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Iraq

Considerable Human Rights Challenges Remain in Iraq

The next Iraqi government will face considerable human rights challenges as it begins the difficult task of building democratic institutions and a political process to unify a country fractured by ethnic, religious, and sectarian differences. Since 2003, the U.S. Commission on International Religious Freedom (USCIRF) has worked with the White House, Department of State, and Congress to encourage strong human rights protections for every Iraqi within the framework of Iraq's transitional and permanent constitutions. Although the Commission plans to address other aspects of the situation in Iraq in a forthcoming report, the current policy brief focuses on specific recommendations that the U.S. government can implement immediately to assist Iraqis to:

- Strengthen and clarify human rights guarantees, including the right to freedom of religion and belief, in the permanent constitution and in related implementing legislation; and
- Develop and strengthen the ability of Iraqi human rights institutions to implement human rights guarantees for all Iraqis effectively and without discrimination.

Recommendations for Strengthening U.S. Efforts to Promote Human Rights in Iraq

A. APPOINT A SENIOR FOREIGN SERVICE OFFICER RESPONSIBLE FOR PROMOTING HUMAN RIGHTS WITHIN IRAQ'S EMERGING POLITICAL AND LEGAL SYSTEM

The Administration recently identified strengthening rule of law and promoting civil rights in Iraq as one of eight strategic pillars being advanced to ensure victory in Iraq.¹ In addition, in agreeing to "help the Iraqi people forge a broadly supported national compact for democratic government," the Administration has committed itself to assist Iraqis in building "stable, pluralistic, and effective national institutions that can protect the interests of all Iraqis."²

The Commission supports these objectives, and has made one of its key recommendations on Iraq the appointment to Embassy Baghdad of a Senior Foreign Service Officer to serve as the lead human rights official responsible for the promotion of human rights in discussions with the new Iraqi government. This individual's responsibilities would focus on:

- Encouraging incorporation of human rights principles during Iraq's constitutional and legal reconstruction, and especially working to secure specific protections for freedom of thought, conscience, and religious belief, and women's equality in the constitutional amendment period;
- Serving as the point of contact for Iraqi human rights institutions, including the Minister for Human Rights and the Human Rights Commission, and assisting these institutions in consolidating their roles within the emerging political structure;
- Exerting a human rights perspective across all levels of American engagement and programs with Iraq and coordinating U.S. human rights efforts with the United Nations and other concerned countries; and
- Facilitating access to American expertise and other assistance to support Iraq's effort to confront human rights challenges during the transition period.

Given the importance of these tasks during the next phase of political development in Iraq, the high-level advisor should be a member of the Senior Foreign Service with requisite experience and rank; head an organizationally distinct unit independent of the Embassy's Political Section, with appropriate support staff based out of the embassy and its four constituent posts across Iraq; and report directly to the Ambassador as a member of the Embassy's Country Team. Finally, ensuring the success of this position requires that the high level official not be "double-hatted" with other responsibilities, but rather, tasked uniquely with the promotion of human rights across relevant Iraqi political, judicial, and civil institutions. This step would ensure that other competing policy priorities would not encroach on this vital mandate.

In November 2005, the Congress expressed support for the Commission's proposal and its expectation that within Embassy Baghdad:

[One] Senior Foreign Service Officer who reports directly to the Ambassador will be assigned as the lead human rights official in Baghdad. This officer should be tasked with encouraging incorporation of human rights principles during Iraq's constitutional and legal reconstruction, and especially to secure for all individuals strong human rights provisions, including freedom of thought, conscience, religion or belief, and due process of law, through the Iraqi legal system and the implementation of the Iraqi constitution.³

It remains up to the State Department to implement this recommendation by appointing an appropriate individual to the position.

THE COMMISSION RECOMMENDS THAT:

THE ADMINISTRATION:

- Immediately appoint and dispatch a Senior Foreign Service Officer to Embassy Baghdad to serve as the lead human rights official, per the Commission's recommendation and as endorsed by Congressional report language.

