On 30 June 2005, the Iraqi newspaper *al-Mada* published what it claimed was a draft bill of rights (available at www.almadapaper.com/sub/06-426/7.pdf), composed by one of the subcommittees of the drafting committee for the Iraqi constitution. And in fact the drafting committee has been conducting much of its work in subcommittees. I cannot confirm the accuracy of the *al-Mada* draft, but some of its provisions do seem to match closely with the brief description some committee members have made of their work.

The draft is obviously a work in progress. While the authors occasionally wax poetic—referring at one point to “the talons of ignorance, fear, and want”—other clauses are incomplete or referred to only in provisional wording. (For instance the language in Article 20 about women’s representation in parliament seems to reflect the committee’s decision but not the precise language it will ultimately forward.) Some clauses seem repetitive and a few are unclear.

In the translation provided below, I have attempted to be as literal as possible. The combination of rough phrasing and literal translation makes for a fairly stilted document. I am making it available, however, because I believe it accurately reflects the committee’s inclinations in some important constitutional provisions. I should add a word of modesty about my translation abilities: my Arabic is imperfect (though I am generally comfortable with legal and especially constitutional language).

The various subcommittees will each complete a section of the draft; an additional subcommittee is working to coordinate among the groups. Thus, this draft bill of rights is not only rough but also quite preliminary: it has not yet been formally presented to the full committee. The recent addition of some Sunni members to the drafting committee will result in a few additional members being appointed to each of the subcommittees; these new members may re-open some of the issues decided in the text below. The strong language on the Ba’ath party (Article 6) and perhaps the citizenship provisions (designed to be generous to Iraqi Shi’a who were deprived of citizenship under the Ba’ath regime) might be raised, though it is difficult to envision other members of the subcommittee retreating on either issue.

Once the various subcommittees submit their work, the full committee will knit the various elements into a final draft constitution and then present that complete draft to the
National Assembly. The chairman of the committee has mentioned the end of July as a target date for submission. The National Assembly must take action on the draft by August 15 if it is to be submitted for a popular referendum by October 15.

General observations on the draft

- Numerous Iraqis connected with the drafting process have suggested that the constitution will replicate the basic structures created by the Transitional Administrative Law (or TAL, the interim constitution written before the dissolution of the American-led Coalition Provisional Authority last year). There are some indications (in the provisions on federalism and the parliament) that this will indeed be the case. Yet the draft bill of rights is clearly not based on the TAL (while it does borrow some elements).

- The document makes very extensive welfare commitments. This is not unusual in more recent constitutions, but it is a marked departure from the TAL. In addition, the commitments are sometimes specific in a way that would seem to move them beyond mere statements of aspirations to enforceable mandates.

- While the rights provisions are extensive, there are actually significant qualifications. Sometimes these relate to religion, morals, and values. This gives the document a very conservative flavor.

- More often qualifications on rights occur in implementing legislation. European constitutions introduced phrasing that suggested that freedoms be defined by law. The original purpose of such provisions was to ensure that only parliament (as the agent of the entire society) would define the way in which a right would operate. This took the task out of the hands of the monarch and the executive and placed it in the hands of those deputized by the nation. But over time it has become clear that defining a right might also mean limiting it. This could occur anywhere but seems especially likely in countries in which the parliament falls under executive domination. In such cases, rights might almost be defined out of existence. Indeed, this is the pattern in much of the Arab world. The drafting committee in Iraq has indicated that it is writing a more parliamentary document, which might diminish but certainly cannot eliminate the possibility of rights being deprived out of their meaning by implementing legislation. Some countries have attempted to forestall such a possibility by including a constitutional provision that implementing legislation cannot limit the essence of a right. No such provision is included in this draft.

- In general, the draft makes real and quite significant concessions to demands for women’s rights and representation. The language is sometimes paternalistic and qualified, however.

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ARTICLE 1

1. Anyone who has Iraqi nationality is considered an Iraqi citizen, with all the rights and duties according to law.
2. An Iraqi may not be deprived of his nationality nor exiled or deported unless it is proven in a trial that he provided false essential information that resulted in his being granted nationality.

3. Any individual with another nationality (except for Israel) may obtain Iraqi nationality after a period of residency inside the borders of Iraq of not less than ten years for an Arab or twenty years for any other nationality, as long as he has good character and behavior, and has no criminal judgment against him from the Iraqi authorities during the time of his residency on the territory of the Iraqi republic.

4. An Iraqi may have more than one nationality as long as the nationality is not Israeli.

5. An Iraqi who was stripped of his nationality in the period of Saddam’s fallen regime for political, religious, racial, or sectarian reasons may reclaim it and be considered Iraqi. [This applies to] all who were stripped of citizenship for the stated reasons.

