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The Future Of Iraq Project



Transitional Justice

Working Group

UNITED STATES DEPARTMENT OF STATE
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Transitional Justice Working Group

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(* Reflects consensus of the participants in the working group. Other papers reflect the views of their authors.

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**Transitional Justice
in Post-Saddam Iraq**

**The Road
to
Re-establishing Rule of Law
and
Restoring Civil Society**

A Blueprint

Report of the
Working Group on Transitional Justice in Iraq, and
Iraqi Jurists' Association
(March 2003)

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I. Executive Overview

Background

The Working Group on Transitional Justice of the Future of Iraq Project (Working Group), in cooperation with the Iraqi Jurists' Association, commenced the development of this Transitional Justice Project in meetings starting in July of 2002.

Comprised primarily of prominent former Iraqi judges, lawyers and law professors, the Working Group embarked on this project in consultation with international experts in the areas of international criminal law, truth and reconciliation, post-conflict justice and military reform.

These jurists came together with a common purpose and a singular objective. The common purpose was to assert that in order to achieve civil society in a future post-Saddam Iraq, it must be founded on the principle of respect for the rule of law. Their singular objective has been to identify and document the necessary procedures, mechanisms, rules and laws to initiate the transformation of Iraq to a society governed by the rule of law.

Premise

There are two primary aspects for the concept of the rule of law. The first is that all persons are accountable under the law regardless of their rank or position in the country, including the head of state. The second is to provide the citizens a credible means to address legitimate grievances and to avoid self-help justice characterized by acts of vengeance.

At the outset, it was universally recognized that the foundation for a society governed by the rule of law is an independent judiciary. By contrast, the government of Saddam Hussein went to great lengths to subvert each of the major powers of state (ie. legislative, judiciary and executive) to the central authority of the president through the Ba'ath party apparatus.

The role of an independent judiciary cannot be over-emphasized, particularly in a society where individual rights and freedoms have been trampled upon so comprehensively as they have been in Iraq under Saddam Hussein.

Vision for the Future

The vision of the Working Group for a future Iraq is one founded on the notion that the laws and institutions of state must be restructured and reformed to serve and protect the interests of its citizens. This is in stark contrast to Saddam's practice of manipulating every instrument and agency of state to protect and serve his regime. In order to re-establish civil society in Iraq, there must be a clear departure from the past and a clear focus placed on the welfare of the Iraqi people.

II. Transitional Justice Plan

This Transitional Justice Plan is aimed at transforming an unstable and chaotic state, caused by a dictatorship with a legacy of gross human rights abuses, to a democratic pluralistic system which respects the rule of law.

Transitional justice in the context of Iraq today demands sincere efforts to create the environment of trust and confidence in a new system, particularly a judicial system which establishes the rule of law in all of its meanings. This includes the general public's respect and confidence in the legal system to resolve disputes, prosecute crimes and also the important task of holding all people accountable regardless of rank or position.

In the case of Saddam Hussein's regime, the prolonged, widespread use of terror and violence against the Iraqi people requires a systematic and comprehensive approach to transitional justice. Such an approach will necessarily have to deal with the past crimes of the regime as well as to proactively create the environment for a future which respects the rights of all Iraqi citizens with coherent laws and reformed institutions.

Addressing the regime's crimes through open and fair trials for those suspected of war crimes, crimes against humanity and other serious abuses is a cornerstone of this plan. In addition, Truth Committees with a mandate to discover the truth, establish a record and disseminate this information on the national and international levels are proposed. Victims' compensation mechanisms are recommended as a key element in the effort to inhibit potential public demands for vengeance.

Building a future on the basis of respect for the rule of law requires a thorough review of the system of laws left behind by this regime to identify, remove and/or replace those provisions which violate internationally recognized basic human, civil and political rights. Beyond reforming the laws, major reforms are also required for key institutions to re-establish their roles to protect and serve the public in contrast to their current capacity to protect and serve the regime of Saddam Hussein.

In parallel with these reforms and the truth, accountability and reconciliation processes, a far-reaching program to educate and re-train professionals in various fields is needed to promote basic values of public service and protection of individual rights. An additional component to the education program is to raise public awareness of the essential rights and responsibilities of citizens building a civil society in all spheres of life, including schools, colleges, the media and other public forums for the long-term transformation of the institutions and society in general.

The following sections are concrete recommendations and draft laws in each of these important areas:

A. DEALING WITH THE PAST...

It may be impossible for Iraqis to confidently and boldly face the challenges of an uncertain future, without first taking a hard, sober look at the past decades under Saddam's rule and thereafter directly addressing the fallout from the widespread crimes and repressive policies which are the hallmark of his regime. Re-establishing the rule of law and preventing individuals or groups from resorting to mob-justice requires a genuine, meaningful process to identify, prosecute and hold perpetrators of crimes accountable for their actions.

Beyond the major crimes, an active truth and reconciliation process is required to identify, record and disseminate information about what transpired under this regime. Additional remedies other than deprivation of liberty such as personal payment of victims' compensation, community service and lustration mechanisms are available for those offenses which do not rise to the level of major crimes.

1. Truth, Accountability and Reconciliation

a. Prosecution v. Truth Committees

The Iraqi regime's crimes against humanity are some of the worst in world history. Although, they have been amply recorded, they are extremely difficult to quantify with any precision.

Having established this fact, it remains necessary to give hope even to some of the perpetrators of less serious abuses. This may be done by a plea bargain offering amnesty for those who defect, or expose the regime's crimes and the persons involved. Such an offer can be made pursuant to law No. 23 of 1971 of the Criminal Procedure Code. (Note- all code references refer to the Iraqi legal codes unless specifically indicated otherwise) Article 29 of this law states:

- 1- The investigative judge may offer amnesty with the approval of the criminal court for reasons set forth on the record in the case against any person accused of wrong doing with a view to obtaining their testimony against other perpetrators provided said accused presents a complete, truthful account. If the offer is accepted, the testimony shall be heard and the accused shall retain his/her status until a verdict is reached in the case.
- 2- If the accused does not present a complete, truthful account, he/she shall lose his/her right to amnesty by decision of the criminal court.
- 3- If the court finds that the account presented by the accused offered the amnesty is complete and truthful, it will cease all criminal proceedings and release said accused pursuant to the terms of the amnesty.

