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THE WASHINGTON POST August 4, 2005 Iraq Must Avoid a Rollback of Rights By Preeta D. Bansal and Nina Shea Iraq's new democracy will be crippled from the outset if the drafts of the country's permanent constitution being circulated are any indication of where things are headed. In a significant rollback from language in the interim constitution, known as the Transitional Administrative Law (TAL), current drafts would threaten regional stability and thwart stated U.S. goals of promoting freedom and democracy. They would establish a constitution under which dissent and debate would not be protected. As the deadline for a constitution approaches, the United States and the international community must redouble their efforts to ensure that an Iran-like theocratic state is not established in Iraq. Current drafts would limit Iraq's international human rights obligations to those that do not contradict Islam or Islamic law. They assert that an undefined version of Islamic law, or sharia, is the main source of law. They make no reference to freedom of religion or belief for every Iraqi, and they provide no guarantee of individual freedom of thought and conscience. One clause in the constitution would forbid any law contrary to sharia, leaving the door open for interpretations by unelected Islamic "experts" to be considered sacrosanct. In fact, the drafts authorize many of the constitutional court's justices to be sharia jurists who may have no education or experience in civil law -- placing Iraq's judiciary in the company of those in Iran, Saudi Arabia, Afghanistan and Pakistan, which allow judges without traditional legal training to decide matters pertaining to constitutional law. Basic individual rights, perhaps even the constitution itself, would be protected only if they were not viewed as contrary to judicial interpretations of Islam. This is a radical departure from the TAL, which set out Iraq's human rights obligations according to international instruments and guaranteed, among other things, the right to "freedom of thought, conscience, and religious belief and practice" for every Iraqi -- man, woman, Arab, Kurd, Muslim, non-Muslim, believer, nonbeliever. The guarantees in the TAL were a positive break from past Iraqi constitutions, which typically guaranteed aspects of freedom of religion only to minority groups, as opposed to individual Iraqis. Guaranteeing freedom of thought and conscience as an individual right for Muslims as well as for minority religious groups is essential if debate within Islam and dissent from imposed orthodoxies is to be allowed, and if the political breathing space necessary for plural and alternative voices within the Islamic tradition is to be created. Now is not the time for the international community to take a hands-off approach, which it may be tempted to do by a false sense of cultural relativism and a misguided respect for a flawed "democratic" process that could, ultimately, lead to undemocratic results. The protection of freedom of thought, conscience, and religion or belief is not un-Islamic. Like all individuals, Muslims deserve and need the freedom to think and believe. An April poll by the International Republican Institute found that 70 percent of the Iraqi people want equal rights for women and 60 percent want freedom of religion. According to a recent study by the U.S. Commission on International Religious Freedom, surveying the constitutions of the world's 44 predominantly Muslim countries: More than half of the world's Muslim population (estimated at over 1.3 billion) lives in countries that are neither Islamic republics nor have declared Islam the state religion. Several countries in which Islam is the declared state religion provide constitutional guarantees of the right to freedom of religion or belief that compare favorably with international legal standards. Similarly, countries with Islam as the declared state religion may maintain constitutional provisions protecting rights to freedom of expression, association and assembly that compare favorably with international standards. A number of constitutions of predominantly Muslim countries incorporate or otherwise refer to international human rights instruments and legal norms. Secretary of State Condoleezza Rice and the U.S. ambassador to Iraq, Zalmay Khalilzad, have asserted in the past week the importance of women's rights in Iraq. But the problems with the draft constitution go beyond this. Women's equality will be in peril unless individual freedom of religion or belief is ensured. Otherwise, a woman will not be able to opt out of the religious laws of her sect. Moreover, the absence of guaranteed religious freedom would severely damage the democratic framework, because individuals engaged in political debate or dissent would have no protection against possible criminal trials for apostasy and blasphemy. The U.S. government and the international community should invoke universal human rights standards as a basis for dialogue and diplomatic engagement with Iraqis. This is crucial for regional security and stability, as well as for humanity. These standards should be a fundamental aspect of any constitution-related assistance programs and a yardstick for measuring the success of Iraq's constitutional process. In the short time remaining, the administration should direct its efforts to backing individual human rights guarantees in the permanent constitution that are consistent with obligations set forth in international instruments to which Iraq is a party. It should also call on the United Nations, other allies and international experts providing technical advice on the drafting process to support incorporation of these guarantees. And it should urge Iraq's transitional government to include underrepresented ethnic and religious minorities, such as Sunni Muslims, Christians and others, in the constitutional process. The United States has fought a war of liberation for Iraq, at great cost in blood and treasure. It must not settle now for anything less than the vision articulated by Rice: "a strong and vibrant and vital democracy here in the heart of the Middle East." Preeta D. Bansal, former solicitor general of the state of New York, is a member and former chairman of the bipartisan U.S. Commission on International Religious Freedom. Nina Shea, vice chairman of the commission, directs Freedom House's Center for Religious Freedom. She is an adviser to the Bush administration on Iraq. © 2005 The Washington Post Company

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