6. The provisions of Iraqi nationality and naturalization will be established by a federal law passed by the National Assembly that operates in accordance with the provisions of this constitution.

7. The competent courts will oversee disputes that arise from the special and general provisions related to Iraqi nationality and naturalization.

8. Iraqi women have the right to grant Iraqi nationality to their children and likewise to their (non-Iraqi) husbands after five years have passed from the marriage contract provided that the husband is resident in Iraq.

9. A woman married to someone with Iraqi nationality or who has been naturalized has the right to earn Iraqi nationality.

10. All Iraqis are equal and have the right to acquire or earn Iraqi nationality and to pass it to their spouses and children.

[Comments: The provisions for women passing on citizenship are very generous here, more so than the TAL. The provisions are also unusually detailed for a constitution. However, it should be noted that section 8 and 9 pulls in a different direction from section 10. Sections 8 and 9 are specifically designed for women; section 10 insists that all Iraqis are equal with regard to citizenship.

Some of the TAL’s provisions can be read as allowing Iraqi-born Israelis to reclaim citizenship. I am aware of none who took advantage of this, yet the drafters of this document seem to wish to close that window.]

ARTICLE 2

All Iraqis are equal before the law without regard to gender, opinion, belief, nationality, religion, or origin. Discrimination on the basis of gender, nationality, religion, origin, or social standing is forbidden. They have the right to personal security in life and freedom except in
accordance with the law. Equality of opportunity is guaranteed to all citizens in accordance with the law.

ARTICLE 3

All Iraqis are equal before the law and equal in the rights that they enjoy by virtue of citizenship just as they are equal in the duties that are imposed upon them by virtue of citizenship without regard to gender, opinion, belief, nationality, religion, sect, or origin.

ARTICLE 4

Non-Iraqis resident or present in Iraq in a legal way enjoy all the rights which Iraqi citizens enjoy as well as the duties presented by the constitution or laws governing subjects. This will operate in reciprocity with a state that has Iraqis among its subjects.

ARTICLE 5: THE BASIC ELEMENTS OF THE SOCIETY

1. People are equal in their humanity and human dignity. Their humanity is protected and honored. Social justice is the basis of building the society. The Iraqi people are one people, unified by belief and the unity of the homeland and culture. Anything that exposes this unity to danger is forbidden.

   [Comment: The language on national unity will probably sound vaguely threatening to some.]

2. Justice is the basis of governance. Cooperation and compassion form the bond of trust among citizens. Freedom, equality, security, peacefulness, and social solidarity are guaranteed to all citizens before the law.

3. The family is the basic nucleus of the society; it is composed by religion, science, morals, and patriotism. The law protects its rightful, sacred nature and strengthens its bonds and its values. The state must guarantee its defense and support it, protect motherhood and childhood, spread, support, and implant moral values and the culture of tolerance, guard youth and protect it form exploitation and other forms of moral, bodily, and spiritual neglect. The state shall take special concern with the physical, moral, mental, and cultural development of young people. The state shall take responsibility for combating moral and behavioral depravity and encourage people and agencies to spread virtue, providing it help and support.

4. The state shall ensure harmony between the duties of woman toward her family and her work in the society and equality with men in the fields of political, social, and economic life without conflicting with or disturbing the provisions of the Islamic shari'a.

5. The state shall guarantee for women the appropriate services related to pregnancy, childbirth, and the period after childbirth and provide her free health services as well as adequate nutrition while she is pregnant and nursing.
6. The introduction of a system of maternity leave, paid or with equivalent benefits, without
a woman losing her position, seniority, or bonuses.

[Comment: Here and elsewhere, the draft is incomplete, containing sentence
fragments indicating the committee’s inclinations but not providing full wording.]

7. The state shall guarantee the realization of social and health insurance for the child from
his birth until he completes his university studies.

8. Issuing of strict binding laws against using children and minors in vulgar trades or those
that are dishonorable or unsuitable for children. Issuing of laws requiring education and
considering it one of the means of security and protection.

9. The state shall guarantee the realization of the social guarantee necessary for citizens in
case of old age, disease, inability to work, or if they are homeless, orphans, widowed, or
unemployed. It shall provide them social insurance services and health care and protect
them from the talons of ignorance, fear, and want, providing them with housing, and
special programs to train them and care for them. A law shall be issued regarding this.

10. The state shall support, in accordance with law, the families of martyrs, guaranteeing the
legitimate rights taken by the fallen regime.

11. The state shall support the victims of the regime and terrorism and their families and
protect their rights in accordance with law.

ARTICLE 6

1. The state shall guard science, literature, and the arts and encourage scientific research. It
shall provide educational and cultural services to citizens. Primary education shall be
mandatory. The state and regional governments shall combat illiteracy and provide their
citizens with the right of free education at the various stages.