Tenets of the Islamic law may also be used in this connection, especially those that allow the victim or the victim's relatives to forfeit their rights against the perpetrator upon reconciliation, in an act of Forgiveness.

However, it must be made clear to all Iraqis that the law shall be firmly and severely applied against those who resort to score-settling or vengeful acts irrespective of their status. The point must be emphasized

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that the principles of transitional justice shall be uniformly enforced against offenders in fair trials where the deserving parties shall be justly compensated for damages.

b. Truth Committees

There is a strong link between truth and reconciliation committees and the qualified amnesty of certain crimes to be later defined.

The truth and reconciliation committees are set up and their functions are defined by order of a judicial council. They are to do everything necessary to reveal the truth with regard to abuses that do not amount to international or major crimes. These lesser abuses may be so numerous that they cannot be prosecuted by courts of law. (A case in point is Rwanda where more than 400,000 people were implicated in such abuses, and their prosecution would have taken hundreds of years.) The measures in question would involve admission of guilt. That is why the aim of these committees is to arrive at the truth and consequently at the higher objective of reconciliation.

For the truth committees to attain their goals, they need to do the following:

1. Investigate claims formally and publicly reveal the truth about past human rights violations and the individuals involved
2. Contribute to justice by imposing sentences other than deprivation of liberty, including amnesty for crimes covered by such a move, compensation for damages. In the event the case involves crimes beyond its jurisdiction or there is a breach of amnesty conditions, it shall refer the case to the criminal investigation committees which in turn may send the accused to a court of competent jurisdiction.
3. Induce confessions of responsibility and guilt. Reconciliation and amnesty is thus not tantamount to acquittal.
4. Involve and satisfy the concerns of victims, achieve reconciliation and renounce vengeance, vendettas and violence.
5. Link amnesty to the work of truth committees in bringing about reconciliation. Amnesty shall not extend to those who do not confess responsibility for abuses and publicly apologize for their misdeeds. This is similar to what occurred in South Africa.

Decisions of these committees must be subject to appeal. The truth committees should also have the power to take such decisions in addition to imposing sentences not involving imprisonment.

In each Appeals Court District, one or more truth and reconciliation committees may be set up as required. They are to comprise three members headed by a judicial officer. The members must be qualified and known for their integrity and good reputation in the community. (See Appendix A/11 for Draft Law to create Truth & Reconciliation Commissions)

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c. Reconciliation Mechanisms

To bring about reconciliation and to encourage people toward acceptance, tolerance and compassion rather than vengeance, structures must be in place that are in accord with local traditions, customs and norms.

The reconciliation project is important and its objective is to promote a favourable climate for normal life in a society that has been stunted by dictatorship. It is designed to help society move forward towards stability and democratic transformation.

A large number of people will likely be implicated in abuses due to the nature of Saddam's contradictory and complex policies which required individuals to demonstrate their loyalty to the regime by transgressing on the rights of others. To punish this huge number of abuses, assuming the necessary possibilities are available to do that, is to risk undermining the existing social and economic set-up threatening the state itself. This is why the work undertaken in implementing the transitional justice and reconciliation project is so essential. It, therefore, requires technically oriented individuals who are committed to a pluralistic, democratic society which respects the rule of law.

The main objectives in a reconciliation process that can assure the uniform dispensation of justice and set the foundation for the rule of law are:

1- Build confidence in the new administration and cooperation with it. This may be realized through the following:

- Granting special priority to the issue of compensation. Fair and just compensation should be granted to victims without discrimination. Failing to do so will invite resentment, protest and eventually rebellion if the issue is manipulated by opponents of the new administration. Moreover, a fair settlement of this issue will help victims overcome their vengeful impulses towards the perpetrators and their relatives. Compensation is a pivotal element of reconciliation.

- Raising the standard of living for civil servants. Conditions for living a decent life have been denied Iraqis under Saddam's regime. A nation-wide drive will be required to raise the standard of living, particularly of civil servants, as a guard against social corruption, thereby attacking its economic causes. This will help maintain self-interests within the accepted moral norms and remove any contradiction between private and public interests.

- Establishing legal safeguards to deter the new administration from imposing restrictions on individual freedoms. To rule out any form of authoritarianism in a post-Saddam Iraq, institutions and structures with appropriate checks and balances must be in place. Above all is the requirement for an independent judiciary. The more independent the judiciary is, the more just and effective it will be.

2- Highlight those tenets of Islamic law (sharia) that emphasize virtue, tolerance and forgiveness. Use may be made of early Islamic experiences which applied the principles of piety, justice, honesty, tolerance and respect for differences rather than ethnic, sectarian, religious, class or clan discrimination as practiced by Saddam's regime and the Ba'ath party. People need to be reminded that Islam could not have built a vast empire in its heyday if it had not espoused justice and virtue as its foundation. This policy will effectively contribute to preventing score-settling and vendettas in the wake of regime change.

3- Make use of traditional conventions and structures like tribal values to maintain order and ward off anarchy in the interests of reconciliation. This is despite the fact that these tribal values were encouraged by prior repressive regimes, nonetheless, they need to be acknowledged in the transition to a pluralist system and may even be a useful vehicle for enfranchisement of otherwise disenfranchised individuals or groups.

d. Prosecution

Holding Saddam Hussein and his cohorts responsible for their crimes against the Iraqi people requires prosecution under Iraqi penal codes. The salient issues in this regard are:

i. Legal Basis for Prosecution

- How to serve out arrest warrants
- How to conduct the investigation and file charges
- How to address the question of immunity granted to Iraqi officials under the existing constitution

ii. Court Structure

- Which courts shall hear which types of cases

i. Legal Basis for Prosecution

Iraqi law No. 23, 1971 of the Criminal Procedure Code sets forth the nature of the proceedings relevant to criminal cases. Article 1 states that it is permissible to set a criminal case in motion by an oral or written complaint presented to an investigative judge, a prosecutor or a competent official at a police station. Such a case can also be initiated by an 'Information' presented to the public prosecutor. On the basis of this Information, an investigation is opened. The investigative judge shall take such necessary steps as issuing a summons, search warrants and arrest warrants against the suspect(s). In the case of arrest warrants, the accused shall be described in detail by name, title, identification (card/number), physical description, place of residence, occupation, the type of alleged offense, the relevant penal code and date of the warrant.