B. SUPPORT THE IRAQI HUMAN RIGHTS INSTITUTIONS

Together with strengthening the capacity of the United States to engage in high-level interactions concerning the development of human rights in Iraq, efforts should be made on the ground to assist Iraqi institutions mandated with

advancing and enforcing human rights protections for Iraqi citizens.

Foremost among the new Iraqi human rights institutions requiring assistance is the Ministry of Human Rights. During the most recent transitional period, the ministerial post for this Ministry was filled by an acting minister and also left vacant for a significant amount of time during a period that could have benefited from a permanent appointment. Downgrading the significance of this position does a disservice to a Ministry that is unique in the region and potentially can serve as an important ally in promoting democracy and international human rights standards for the benefit of the Iraqi people.

To be certain, the timely appointment of a respected individual to head the Ministry of Human Rights in the coming government can ensure that human rights in Iraq is given its due attention, and can further serve to clarify and entrench a ministerial mandate that includes not only retrospective human rights concerns, but the development and enforcement of human rights protection now and in the future.

In addition to the acute need for a respected and adequately supported Minister of Human Rights, attention must be focused within the Ministry at large. Through the Department of State's Iraq Reconstruction Management Office (IRMO)⁴, U.S. advisors are posted to various Iraqi government ministries. However, according to information obtained by the Commission, as of February 2006, U.S. advisor posts within the Iraqi Ministry of Human Rights continue to remain vacant. In fact, of the nearly two dozen Iraqi ministries, the Ministry of Human Rights is one of only two that is without an IRMO advisor. As a contrary example, there are at least two U.S. advisors attached to the Iraqi Ministry for Youth and Sports.

A U.S. advisor should be appointed to the Ministry of Human Rights immediately, particularly in light of the Administration's expressed commitment to building "stable, pluralistic, and effective national institutions that can protect the interests of all Iraqis, and facilitate Iraq's full integration into the international community."⁵ As the Administration sets out in its *National Strategy for Victory in Iraq*, one strategic objective in helping to strengthen rule of law and promote civil rights in Iraq is ensuring that the government "reforms its legal system and develops institutions capable of addressing threats to public order."⁶ Effective participation by the

Ministry of Human Rights in formulating such reforms is critical to ensuring respect for human rights throughout the legal system and in the government's response to threats to public order.

THE COMMISSION RECOMMENDS THAT:

THE ADMINISTRATION:

- Immediately appoint one or more U.S. advisors under the Department of State's Iraq Reconstruction Management Office (IRMO) to serve as liaisons to the Iraqi Ministry of Human Rights.
- Urge Iraqi leaders and directly support efforts to:
 - Establish effective Iraqi institutions to protect human rights in accordance with international standards, including the establishment of an independent and adequately financed national human rights commission;
 - Undertake transparent and effective investigations of human rights abuses, including abuses stemming from sectarian, religiously motivated, and other violence by Iraqi security forces and others; and
 - Enhance efforts to bring perpetrators of such abuses to justice.

C. URGE THE ADOPTION OF CONSTITUTIONAL AMENDMENTS TO STRENGTHEN HUMAN RIGHTS PROTECTIONS FOR ALL IRAQIS

The Commission believes that ambiguous and potentially problematic constitutional provisions, as currently drafted, coupled with ongoing religiously-motivated sectarian violence in Iraq, underscore the need for constitutional amendments that would clarify and strengthen human rights, as well as the promotion of implementing legislation to protect and enforce these rights. Such legislation should safeguard the right of every person to freedom of thought, conscience, and religion or belief, as well as establish an impartial and objective judiciary. In the face of Iraq's history of tyranny and the difficult efforts by those Iraqis who continue to support pluralism and freedom, these concerns are not merely theoretical. They are essential for genuine democracy and peace.

