

The Iraqi Bill of Rights in Regional Perspective

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Brief Analysis

The Iraqi Transitional Administrative Law (TAL) -- to be officially published tomorrow, when the mourning period for the victims of the March 3 Ashura bombings ends -- includes an extensive bill of rights. Yet, several of the Arab countries whose constitutions offer similar rights have a decidedly unsatisfactory record on human rights. Indeed, the region's poor track record with regard to actually implementing constitutional guarantees may make the TAL appear less impressive to Arabs than it does to Americans. At least as important as what the TAL says is whether the legislation will be respected in practice.

The TAL's Provisions

According to the Coalition Provisional Authority website, "An important function of the TAL will be to guarantee the basic, inalienable rights of all Iraqis." It explains, "The rights that the TAL will protect will include, but not be limited to: the right to think, speak, and publish freely; the right to peaceable assembly; the right to free association and organization; the right to vote; the right to freedom of religion; the right to privacy; the right to a fair, speedy, and public trial in accordance with the law; the right to be presumed innocent of a crime until proven guilty; [and] the absolute prohibition of torture and of other cruel and inhuman treatment." The website also asserts that "the TAL will make a break with the past in ensuring that Iraqis can enjoy with confidence the rights that they naturally share with citizens in democracies throughout the world."

When the TAL was finalized by the Iraqi Governing Council on March 1, Secretary of Defense Donald Rumsfeld stated, "This interim constitution includes as its cornerstone a bill of rights that provides protection of individual rights that are unprecedented in the history of Iraq, and indeed the region." He was echoing the words of Adnan Pachachi, the council member who was most involved in preparing the TAL and who described its bill of rights as "something that is unheard of, unprecedented in this part of the world."

Comparable Arab Constitutional Provisions

In fact, the majority of the rights guaranteed in the TAL are also guaranteed in the constitutions of most Arab states. Nearly every Arab state has a constitution; even Saudi Arabia has a Basic Law of Government that closely resembles a constitution. Each of these documents includes provisions regarding the rights of citizens. Some of the key areas generally covered by these provisions are outlined below.

Freedom of speech. Libya's 1969 constitution is one of the few that spell out what is the practice in so many other Arab countries, namely, that free speech is tolerated only insofar as it eschews criticism of the government. As Article 13 of that document puts it, "Freedom of opinion is guaranteed within the limits of public interest and the principles of the Revolution." Most Arab constitutions include more permissive speech-related provisions that do not necessarily reflect the reality within the countries in question. For example, according to Article 38 of the Syrian constitution, "The state guarantees the freedom of the press, of printing, and publication in accordance with law." (To be fair, the relevant U.S. constitutional provision -- "Congress shall make no law . . . abridging the freedom of speech" -- has been interpreted in practice to permit laws banning obscene speech and penalizing slander.) Several Arab constitutions offer absolute guarantees of free speech, as seen in Article 48 of Egypt's 1980 constitution: "Freedom of the press, printing, publication, and mass media shall be guaranteed. Censorship on newspapers is forbidden as well as notifying, suspending, or canceling them by administrative methods." Similarly, Article 41 of Algeria's 1976 constitution reads, "Freedom of expression, association, and meeting are guaranteed to the citizen."

Freedom of religion. In many Arab countries, the basic laws regarding religious rights are similar to Article 46 of the Egyptian constitution: "The state shall guarantee the freedom of belief and the freedom of practice of religious rites." Other countries qualify the right to practice religion in public; for example, Article 35 of the 1962 Kuwaiti constitution "protects the freedom of practicing religion in accordance with established customs, provided that it does not conflict with public policy or morals" (for the record, Kuwait has several Christian churches and a Jewish cemetery). The exception to these relatively liberal provisions is Saudi Arabia's 1992 Basic Law, Article 34 of which states, "The defense of the Islamic religion, society, and country is a duty for each citizen."

Judicial rights. Many Arab constitutions include all of the basic principles considered essential to guaranteeing full judicial rights. Article 28 of the 1973 Syrian constitution states, "Every defendant is presumed innocent until he is proved guilty by a final judicial decision. No one may be kept under surveillance or detained except in accordance with the law. No one may be tortured physically or mentally or treated in a humiliating manner." The 1991 Yemeni constitution is the most specific and comprehensive regarding such rights. For example, Article 32 states, "Anyone whose freedom is restricted has the right to remain silent and to speak only in the presence of an attorney. . . . Whoever is temporarily arrested for suspicion of committing a crime shall be arraigned within twenty-four hours. The judge shall inform him of the reasons for his arrest, question him, and give him the opportunity to plead his defense. The judge shall immediately issue a reasoned order for his release or continued detention."

Women's rights. Interestingly, Arab constitutional provisions regarding women's rights are more in line with what their governments actually strive to achieve (albeit not always successfully) than provisions regarding other rights. For example, Article 11 of the Egyptian constitution reads, "The state shall guarantee the proper coordination between the duties of woman toward the family and her work in society, considering her equal with man in the fields of political, social, cultural, and economic life without violation of the rules of Islamic jurisprudence."

Iraq's Past Constitutions

Iraq's longest-lasting constitution occurred under the monarchy; it was adopted in 1925 and replaced in 1958. Under Ba'ath rule, Iraq adopted several interim constitutions, most recently in 1990. Those constitutions included a variety of provisions that sounded wonderful but remained dead letters. For example, the 1990 constitution stated that "it is inadmissible to arrest a person, to stop him, to imprison him, or to search him, except in accordance with the rules of law. . . . The dignity of man is safeguarded. It is inadmissible to cause any physical or psychological harm." The 1925 constitution went further: Article 7 stated, "There shall be no violation of, or interference with, the personal liberty of any of the inhabitants of Iraq. . . . Torture and the deportation of Iraqis from the Kingdom of Iraq are absolutely forbidden." It will be interesting to compare the bill of rights in the final version of the new TAL with the 1925 and 1990 Iraqi constitutions; they may in fact have many features in common.

Implementation Is What Counts

Constitutions are not necessarily accurate predictors of an Arab country's actual track record on human rights. Those regimes with reasonably good records in practice (e.g., Kuwait) sometimes have constitutions that contain the most qualifications and limitations to human rights, while those regimes with poor records (e.g., Syria, Algeria) sometimes have the most liberal constitutional provisions. The Yemeni constitution contains the most potent bill of rights, but it is by no means clear that Yemen has the best human rights record in practice.

The Iraqi people remember all too well that the rights spelled out in their 1925 and 1990 constitutions were not enforced. Hence, it would be unrealistic to expect them to have much faith in the new interim constitution simply because of the wording of the text. Much more important than the phrasing will be the implementation. In particular, Iraqis must be shown that all parties will be bound by the provisions of the new constitution. That will not be easy to do during the current emergency period, with its continued insurgent and foreign terrorist activity. The U.S. military now faces the challenge of adopting and implementing procedures that are fully consistent with the TAL. If U.S. practice falls short of the TAL's principles, Iraqis may lose confidence that the political procedures spelled out in that document will determine the actual distribution of power.

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