The question then becomes, in the event there is no complaint filed against an official, particularly in the event there is a coup or an occupation by outside forces, can the investigative judge serve an arrest warrant and determine the nature of the suspect's custody/detention based merely on suspicion?

The answer is yes. Article 103 of the Criminal Procedure Code allows the arrest of any person suspected on reasonable grounds of having committed a major crime or an intentional felony without the need for a formal complaint. Precedent shows such suspects have been put under arrest by investigative judges pending inquiry into their alleged crime or involvement in a criminal act. Investigative judges can

invoke this provision to arrest and question state officials without an initial summons or complaint being formally lodged against them.

As for the legal mechanism required to serve these arrest warrants, it is proposed that a Judicial Council be established, comprised of at least 9 members selected from judges forcibly retired in Iraq, those in exile and others presently in the Kurdish region. This Council can serve as a nucleus of the judiciary in a post-Saddam Iraq, expanding to include judges of integrity inside Iraq, after regime change. The Council shall have all the powers of the judiciary as defined in the future interim constitution or basic law.

The Judicial Council shall select a presiding judge who may be the same person as the presiding judge of the Cassation Court. The Council shall appoint investigative judges to investigate alleged crimes by officials of Saddam's regime under the Iraqi penal code. The Council shall also serve to vet members of the judiciary with authority to retire judges with questionable political backgrounds or integrity. Vacancies created by such actions may be filled by recalling retired judges of sound character and lawyers known for their competence. The Judicial Council may assume its constitutional and legal duties in the interests of justice during the transitional period.

It is proposed to initially confine all arrest warrants to top officials of the regime, including its head, his immediate associates, deputies, Revolutionary Command Council (RCC) members, ministers, regional leadership members, heads of security agencies, army chief of staff and corps commanders.

ii. Court Structure

Special Courts for International and Major Crimes

Criminal trials by no means imply automatic conviction of the accused. They are legal proceedings designed to arrive at the truth. The accused is innocent until proven guilty. These trials shall be instrumental in revealing the truth and eliminating the impulses for vengeance and violence. In this sense they are an effective contribution to transitional justice. The truth will lead either to conviction of the accused when proven guilty or to acquittal or to dismissal for lack of evidence.

Before holding criminal trials competent investigative teams, presided over by investigative judges, should be in place. They are to investigate officials suspected of war crimes, genocide, torture and crimes against humanity. There is no statute of limitations for the prosecution of these crimes, nor are they covered by any amnesty. The investigation teams should be supported by international experts while making use of facilities offered by specialized institutes to uncover and preserve incriminating evidence and other areas of expertise.

The measures taken by these teams are governed by provisions of the 1971 Criminal Procedure Code in line with all subsequent procedures by courts applying the same law. The investigation teams may present the respective cases to investigative judges for the issuance of arrest warrants, summons, and search warrants pursuant to the above-mentioned law. Alternatively, investigative judges may preside over these teams to facilitate the task of issuing the appropriate court orders.

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Crimes not falling in the international crimes category specified above but covered under Iraqi penal codes may be investigated in the typical manner with magistrates. There may be a pressing need to increase the number of competent prosecutors to investigate these crimes due to their large number.

Criminal courts in Iraq are classified according to the nature and gravity of the crime. There are criminal courts dealing with offences punishable by more than five years in prison. There are misdemeanor courts that deal with offences carrying a maximum penalty of five-year imprisonment.

Saddam Hussein and his top officials will be tried for crimes that do not fall under either of the above two categories. Theirs are grave international acts involving war crimes, genocide, torture and crimes against humanity. There is neither a statute of limitation nor amnesty for these crimes.

Saddam Hussein and other officials at the highest echelons are to be indicted for three types of crimes:

1. The first are grave international crimes that come under international criminal law.
2. The second are major crimes codified in the Iraqi penal code.
3. The third are lesser crimes and offenses covered by Iraqi penal code.

(The third type is addressed in the section on truth and reconciliation committees.)

As for the first type, they are crimes that can be dealt with by one of the following:

An ad hoc international criminal court like those set up for former Yugoslavia and Rwanda. The maximum penalty that can be meted out by these courts is life imprisonment. They are formed by a resolution of the UN Security Council. (Note: the newly created International Criminal Court is unfortunately not an appropriate venue to prosecute these crimes as its mandate is limited to crimes committed after July 2002. The vast majority of crimes committed in Iraq occurred well before this date.)

A hybrid criminal court consisting of Iraqi and international judges. This court, too, would be set up by a UN Security Council resolution, and it may also be barred from passing sentences involving the death penalty in accordance with the provisions of the UN resolution. Such a resolution is likely to be consistent with the provisions of international criminal law, which was the case with the Yugoslavia and Rwanda courts.

A special national criminal court comprised of Iraqi judges according to law No 23 of 1971 on Criminal Procedure Code. It may be made up of a presiding judge and two associates who can seek counsel from international experts or have international judges acting as experts. The overwhelming majority of Iraqi jurists are in favour of this kind of court as it will ensure that the trials have a national character and forestall any criticism from local, Arab and regional quarters. The difficulty this court might encounter is related to the fact that under the most recent applications of international criminal law, the maximum penalty for these crimes has been

life-imprisonment. The maximum sentence under the Iraqi penal code, however, is death for major crimes such as pre-meditated murder. It would be gravely unjust to prosecute murderers with the possibility of a death sentence, while war criminals and persons accused of crimes against humanity face only a life-sentence. One solution to this dilemma would be to allow for the use of the death penalty for those convicted of one or more of the four major international crimes. Another solution would be to have the appropriate/legitimate legislative body abolish capital punishment in the Iraqi penal code to be consistent with the recent applications of international law.