2. The freedom of culture and scientific research are guaranteed and the state and regional
governments shall encourage, reward, and foster excellence, creativity, and invention and
the various forms of talent.

3. Freedom of opinion, expression, publishing, printing, the press, advertising, media,
meeting, peaceful demonstration, founding political parties, unions, and associations are
guaranteed in accordance with the law. No one may be arrested or have his freedom
restricted because of his belief, political thoughts, or religious convictions. The idea of the
Ba'th party is absolutely forbidden and it is not permitted to be a part of political
pluralism.

4. There is no censorship on newspapers, printing, publishing, advertising, or media except
by law.
5. The secrecy of postal, electronic, telegraphic, and telephonic messages is guaranteed. It is not permitted to inspect them except for legal necessity and protection of security in accordance with law.

**ARTICLE 7**

Iraqi citizens have the right to enjoy security and free health care. The Iraqi federal government and regional governments must provide it and expand the fields of prevention, treatment, and medication by the construction of various hospitals and health institutions.

*Comment: Here and elsewhere, a significant obligation is placed on the shoulders of various levels of government without clear specification of how the fiscal burden is to be allocated among them.*

**ARTICLE 8**

Iraqis have the complete and unconditional right of ownership in all areas of Iraq without limitation.

*Comment: Oddly, this is one of the few rights that is absolute, not depending on implementing legislation.*

**ARTICLE 9**

Citizens may not be forbidden from traveling outside the country or returning to it, nor may they be limited in their movement inside the country except in cases defined by law.

**ARTICLE 10**

1. The Iraqi citizen has the right to freedom of thought, conscience, religious creed and religious rites.

2. The Iraqi citizen enjoys the right of protection against intellectual, political, sectarian, religious, and national coercion so long as [this protection] is by law.

*Comment: Elsewhere in this document, I have translated similar phrasing as “Iraqi citizens” rather than the more literal but stilted English phrase “The Iraqi citizen.” I have not done so here in order to make clear that the draft bill of rights here places the freedoms on an individual basis, not on a communal basis as is frequently done in other constitutions in the region.*
ARTICLE 11

The right of political asylum is guaranteed to all oppressed. It is forbidden to surrender a political refugee. It is forbidden to grant right of refuge (humanitarian or political) to someone accused of international crimes.

ARTICLE 12

1. Work is a right for every Iraqi citizen and a duty for him. The state and the governments of the regions shall strive to provide work opportunities for every able-bodied citizen.

2. The state is responsible to support the provision of work opportunities for all qualified and pay monthly salaries for all unemployed for any reason until opportunities are provided in the case of disability, handicap, or illness until the malady ceases.

3. The state provides for improving working conditions and raising the standard of living and expertise of all working citizens.

4. No one may be required to undertake a specific task unless that task has a public benefit in accordance with law or in the case of staving off a sudden public danger.

5. Compulsory service (the corvee), slavery, the slave trade, forced labor, or any work that is imposed on the Iraq citizen not in accordance with the provisions of the constitution or the law are forbidden.

6. Citizens are equal in assuming public positions in accordance with the conditions established by law.

ARTICLE 13

1. Public and private freedoms are protected provided they do not conflict with moral values and public decency.

2. Citizens’ private lives are protected. Citizens may enjoy it in compliance with moral values and decency. No citizen has the right to deviancy in the use of his right or to exercise any of his rights…

[Comment: the second sentence here is incomplete in the original.]

ARTICLE 14

Iraqi citizens enjoy the freedom to belong to associations and the right to development the institutions of civil society even by cooperation with international civil society organizations. The federal, regional, provincial, and municipal governments and local authorities may not prevent this right so long as it is exercised in accordance with law.
[Comment: The protection offered those working with international NGOs is unusual. It did appear in the TAL, but given the more nationalistic tone of this document, its retention is mildly surprising.]

ARTICLE 15

1. Personal freedom is guaranteed in accordance with law.

2. Nobody may be arrested, detained, held, searched, placed under house arrest, or have his freedom of residence or movement restricted except in accordance with law and under judicial supervision.

3. Nobody shall be exposed to physical or moral torture, entrapment, or treatment offensive to dignity. The law shall specify the punishment for those who act in this manner. Any statement or confession proven to be issued under pressure of torture, entrapment, such treatment, or threat of any of them is invalid.

4. A person may not be detained or held except in a place designated for that purpose in the laws for prisons. [The place of detention must] include health and social care and be under judicial supervision.

5. Punishment is personal and there is no crime or punishment except in accordance with law. Punishment may only occur for deeds committed after the law stipulating it becomes operative.