The new Iraqi constitution provides for the creation of a parliamentary committee that will have four months to develop and recommend constitutional amendments to the Council of Representatives. Ambassador Zalmay Khalilzad has observed that such amendments,



USCIRF Vice Chair Felice D. Gaer with Dr. Muhsin Abdul Hameed, Chairman of the Iraqi Islamic Party

particularly those “emphasizing national unity and individual rights,” will be crucial for broadening support among Iraqis for the constitution.⁷

To ensure that human rights principles are emphasized in governance and strengthened within the constitution, the Commission recommends that a series of constitutional amendments be prioritized by the U.S. government and other concerned international actors as a basis for dialogue with the next Iraqi government and the constitutional amendment committee. These amendments are based on a legal analysis of Iraq’s new constitution undertaken by the Commission in October 2005.⁸

i) Art. 2: Concerning the Role of Islam and Basic Freedoms

- Strengthen protection of human rights by specifying that no law shall contradict “the rights and basic freedoms stipulated in this constitution, *including the principles of equality and nondiscrimination, or the human rights guaranteed under international agreements to which Iraq is a state party.*”
- Clarify and expand the provision guaranteeing “full religious rights” of all individuals to explicitly guarantee *the full rights of all individuals to freedom of religion, belief, and practice.*

ii) Art. 41: Concerning Personal Status Issues

- Provide that one civil law clearly applies to all Iraqis regardless of religion, on matters of personal status such as marriage, adoption, divorce, and inheritance, and that the free and informed consent of both parties is required to

move a hearing regarding personal status to any religious court system.

- Ensure equality and non-discrimination within the religious court system, and affirm that religious court rulings are subject to the final review of Iraq’s civil courts.
- Provide that judges appointed to the religious courts meet international standards with respect to judicial training.

iii) Art. 42: Concerning Freedom of Thought

- Omission of the term “religion” from the bill of rights guarantee safeguarding freedom of thought, conscience, and belief may facilitate a judicial ruling permitting the practice only of “divinely revealed” religions. Accordingly, “religion” should be added to the list of freedoms protected under art. 42.

iv) Art. 45: Concerning Civil Society

- This article has the potential to be a positive provision insofar as it promotes the role of civil society organizations in facilitating democratic development and the exercise of human rights. However, a provision should be added to ensure that no regulation of civil society organizations shall impede the free exercise of the right to freedom of assembly, association, and other fundamental rights and freedoms. This amendment is particularly important given reports of legislative efforts already underway to restrict the organization and operation of nongovernmental organizations (NGOs) in Iraq.⁹

v) Art. 49: Concerning Limitations on Rights

- Remove art. 49 from the constitution since it enables parliament to restrict or limit the practice of all rights or liberties stipulated therein, provided the “essence” of the right is not violated.
- Alternatively, qualify that any limitation on a right or liberty shall comply with the standards set forth under the International Covenant on Civil and Political Rights and other international human rights treaties to which Iraq is a party.

vi) Art. 91: Concerning the Appointment of Judges to the Supreme Court

- Remove the possibility of making appointments to the Federal Supreme Court based on an individual’s

training in Islamic jurisprudence alone. At a minimum, require that all judges have training in civil law.

- Clarify the appointment procedure to specifically state that a 2/3 majority of parliament is required to appoint a judge to the Federal Supreme Court.
- Provide a guarantee that the judiciary will be an institution representative of all Iraqis.

vii) Art. 101: Concerning the High Commission for Human Rights

- Clearly provide for the independence of the High Commission for Human Rights.
- Remove monitoring by the Council of Representatives.
- Include reference to the UN Paris Principles as the basis for the High Commission’s functions and operations.¹⁰
- Finally, an effort should be made to encourage the Iraqi government to include a constitutional amendment which extends to all individuals all the rights provided in the international human rights treaties to which Iraq is a party.

D. RE-ALLOCATE IRAQ RELIEF & RECONSTRUCTION FUNDS TO SUPPORT HUMAN RIGHTS

Although it appears the Administration has chosen not to seek new funds for the development of human rights programs in Iraq in its most recent budget request to Congress, there is reportedly between \$1.2-1.7 billion in uncommitted funds remaining from the original \$18.4 billion Iraq Relief and Reconstruction Fund (IRRF) appropriation from 2003.¹¹ A portion of this uncommitted funding should be reallocated to non-construction projects designed to promote human rights, including freedom of religion, within Iraq.¹² Currently, only \$15 million from the original IRRF \$18.4 billion appropriation has been allocated specifically to human rights.¹³ Of this sum, approximately \$4 million remains unobligated.¹⁴ Additional human rights-related activities are being funded under the rubric of “democracy-building activities,” and here too, unobligated funds remain available into 2006.