Domestic Criminal Courts

The second type of crimes is covered under the Iraqi penal code. With over 34 years of Ba'ath rule in Iraq, numerous and heinous crimes have been perpetrated. The number of perpetrators may run into the tens of thousands. These crimes come under the jurisdiction of Iraqi criminal courts. These courts are limited in number and may not be able to cope with all of the potential cases, without taking an unreasonably long time to resolve. Such delays may be a disservice to justice. That is why additional criminal courts will need to be set up in the respective Appellate Court districts, even if they are provisional and last only until the major caseload is handled.

A flow chart is attached which depicts a sample organization for these courts and commissions. (See Appendix A1/12)

e. Defenses- The problem of immunity against prosecution

Under Iraqi law, immunity does not pardon or annul a crime. It merely suspends legal proceedings for specific and special reasons. Lifting this immunity implies that the special reason for the restriction is removed and things are back to normal. In other words, the person enjoying immunity shall be subject to legal proceedings like any other person.

The 1970 interim constitution grants this immunity to the president, RCC members, ministers and Ba'ath party regional leadership members. Abolishing this constitution by the competent authority after regime change will automatically lift this immunity and restore normality. The question of military immunity is addressed in the section on institutional reform, where it is proposed that immunity for members of the military be lifted and that they be treated as civilians.

f. Amnesty

There are two kinds of amnesty. There is a general amnesty covering all perpetrators of crimes irrespective of their gravity and the persons involved. Such an amnesty has been applied in certain countries like Sierra Leone in 1999 and before it Argentina in 1983. It was unsuccessful as it had failed to restrain people's vengeful impulses and bring about the desired sense of justice. A general amnesty will not

contribute to reconciliation in Iraq where the situation is much more complex. Objective conditions rule out this kind of amnesty in favour of other more relevant world experiences.

The amnesty deemed suitable for Iraq would be a qualified amnesty covering only specified abuses. It has been suggested that it should cover lesser offenses and infractions specified in the Iraqi criminal law. In other words, amnesty should be extended to crimes punishable by a maximum of five-year imprisonment. Other crimes, including criminal acts with international implications, should not be covered by the envisaged amnesty unless all of the victims or the victims' relatives settle for reconciliation, restitution according to local customs, or compensation for damages.

For the amnesty law to serve the purpose of reconciliation it should be contingent upon:

1. The persons amnestied turning themselves in within a specified time period.
2. The persons amnestied cooperating with the truth committees and fully and completely confessing their crimes.
3. The persons amnestied giving a public apology to the victims and the community as a whole.
4. The persons amnestied pledging not to repeat their misdeeds in the future.

This kind of amnesty has proved to be a success in South Africa. The essence of the amnesty is to acknowledge responsibility for previous abuses and cooperate with the truth committee investigators. On the basis of the findings, the committee will decide whether the perpetrator will be amnestied or not for reasons to be recorded in the investigation file.

2. Victim's Compensation and Reparations

Compensation to the victims of the Ba'ath regime since 1968 is a major component of the reconciliation process. It will soothe the victims' sense of having been unjustly treated and restrain their vengeful impulses while promoting trust between them and the new administration.

The regime's victims include those who lost loved ones in its prisons, were arbitrarily detained and tortured, lost their jobs, were expelled or forced into exile, had their property confiscated, were physically or psychologically scarred or have suffered significant injury; all deserve to be compensated for damages. (See Appendix B/21 for Draft Law enabling victim's compensation)

The two main kinds of compensation are:

1- Monetary compensation which may take two forms:

- a. Monetary compensation for confiscated real or personal property as a consequence of displacement, exile or unjust decrees.
- b. Monetary compensation for damages sustained as a consequence of the regime's actions, including persecution, murder, torture, imprisonment and detention on false charges.

2- Non-tangible compensation which may also be of two types:

- a. A formal apology to the victim or their relatives by the perpetrators if their abuses are covered by the amnesty or if the victim or their relatives accept such a gesture.
- b. A public registry listing of the victims to remind future generations of the regime's crimes and observing a certain day to commemorate the victims.

3. Recovery of Misappropriated Public Funds

The former regime consistently dispersed and dissipated public funds and deposited them in accounts and entities belonging to persons and private companies in order to conduct illegal businesses which serve the illegitimate purposes of this regime, unconcerned about the fate of this money so long as the persons in possession of these funds and property obey the orders of the regime.

As public funds are part and parcel of a nation's wealth and therefore all means and international contacts should be made to recover it, specific laws are recommended to criminalize the acts of persons in possession of this money and those who have failed to return it in the legally specified time to do so.

The laws call for all those in possession of misappropriated public funds/assets to return those funds/assets within 3 months from the issuance of this law. It is proposed that those who do return the funds/assets within this timeframe will be entitled to a 10% reward (of the value of the property). Those who do not return the property within this timeframe will be subject to prosecution. (See Appendix C/22 for Draft Law)

In addition, it is recommended that a commission be established to research and identify all companies who profited from doing business with the prior regime. This list should be published, and it would be up to the Iraqi electorate to determine what to do with these companies: whether to prosecute, blacklist, disgorge their ill-gotten profits or any other measures deemed appropriate. For the sake of posterity, it should be well known which businesses profited from their association with the prior regime.

4. De-Baathification

a. Revocation of Ba'ath Party Privileges

Since it seized power in 1968, the Baghdad regime has been granting privileges and lavish perks to members of the Ba'ath party from the public treasury without regard to the public's welfare. These privileges have been granted under laws passed by the regime, as handouts from Saddam Hussein himself or by arbitrary expropriation of public as well as personal funds and property.

There are ample examples of these excesses such as the confiscation of property belonging to deported or exiled individuals, distribution of housing plots, large financial rewards, houses, luxury cars, and other special prerogatives.

A draft law was drafted abolishing these privileges. (See Appendix D/31)

b. Memorialize dark Ba'ath era for future generations

The legacy of Saddam and his regime must not be lost on future generations of Iraqis. It is proposed that a monument for the regime's victims be built in every Iraqi city with a national museum of the regime's inhumane practices with a chronicle of the brutal methods used by its security agencies. Notorious prisons and torture chambers should be preserved as perpetual memorials for the victims of Saddam's crimes.

