and pursuant to the recognized principles of human rights.

E- The Iraqi Government shall respect and implement Iraq's international obligations regarding the non-proliferation, non-development, non-production, and non-use of nuclear, chemical, and biological weapons, and shall prohibit associated equipment, materiel, technologies, and delivery systems for use in the development, manufacture, production, and use of such weapons.

Second: Military service shall be regulated by law.

#### **IDW's suggested amendments:**

**In principle, citizenship is the basic source of freedoms and rights. Ignoring this principle will damage the rights and freedoms as is the case in article (9a and 9b). 9a asserts that (The Iraqi armed forces and security services will be composed of the components of the Iraqi people). We suggest replacing the word (Components) with (people) or (Citizens) because the word (Component) might be interpreted in a manner that makes the Iraqi armed forces seem like conglomerations of ethnicities, sects and tribes under the pretense that they are (Components).**

**In 9b (The formation of military militias outside the framework of the armed forces is prohibited). Since the formation of any militia whether inside or outside the framework of the armed forces will cause a serious danger to freedoms and rights. The suggested amendment is as follows: (The formation of military militias inside and outside the framework of the armed forces is prohibited)**

Article 29:

First:

- A. The family is the foundation of society; the State shall preserve it and its religious, moral, and national values.
- B. The State shall guarantee the protection of motherhood, childhood and old age, shall care for children and youth, and shall provide them with the appropriate conditions to develop their talents and abilities.

Second: Children have the right to upbringing, care and education from their parents. Parents have the right to respect and care from their children, especially in times of need, disability, and old age.

Third: Economic exploitation of children in all of its forms shall be prohibited, and the State shall take the necessary measures for their protection.

Fourth: All forms of violence and abuse in the family, school, and society shall be prohibited.

**IDW's Suggested amendment:**

**IDW proposes replacing 29 with “The individual is the essence of the family and the family is the essence of society and the state will provide for individuals, from infancy to old age, and provide the family with special attention to the protection of motherhood and childhood.”**

Article 38:

The State shall guarantee in a way that does not violate public order and morality:

- A. Freedom of expression using all means.
- B. Freedom of press, printing, advertisement, media and publication.
- C. Freedom of assembly and peaceful demonstration, and this shall be regulated by law.

**IDW's Suggested amendment:**

**We suggest omitting the word “morality” from the article.**

**The reason behind this omission is that the constitution does not determine who is responsible for defining the definition of “morality.” Thus, deleting the word “morality” is more appropriate.**

**We suggest adding “requesting information” to the second 38b and omitting the phrase “this shall be regulated by law” from the third section.**

Article 41:

Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.

**IDW’s Suggested amendment:**

**We suggest replacing this by “Iraqis are free in their commitment to their personal status in accordance to the Personal Status Law number 188 for the year 1959.”**

Article 43:

First: The followers of all religions and sects are free in the:

- A- Practice of religious rites, including the Husseinii rituals.
- B- Management of religious endowments (waqf), their affairs, and their religious institutions, and this shall be regulated by law.

Second: The State shall guarantee freedom of worship and the protection of places of worship.

**IDW’s Suggested amendments:**

**Omitting the phrase “including Husseinii rituals” from 43a.**

Article 45:

First: The State shall seek to strengthen the role of civil society institutions, and to support, develop and preserve their independence in a way that is consistent with peaceful means to achieve their legitimate goals, and this shall be regulated by law.

Second: The State shall seek the advancement of the Iraqi clans and tribes, shall attend to their affairs in a manner that is consistent with religion and the law, and shall uphold their noble human values in a way that contributes to the development of society. The State shall prohibit the tribal traditions that are in contradiction with human rights.

**IDW’s Suggested amendments:**

**We suggest adding “without the intervention of the state in the affairs of these institutions” after “independence” in the first section of article 45.**

**We also suggest dropping the second section from article 45 in order to cancel the Laws of Tribes for the year 1958 and to affirm the sovereignty of the state’s law.**

Article 46:

Restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom.

**IDW's Suggested amendments:**

**We suggest omitting the phrase “on the basis of a law,” and reinstating the article that dealt with Iraq’s obligations to the international conventions it had signed.**