The State Department’s most recent report to Congress on IRRF makes only a single specific mention of addressing religious freedom concerns in Iraq, in the

context of work undertaken by the U.S. Institute of Peace.¹⁵ Previous State Department updates provide no information or reference to specific activities undertaken for the promotion of religious freedom. It should be noted that the IRRF specifically requires the State Department to work, “in conjunction with relevant Iraqi officials, to ensure that a new Iraqi constitution preserves the full rights to religious freedom and tolerance of all faiths.”¹⁶ Yet, on the whole, the vast majority of human rights-related projects are limited to law enforcement training, infrastructure improvements within the criminal justice system, and retrospective investigations of the previous regime’s human rights violations. While the Commission appreciates the significance of these projects, it concludes that in tandem with these activities, concrete steps need to be taken to build a culture of individual human rights within the emerging Iraqi political and legal system, particularly with respect to freedom of religion or belief.

Given the will of Congress expressed in the IRRF, and the availability of unobligated funds, the Commission recommends that, during the upcoming constitutional amendment and legislative implementation phase, a team of legal advisors with expertise in human rights, including religious freedom, should be deployed to Iraq through USAID and/or another U.S. contractor and made available for consultations with Iraqi legislators.¹⁷ Such a commitment is critical at this stage since, based on information obtained by the Commission, USAID funds already allocated for the next stage of Iraq’s political reconstruction will not be used for similar human rights-related activities.

In light of the critical need to ensure a successful emerging political framework, it is imperative that the Administration expressly direct project funding for the purpose of providing “on the ground” expert human rights consultants during the amendment and implementing legislation drafting period. As Ambassador Khalilzad remarked in a recent op-ed, “the next [Iraqi] government must put more emphasis on human rights.”¹⁸ One means of ensuring that this emphasis occurs is by giving the Iraqi government access to legal expertise with up to date human rights training related to domestic legislation and implementation programs, as well as international human rights treaty obligations and standards.

THE COMMISSION RECOMMENDS THAT:

THE ADMINISTRATION:

- Direct unobligated Iraq reconstruction funds to deploy a group of human rights experts for consultations with the Iraqi Council of Representatives and the constitutional amendment committee, and to assist with legal drafting and implementation matters related to strengthening human rights provisions, including freedom of thought, conscience, and religion or belief.
- Declare a proportional allocation of funds for ChaldoAssyrian communities, ensure that the use of these funds are determined by independent ChaldoAssyrian national and town representatives, and establish direct lines of input by such independent ChaldoAssyrian structures into the allocation process of the Iraqi central government in Baghdad, separate from the Kurdish Regional Government.
- Promote and prioritize, in all reconstruction programs for Iraq and in contacts with Iraqis, coalition partners, and other potential donors including the United Nations, an Iraqi political system that respects freedom of religion and belief, endorses equality for women, and guarantees the universal human rights of all Iraqis, including members of religious minorities and individual women.
- Fund workshops and training sessions on religion/state issues for Iraqi officials, policymakers, legal professionals, representatives of non-governmental organizations, religious leaders, and other members of key sectors of society who will have input on the permanent constitution and its implementation.
- Establish an Iraqi visitors program through the State Department to focus on exchange and education opportunities in the United States related to freedom of religion and religious tolerance for Iraqi officials, policymakers, legal professionals, representatives of non-governmental organizations, religious leaders, and other members of key sectors of society.¹⁹

THE CONGRESS:

- Ensure continued funding through Fiscal Year 2007 for democracy and governance programs in Iraq, including the specific programs discussed herein.
- Invite Iraqi legislators to attend meetings and interact with U.S. legislators and other policymakers on human rights and religion/state issues.