B. BUILDING THE FUTURE

1. Legal Reform

Laws affecting human rights and freedoms have been turned upside down and radically amended to assist the regime's violation of these very rights. It is, therefore, imperative to review major laws with the aim of restoring people's rights and dignity, including their right to a decent, secure life in their own country. Iraqi jurists in conjunction with international legal and human rights experts, have embarked on this project and make the following recommendations:

a. Criminal Law

The objective of criminal legislation is to maintain social order and protect public safety consistently and uniformly. By contrast, the Iraqi regime introduced amendments to the Iraqi penal code No 111 of 1969 in a manner contrary to human rights in order to secure its own survival.

In both its legislation and its actions the Iraqi regime has violated (and continues to violate) every aspect of humanitarian law as set forth in international covenants and the Universal Declaration of Human Rights. This includes imposing or increasing sentences with the death penalty without regard to the well-established legal principles that:

- There is no crime and therefore no punishment without a specific text in the penal code.
- Criminal laws cannot be retroactively applied.
- The accused is innocent until proven guilty.
- Sentencing decisions should be made specific to the individual defendant.
- There should be no more than one punishment for the same crime.

The regime has also violated the basic rights of the accused, including the ban on torture and arbitrary detention, the right to compensation for damages, and freedom of speech.

The general consensus of the commentators is that the original Iraqi penal code and Criminal Procedure Code were drafted by a distinguished group of jurists, legal experts and judges. However, successive amendments were introduced by Saddam's regime which violate basic human rights and social norms. The main purpose for these amendments was to ensure the survival of the regime.

Nonetheless, the entire criminal code needs to be overhauled under a legitimate process that is in keeping with the times and technological advances. However, this process should be the result of a thorough study and examination by legal experts who should undertake this task in a stable environment with a functioning parliament (legislative body) under favourable conditions for enacting a modern criminal code.

In the meantime, the offensive amendments which violate basic human rights should be dealt with in the interim period. The majority of the commentators are in favour of keeping the existing penal code and Criminal Procedure Code after repealing all amendments and modifications by the authority empowered to enact laws during the transitional period.

Specifically, it is proposed to repeal all provisions regarding political offences in articles 20, 21 and 22 of the penal code.

It is also proposed to amend the Criminal Procedure Code to give defense lawyers the absolute right to be present and to see all papers related to the case at every phase, and to visit their clients in custody without interference by any state authority.

In culmination, a bill has been drafted repealing all amendments in question. (See Appendix E/28)

b. Military Penal Codes

Military penal codes are marked by two main characteristics:

1. Immunity and extensive powers.

Law No 106 of 1960 on Service of Process has turned members of the military into a privileged class. It grants them immunity against summons and legal proceedings by civil courts. Indeed, it almost absolves them of all liability. A member of the military can be apprehended only when committing a witnessed crime. Even in this case the accused shall be handed over to the nearest military authority. The accused can be brought before a civil court only with approval of the minister of defense or an official authorized by him. Also, military courts have extensive jurisdiction. (See Appendix F/8)

2. Severity of punishment.

The military penal code is also marked by its harsh penalties in matters related to security of the regime or its military and repressive agencies. Military courts have been granted extensive powers although their member judges generally lack the necessary legal qualifications to decide cases referred to their courts.

The military penal code provides for severe penalties that are out of tune with modern criminal practice. Iraqi military penal codes are a fairly realistic reflection of the "carrot and stick" policy pursued by the regime. Members of the military enjoy extensive privileges and immunity against prosecution for crimes committed against civilians. On the other hand, they are subject to extremely harsh penalties for offences related to security of the regime and its military institutions.

Recommendation

1. The jurisdiction of military courts is dealt with under Institutional Reform- Judiciary.

2. With regard to immunity, there is no justification whatsoever for members of the military to be more privileged than others or be elevated to a distinct class from the rest of the people. This immunity must be revoked.

c. Nationality law

Since the coup of 8 February 1963, Iraqi citizenship matters are governed by law No. 43 of 1963 repealing law No. 42 of 1924 and its amendments.

The general consensus is that the existing law has introduced unjust provisions that have resulted in the tragic deportation of tens of thousands of Iraqis after revoking their citizenship. That is why this law constitutes a flagrant violation of human rights pursuant to international covenants and the Universal Declaration of Human Rights. Article 15 of the latter states that every individual has the right to citizenship. It also states that a person cannot be arbitrarily denied citizenship or the right to change it.

It is agreed that this law and its amendments cannot remain effective after a regime change as hundreds of thousands have been victimized by it. It should be repealed in its entirety while recognizing the naturalization decisions taken under it.

A review should be undertaken to compensate victims and restore Iraqi citizenship to those who have unjustly lost it. There should also be a watchdog entity established to oversee implementation of the new law with a view to guaranteeing people's rights.

Work in this connection has culminated in drafting a new citizenship law taking into account the problems caused by previous laws as much as possible until a new, well-considered citizenship law is adopted by the prospective Iraqi parliament. It should be noted that, unlike most other nationality laws in the region, this proposed law is gender neutral. (See Appendix G/29)

d. Administrative law

The Baghdad regime's policy since it seized power has resulted in rife corruption in the state apparatus. The main causes for the corrupt bureaucracy may be summed up in the following:

- 1- Politicization of administration.
- 2- The economic squeeze and low wages.
- 3- Absence of administrative, legal, parliamentary and public controls over the bureaucracy.
- 4- Militarization of the administration.

Recommendation

To uplift the state bureaucracy to the level of democratic transformation in Iraq during the transition period, a host of reforms must be carried out, including:

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- Repealing all laws and decrees that have politicized administrative functions and terminating control of state institutions by the ruling party;
- Reviewing civil service and employment laws with incentives encouraging honesty and integrity with an emphasis on the concept of the "public trust" for civil servants;
- Establishing administrative, judicial, public and parliamentary oversight over civil servants;
- Preparing a development plan for the administration of the bureaucracy;
- *Identifying and dismissing all employees found to be redundant, corrupt, or grossly negligent in their duties;*
- Selecting top civil servants who are highly qualified people of unquestionable integrity to set an example for their staff; and
- Developing intensive plans to train civil servants at various levels such as:
 - Introducing modern technology in administrative work.
 - Promoting courteous interaction at all levels of the system and renouncing condescending attitudes within the system or towards the public.
 - Disbanding all state functions or positions related to the Ba'ath party— including those of security officers and operations run by that party in the state bureaucracy.
 - Reviewing all other laws governing the bureaucratic function for further reform in line with the new democratic era.