6. An accused is innocent until proven guilty in a court of law that grants him the necessary guarantees to engage in the right of defense in all phases of investigation and trial in accordance with law.

7. It is forbidden to injure an accused physically or morally.

8. Anyone accused of a felony must have an attorney he has accepted defending him.

9. The right of litigation is guaranteed in accordance with law.

10. The freedom of houses is guaranteed and they may not be entered or searched except according to law.

[Comment: While many of these guarantees are effectively qualified, the bar on torture and on the use of evidence gained under torture is particularly strong.]

ARTICLE 16

1. There is no tax or fee except by law. The basis for taxes and public expenditures is social justice.

2. The law shall organize exempting those with low incomes form taxes in such a way as not to infringe on the minimum needed for subsistence.
ARTICLE 17

1. Public funds are sacrosanct and their protection is a duty for every citizen.

2. All natural resources and the [resulting] revenues are owned by the people. The state shall preserve them and invest them well.

3. The state shall strive to provide housing for those citizens with limited incomes either by constructing free and appropriate houses or housing blocs or by giving them grants and loans to build their private housing, granting priorities and in accordance with need.

4. The state shall take the necessary measures to realize the exploitation of land suitable for agriculture, stop desertification, and work to raise the level of the peasant and help farmers and their land ownership in accordance with law.

5. The state shall take the necessary measures to preserve the environment and protect it from pollution and to preserve the environmental order, considering it among its priorities. It shall issue strict laws and impose financial penalties on those who violate.

ARTICLE 18

1. The basis of the national economy is social justice. It is composed of cooperating between public and private activity. Its goal is economic growth in accordance with a decreed plan and the realization of prosperity for citizens. This shall all occur with the boundaries of the law.

2. The state shall bear the responsibility for growth, developing production and services, building a solid infrastructure for the economy of the country, and providing services.

3. The competent authorities shall strive to encourage tourism and develop tourist institutions.

4. The state shall take the necessary measures to preserve Iraqi heritage and archeological sites. It shall issue strict laws for whoever abuses our civilizational heritage.

ARTICLE 19: TRIBES

[Comment: The article is either not yet written or omitted from the original.]

ARTICLE 20

1. Any Iraqi who meets the conditions stipulated by the elections law may nominate himself and vote.

2. It is forbidden to discriminate against any Iraq for electoral purposes on the basis of gender, sect, race, nationality, language, wealth, or ability to read and write.
3. Preserving the proportion of 25% as the share of representation for women in the seats of the parliament (the seats of the National Assembly), decision-making positions, and ministries for two stages. Then the proportion shall become open and according to ability.

[Comment: the proportion for women’s representation in the TAL was limited to the Assembly itself and did not extend to other state positions. This provision is more generous, though the precise wording has not been worked out. The reference to “two stages” is not spelled out. It suggests that the committee is proposing a phased withdrawal of the quota. This article might more logically fit within the sections of the constitution on the parliament or the executive and it might be that the system of stages will be more fully explicated there.]

ARTICLE 21

The constitution guarantees compensation for any Iraqi citizen if any official in the Iraqi government harms him by depriving the citizen of the rights, which the constitution guarantees. This shall be in front of the law and in front of the competent bodies (that is, it will be the judiciary as the place of recourse for defending rights in this chapter. The court shall decide the penalty or compensation or both when it determines the extent of responsibility of the competent government authorities or direct personal responsibility or both.)

ARTICLE 22

In addition to the rights stipulated in this constitution Iraqi citizens enjoy the rights stipulated in international treaties, agreements, and international legal documents that Iraq has signed or joined or that are considered binding according to the provisions of internal law, so long as these do not contradict the provisions of the Islamic shari’a. Non-Iraqis inside Iraq enjoy all human rights as long as they observe Iraqi society’s moral values, public manners, and the like.

[Comment: The provision on international human rights instruments is very strong. The only qualification has to do with the Islamic shari’a. Nowhere in this bill of rights is any guidance given for authoritative determination of shari’a provisions; if such guidance is given (and it may not be) it would have to be in other sections of the constitution. The final sentence typifies the fairly conservative social tone of the draft, indicating that the authors are very concerned that freedoms not be exercised in ways that violate prevailing social practices or offend the sensibilities and beliefs of Iraqis.]

ARTICLE 23: DUTIES

1. Iraqi citizens are responsible for defending the homeland and preserving its unity.

2. Paying taxes and fiscal fees are a duty for all Iraqi citizens, it being provided that there are no taxes, levies, duties, and fees imposed except by law.
3. Citizens may not own, bear, buy, or sell weapons, except by a permit issued in accordance with law.

4. Preserving national unity, protecting state secrets, and defending and supporting the constitution are the duties of every Iraqi citizen.

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