E. BUILD INTERNATIONAL SUPPORT FOR STRENGTHENING HUMAN RIGHTS IN IRAQ

In the Commission’s view, it is imperative that Iraq’s next government be made aware of its international treaty obligations and provide that appropriate human rights standards are incorporated into enabling legislation related to the

permanent constitution and other issues, including personal status. The fact that the permanent constitution provides for a four-month time frame during which amendments may be proposed, offers the U.S. and the international community an opportunity to engage Iraqi lawmakers.

With a view to engaging Iraqis successfully and through multiple channels during the upcoming amendment period, the Administration should press the international community to increase financial and technical support for Iraqi human rights institutions, including the national human rights commission, the Ministry of Human Rights, and the Ministry of Women’s Affairs, as well as for the Iraqi judiciary.

In tandem with this, as a practical example, the Administration should encourage the Iraqi government to invite the UN’s Special Rapporteur on Freedom of Religion or Belief to visit Iraq. Such a trip could be undertaken in a consultative capacity, to provide the Iraqi government with independent recommendations on how best to ensure that the constitutional, legislative, and judicial frameworks now being resolved will comply with international standards for protecting freedom of thought, conscience, and religion or belief.

THE COMMISSION RECOMMENDS THAT:

THE ADMINISTRATION:

- At the highest levels, urge the next Iraqi government and parliament to strengthen human rights guarantees (see previous recommendations in part C above) by consulting with international human rights experts during the constitutional amendment process and the drafting of implementing legislation related to human rights and religion/state matters.
- Urge Iraq’s new government and Council of Representatives to include underrepresented religious minorities, including Sunnis and Christians, in the work of the constitutional amendment committee.
- Encourage the UN and its human rights mechanisms to take a more assertive role in advocating adherence to international human rights standards during the upcoming phase of political transition, including deploying human rights experts to consult with Iraqis on potential amendments to the constitution, and on the drafting of relevant enabling legislation.
- Urge the Iraqi government to reconsider a proposed new law regulating non-governmental organizations, drafted by the Ministry of Civil Society, which reportedly imposes harsh restrictions on both national and international civil society organizations; any regulations should comport with international human rights standards.

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Iraqi Governing Council members celebrate the signing of Iraq's interim Constitution, March 8, 2004 (Peter Andrews, Reuters)

USCIRF Recommendations Related to Reconstruction Efforts

WITH REGARD TO RECONSTRUCTION EFFORTS IN IRAQ, THE COMMISSION RECOMMENDS THAT THE U.S. GOVERNMENT:

- Ensure that U.S. funding and other forms of support are not going to Iraqi political parties or other organizations that advocate or condone policies at odds with Iraq's international human rights obligations, or whose aims include the destruction of such international rights guarantees.
- Give clear directives to American officials and recipients of U.S. democracy building grants to assign priority to projects that seek to encourage the inclusion of effective human rights guarantees for every Iraqi in the permanent constitution and its implementing legislation. Also emphasize projects that promote multi-religious and multi-ethnic efforts to address religious tolerance and understanding, and knowledge among Iraqis about universal human rights standards.
- Address with regional Kurdish authorities reports of expropriation of ChaldoAssyrian property, and seek assurances that there will be no official discrimination practiced against minority communities.



USCIRF Vice Chair Felice D. Gaer with Dr. Mouaffak Al-Rubaie, Iraq National Security Advisor

CONCLUSION

Implementing the above recommendations will enable the United States to demonstrate support for an Iraqi commitment to human rights, and will signal to the next Iraqi government—and to the Iraqi people—that the strengthening of human rights principles and related institutions is a priority of the first order. These recommendations can also signal to Iraqi minorities, including alienated Sunni Muslims, that any emerging government in Iraq will be expected to adhere to universal principles that protect individual rights and ensure equality and non-discrimination for all Iraqis.

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ENDNOTES

¹ National Security Council, *National Strategy for Victory in Iraq*, Nov. 29, 2005, at 25.

² *Ibid.* at 8.