Considering the crucial nature of the transitional phase and the fact that the Ba'ath party is primarily responsible for politicizing and therefore crippling the bureaucracy, a bill has been drafted repealing the "leading party law" No. 142 of 1974 and banning the Ba'ath party itself. (See Appendix H/30)

e. Civil Law

The general consensus of the commentators is that the existing civil law of 1951 has not experienced any radical change in contravention of human rights. Maintaining this law will not be detrimental to these rights, at least and until specialized legal authorities are in place to re-examine the law and present relevant recommendations.

f. Interim laws

These are laws expected to be required during the transitional period to deal with immediate situations and needs. A body of legal experts should be set up to examine these needs, which may be called "Ad hoc Legal Committee for Drafting Interim Laws." The Judicial Council may assist with this task during the transitional period.

Immediately after a regime change, it will be imperative to pass a law banning the Ba'ath party and privileges enjoyed by it under the "leading party law" No. 142 of 1974 as it was used as a tool of persecution and brutal repression.

2. Institutional Reform

The vital state institutions have undergone extensive changes in their structure and functions dissociating them from the purposes they were originally set up to serve. Their function changed from serving and protecting the public to solely serving and protecting Saddam and his regime.

This is why it is a critical manifestation of transitional justice to reform these institutions and re-establish their basic public services. Reform cannot be brought about by merely renaming the institutions that supported the dictatorship. Reform demands restructuring of these institutions and the laws under which they operate to serve the public good rather than the repressive regime. The most important institutions are the judiciary, institute of legal education, security agencies, military and prison system to name but a few.

a. Judiciary

Before the coup of 17 July 1968, the Iraqi judiciary was marked by a measure of integrity, impartiality and commitment to the requirements of justice. It enjoyed a certain degree of independence in fulfilling its duties and making its rulings, which were characterized by the principle of even-handedness, solid substantiation and profound legal reasoning. These rulings would serve as precedents to be cited by litigants and other courts alike.

Before the 1968 coup, the Iraqi judiciary ensured a modest level of justice in the sphere of social order and individual rights. This was the result of concerns by successive governments to uphold the integrity of this vital sphere. There is no denying, however, that all those governments were undemocratic and opposed to judicial scrutiny of their political actions, including the legislative process and the actions of the executive.

After the 1968 coup the Ba'ath regime introduced the notion that there are no independent state powers except one political power assisted by legislative, executive and judicial agencies to undertake its responsibilities. This eliminated any notion of the separation of powers (legislative, executive and judiciary) and turned all of these powers into institutions controlled by one ultimate political power under Saddam Hussein.

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To eliminate any remaining role for an independent judiciary, the Baghdad regime dissolved the Judicial Council which was headed by the presiding judge of the Iraqi cassation court. It was re-invented as "the justice council" headed by the minister of justice who reported to the President.

As a consequence, the Iraqi judge has become a mere functionary following orders from the political power. The breakdown below demonstrates the unparalleled fragmented nature of the current Iraqi judiciary:

The Iraqi judiciary is divided into the following sectors:

I: The Iraq cassation court.

II: The military cassation court.

III: The internal security agencies cassation court.

IV: Special judiciary courts, which are divided into four parts:

1: The revolutionary court.

2: Judiciary of party organizations. (Serious judicial powers have been granted to party organizations.)

3. Judiciary of ministries and security agencies. (Many courts have been set up in key ministries and departments like the interior, defense and security agencies- intelligence, public security and special security).

4. Judiciary of provisional courts.

V- Judiciary of the joint cassation court.

VI- Judiciary of special powers. (Judicial powers granted to state functionaries, police officers and others.)

Each of the above judicial organs is completely separate from the other, and they are in no way connected with each other. Each of them is linked to a specific ministry or government agency. Each has its own functions defined by its own laws.

Recommendations

Justice and human rights have been the first victims of this decimation of the Iraqi judiciary. The transitional authority will have the urgent task of restoring the authority of the Iraqi judiciary and its former uniform structure as much as possible pending a more detailed plan to ensure the independence of this branch and its jurisdiction over all aspects of the legal system in Iraq. To this end the following steps are proposed after a regime change:

1. Abolishing all special courts and powers granted to police, security and intelligence officers as well as other state functionaries. (See Appendix I/49 for Draft Law)

2. Keeping for the time being military courts and internal security courts governed by law No 44 of 1941 on military court procedures. These courts will be difficult to dissolve due to the service laws involved and it will take some time to review these laws together with the penal codes. However, the jurisdiction of these courts can be restricted to only enforcing the military penal code. Civilian criminal courts shall have jurisdiction over all other crimes subject to the provisions of any

other penal code like crimes committed by a member of the military against another or against a civilian.

3. Incorporating all lower cassation courts into the Iraq cassation court. A body should be created within its structure to try crimes covered by the military penal code. This body may co-opt an expert on the military penal code such as the head of the legal department at the ministry of defense, his counter-part at the ministry of interior, a legal officer with a minimum of ten-years of experience or any other officer whose participation is deemed necessary for technical reasons.

4. Setting up a higher constitutional court to serve as a watchdog over the constitutionality of laws, by-laws and decrees and their accord with the provisions of the constitution and international covenants of human rights, including the Universal Declaration of Human Rights.

5. Setting up a judiciary council comprised of the presiding judge of the Iraq cassation court, his deputies, presiding judges of the lower cassation courts, presiding judges of the appeal courts, presiding judge of the higher constitutional court, his deputies, president of the state consultative council, his deputies, chief of the prosecutor's office and head of the justice department's inspectorate.

6. Amending the law No. 160 of 1979 on organizing the judiciary in line with the transitional justice project while ensuring total independence of the judiciary (See Appendix J/50 for Draft law)

b. Internal and other Security Agencies

The Baghdad regime relies on special security agencies it created which have no relationship to the conventional internal security agencies operating in the Iraqi state when it was founded. These special security agencies are: the general intelligence (mukhabarat), special security, Fyda'een Saddam, the special republican guard, the people's army, the emergency forces and the Al-Quds Army.

All of them are repressive agencies that have extensive powers and their own prisons and detention centers. They used torture and extrajudicial killing to terrorize the people.

The regular internal security agencies consist of the police general directorate, the security general directorate, the traffic police general directorate, the citizenship general directorate and the border police general directorate.

These agencies have been in existence since before the British occupation in 1918. After the occupation, the commander of British forces issued a police statement No. 72 of 1920 setting out guidelines governing police affairs. The internal security agencies developed further, and police service and discipline law No 20 of 1943 was later enacted to regulate their function. This law was more akin to the civil service law than to the military service law; in fact, the civil service law was its main source.

The internal security agencies have been militarized under the Ba'ath regime and subjected to service laws similar to those of military service and military penal codes. They have been granted extraordinary immunity as is the case with military personnel.

Recommendations

Recommendations with regard to all of the "special" security agencies are strongly in favour of disbanding them and liquidating their assets immediately after a regime change as they will be superfluous and irrelevant.

A draft resolution has been drawn up disbanding the special security agencies. (See Appendix K/37)

To reform the relationship of the regular security agencies with the public, it is proposed that a new motto be established: "police in the service of the people." These institutions should be re-built to focus solely on the protection of social order, individual rights and public safety. The laws governing these agencies should be reviewed and transformed into civil laws.

The training and education of their personnel needs to be redesigned to ensure they serve the purpose which they were originally designed to serve. To ensure the people's freedoms and rights it is equally necessary to abolish the immunity enjoyed by these agencies under the Service of Process law No. 106 of 1960.

c. Military Service (The draft)

The Iraqi people, especially young Iraqis, have suffered tragically as a result of the Baghdad regime's misadventures and wars with neighbouring countries. Hundreds of thousands of young Iraqis have been killed or disabled due to continued compulsory service in the army which has consumed the better part of life for this age group.

An international protection force under the auspices of the United Nations, after regime change, will allow Iraqis to use their creative potential for building a new Iraq, especially the young people. The new Iraq must be at peace with itself, its neighbours and the world refraining from destabilizing the region while focusing on democracy building. This requires the rejection of any thinking to build a new war machine as it will be meaningless and incompatible with the aspirations of a new democratic Iraq seeking peace and goodwill.

Accordingly, the commentators see no need for compulsory military service. Instead there should be a professional army of volunteers to defend the country against external aggression. A new Iraq belonging to the community of democratic states can contribute to international efforts to establish the principles of justice and to fight international terrorism.

d. Prison System

Prison law No 51 of 1969 was apparently passed within the framework of a reasonable penal policy to turn the prison system into an agency for reform and rehabilitation of its inmates. However, the regime's practices, its manner of operating the prisons, and the punishments meted out by the regime run counter to the aims of the above law. Punishment under Saddam's regime serves as revenge rather than reform. Amendments to the Iraqi penal code abound with prescriptions for capital punishment for minor offences, albeit primarily political offences. Indeed, the regime has introduced such inhumane punishment as chopping off ears, branding, amputation of the limbs and other prehistoric forms of punishment that are diametrically opposed to modern penal policy. Inhumane treatment is widespread against prisoners and detainees.

Recommendation

The following negative aspects of the prison law need to be eliminated:

- 1- Solitary confinement as a punitive measure during which the prisoner is denied regular meals.
- 2- Section 7 of the prison law dealing with political prisoners and detainees, which grossly contradicts democratic practice under the prospective new government. Self-expression and opposition are by no means a crime punishable by law, and, therefore, there should be no political prisoners. This section must be repealed.

It is proposed to add the following new provisions:

3. None of the punitive measures laid down in the prison law may be enforced without an inquiry. In the course of such inquiry the prisoner is faced with the alleged offence and given a hearing with the right to self-defense. There should be a written record of the proceeding.
4. None of these punitive measures should entail delay of release after serving the sentence passed or the order of remand.
5. Defense lawyers shall have the right to meet privately with the detained or imprisoned defendant. Foreign detainees or prisoners shall have access to their respective consulates or the mission representing their country's interests.
6. No staff members of a public authority may contact any detainee or prisoner without a written consent from the general prosecutor.
7. Any pregnant woman prisoner shall be accorded special treatment and medical care from the date pregnancy has become evident.

8. Special treatment shall be accorded the mentally ill prisoner. Upon determination of the prisoner's condition, he/she shall be moved to a mental institution.

9. Release may be obtained for health reasons if it is established that a prisoner has a life-threatening condition or the prisoner's condition poses a threat to the lives of others in prison. Release for health reasons shall be effected by a decision of the general prosecutor with a copy of the decision to the ministry of labour and social affairs.

10. Prisoner's relatives shall be informed if his/her condition has become sufficiently serious.

11. Bodies of dead prisoners shall be turned over to their relatives with a detailed report on the history of illness, the nature of work on the day of death, the kind of food, the date the prisoner was committed to hospital, the date when the condition was first diagnosed, the specific nature of illness, the last day a doctor examined the prisoner and the date and time of death.

For a Draft law implementing these recommendation see Appendix L/54.

e. Institute for Legal Reform and Training of Lawyers

There is at present a judicial institute affiliated with the ministry of justice. It has two-year courses to graduate judges and general practice attorneys. This institute can be developed to offer three-year courses, including one or two years for practical training in the work of judges and public prosecutors. Also, its curriculum should be re-examined to be consistent with Iraq's future development.

Courses at the institute can be expanded to the training of lawyers and legal personnel. As the institute is engaged in the training of judicial personnel in general, a body specialized in legal reform at the institute will be very relevant. Reform questions can be discussed with competent legal personnel at the institute.

3. Proposed Constitutional Principles

Having universally accepted constitutional principles is important at any stage of governance in Iraq. No state function can be fulfilled by the various authorities without a constitution as the basic law. Serious thought must given to the issue of constitutional principles during the transitional period. Without these supreme rules ensuring people's rights and defining their duties, transitional justice in Iraq will be unthinkable.

Iraq's multi-ethnic, multi-religious and multi-cultural structure has been further compounded by Saddam's sectarian policy. Working out constitutional principles for such a country will be a daunting task.