³ Joint Explanatory Statement, Conference Report on H.R. 2862, Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (H.R. Conf. Rep. No. 109-275), available at http://www.rules.house.gov/109/text/hr2862cr/109_hr2862cr.htm.

⁴ According to the Office of the Special Inspector General for Iraq Reconstruction, IRMO is “the primary Department of State entity involved with [Iraq Reconstruction and Relief Fund (IRRF)] projects and is thus inherently responsible for the coordinative supervision and general direction of the [IRRF] sustainment effort.” Office of the Special Inspector General for Iraq Reconstruction, Managing Sustainment for Iraq Relief and Reconstruction Fund Programs, Report No. SIGIR-05-022 (Oct. 24, 2005) available at http://www.sigir.mil/pdf/05-022_Sustainment_IRRF.pdf.

⁵ *National Strategy for Victory in Iraq*, supra note 1.

⁶ *Ibid.* at 36.

⁷ Zalmay Khalilzad, “The Challenge Before Us,” *Wall Street Journal*, Jan. 9, 2006, at A-12.

⁸ For a detailed human rights analysis of the Iraqi constitution, see USCIRF, Iraq’s Draft Permanent Constitution: Analysis & Recommendations, and accompanying press release, USCIRF, Analysis of Proposed Iraqi Constitution: Ambiguities in Text Threaten Human Rights Protections, available on the Commission’s website.

⁹ The State Department has noted that future U.S. financial assistance should increasingly focus on strengthening Iraqi civil society’s capacity “to counter increasing efforts by state institutions and actors to limit the scope of civil society’s activities and ability to ensure government transparency and accountability.” U.S. Dept. of State, Section 2207 Report Quarterly Update to Congress on Iraq Relief and Reconstruction, 14 (Jan. 2006), available at <http://www.state.gov/p/nea/rls/rpt/2207/> [hereinafter Quarterly Update to Congress on Iraq Relief and Reconstruction].

¹⁰ “Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights” (Paris Principles).

These principles were endorsed by the Commission on Human Rights in March 1992 (Resolution 1992/54) and by the UN General Assembly in its resolution A/RES/48/134 of Dec. 20, 1993 available at <http://www.unhcr.ch/html/menu6/2/fs19.htm#annex>.

¹¹ Pub. Law 108-106, 117 Stat. 1209 (Nov. 6, 2003). Ellen Knickermeyer, “U.S. Has End in Sight on Iraq Rebuilding,” *Washington Post*, Jan. 2, 2006, at A-1. Stephen Farrel, “Iraq Must Rebuild Itself After Fund is Exhausted,” *Times Online*, Jan. 3, 2006, available at <http://www.timesonline.co.uk/printFriendly/0,,1-6047-1967506-6047,00.html>.

¹² The IRRF originally included provision of \$280,000,000 for education, refugees, human rights, and governance projects.

¹³ Quarterly Update to Congress on Iraq Relief and Reconstruction, supra note 9 at 21.

¹⁴ *Ibid.* at I-110.

¹⁵ USCIRF participated in a U.S. Institute of Peace-organized conference in Amman, Jordan in 2005 for Iraq’s religious and ethnic minority leaders.

¹⁶ Pub. Law 108-106, 117 Stat. 1226 (Nov. 6, 2003). This obligation transferred from the Coalition Provision Authority to the Department of State following the handover of sovereignty to the Iraqi interim government at the end of June 2004.

¹⁷ Potentially, this could be achieved by way of a specific State Department grant to a group of human rights consultants. Alternatively, the U.S. Agency for International Development could be tasked with providing support programs focused on those pieces of enabling legislation that are related to human rights issues.

¹⁸ Zalmay Khalilzad, “After the Elections,” *Washington Post*, Dec. 15, 2005, at A-33.

¹⁹ For example, programs could be designed for legislators, Ministry of Human Rights officials, and civil society leaders on implementing constitutional legislation to promote human rights; and for religious and civil society leaders, and journalists on the role of civil society in protecting human rights, including freedom of religion, in a diverse society.