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A permanent constitution at this or any subsequent stage can only be deliberated with the full involvement of the public as well as all political groups and personalities in post-Saddam Iraq.

The transitional stage will be better served with transitional constitutional principles that will serve as a basis for the authority of state powers and a guarantee of people's rights. Such principles should be drafted by a team of experts –technocrats- specialized in law, political science, sociology and economics.

Recommendation

It is proposed that the future transitional constitution or basic law include the following principles:

1. Separation of the three branches (legislative, executive and judicial) and defining the character of each branch, its structure, duties and mechanism of discharging its functions.
2. Recognition of Iraq's multi-ethnic structure comprising Arabs, Kurds, Turkmans and Assyrians among other ethnic groups.
3. Recognition that Iraq is a multi-religious society, including Islam, Christianity, Judaism, Mandaeism, Yazidism, and religious communities like the Shiites, Sunnis, etc.
4. Commitment to international covenants ensuring human rights in Iraq, including the Universal Declaration of Human Rights.
5. Upholding people's basic rights and responsibilities, including safeguarding property and banning unlawful confiscation.
 - Equality in rights and duties and prohibition against all forms of discrimination.
 - The principle that the accused is innocent until proven guilty.
 - The principle of non-retroactivity of criminal and economic laws.
 - Non-interference in people's private affairs like the freedom of thought, faith, etc.
 - Prohibition of torture.
 - Commitment to other related humanitarian principles.
6. Recognition of cultural rights and languages of all nationalities.
7. Freedom of worship rites and religious freedom for all communities.
8. Right of regular courts to oversee constitutionality of laws or assigning this task to a constitutional court.
9. Maintaining the present administrative provincial divisions until a permanent constitution is adopted, and state constitutional structures are in place in the course of democratic transformation.
10. Any other basic principles that contribute to stability without controversy with groups inside Iraq.

It should be pointed out that any attempt to enforce any of Iraq's past constitutions since 1925 will antagonize one group or another in Iraq and provoke senseless disputes. The republicans refuse to recognize the 1925 constitution; the monarchists refuse the republican constitutions; and the Kurds do not recognize any constitution that does not guarantee their right to federalism.

It will, therefore, be more practical to adopt a transitional constitution drafted by competent experts. Such a constitution should ensure the separation of the branches and protect human rights and the basic norms of citizenship.

4. Recommendations for Authority in Transitional Phase

It should be emphasized that the basic principle for a transitional authority in Iraq is that it should be comprised of Iraqis. The qualifications should be established such that any person serving on a transitional authority should have:

- a. a solid track record of service to the country
- b. sound moral character and unquestioned integrity
- c. no prior associations with Saddam's regime which might taint his/her reputation
- d. no prior involvement or even appearance of involvement with criminal activities or other improprieties

Furthermore, it is recommended that anyone with executive authority in the transitional phase be ineligible for participating in the first round of elections. Since one of the tasks of the transitional authority will be to prepare for the first round of elections, it is imperative there not be any conflict of interest issues.

In addition, the affairs of the state should be run by technical experts (i.e., technocrats) in key areas. It is proposed that the branches at this stage are as follows:

1. The executive consisting of:
 - First, a presidential council which is proposed to be comprised of 3-5 Iraqi members representing Iraq's diversified structure. Needless to say, members of the presidential council must be people known for their independent thinking, integrity, expertise and good reputation in Iraqi society.
 - Second, a council of ministers: comprising highly experienced Iraqi technocrats known for their independent thinking and good reputation in Iraqi society.
2. The judiciary: Represented by a judicial council of high-level judges. The council may be headed by the presiding judge of the Iraq cassation court. Its membership may consist of the presiding judge of the cassation court, of course, his deputies, presiding judges of civil, family, administrative and criminal courts, presiding judge of the higher constitutional court, his deputies, president of the state consultative council, his deputies, head of the judicial inspectorate, head of the law drafting department and presiding judges of appeal courts. The judicial council may be authorized to decide on all matters related to judges like appointment, promotion, allowances, retirement, etc. The presiding judge and members of the judicial council are to have the same grade and privileges as the president and members of the council of ministers. The council is to have its own budget separate from that of the justice ministry to ensure maximum independence of the judiciary in the interests of justice and democracy in post-Saddam Iraq. An independent judiciary is a solid guarantee for the establishment of the rule of law.
3. The legislative: The transitional period will be without a parliament to pass laws. A safe arrangement on the path to a democratic and just society is for both the executive and the judiciary to jointly pass laws. Legislation at this stage should not be left to the executive alone lest it establish a monopoly in this sphere. In other words, the

legislative during the transitional period will be a combination of the presidential council, the council of ministers and the judicial council pending the formal approval of a permanent constitution and development of constitutional institutions.

Possible Violence and Resistance to Change

Since it seized power in 1968 the Baghdad regime has surrounded itself with different centers designed to tighten its grip on the internal situation. These centers are a major part of an array of potential factors that may trigger acts of violence and resistance to the expected change in Iraq.

To preempt such potential risks these factors have to be identified keeping in mind the situation cannot be totally controlled due to the political minefields created by the Saddam regime. Effective action is still required to minimize any losses that may be sustained as a consequence.

The main risk factors and how to deal with them:

A- **Sectarianism**

Saddam Hussein has used every possible means to ensure his survival in power. This has taken a heavy human and material toll affecting all components of Iraqi society. Saddam Hussein has always been aware how unpopular he is. To find support in the region and within Iraq he has played the sectarian card in his policies and official propaganda. He has been suggesting to Sunni army officers that they are the first to be targeted in the coming change and that is why they have to remain on his side for their own survival. His media has been working 'round the clock to fuel sectarian discord with a view to winning supporters at home and in the region.

Saddam's ploys to use the sectarian card for winning support at home and in the region must be effectively countered by a plan focused on exposing the dangers of sectarianism.

B- **Involvement in Saddam's Crimes**

To tie the fate of as many state officials as possible to his own, Saddam has involved them in his crimes as members of the Revolutionary Command Council, ministers, security officials, military commanders or party commissars.

People involved in lesser abuses than war crimes, crimes against humanity, torture or genocide under international criminal law, should be given hope that they may be amnestied in a general pardon and national reconciliation process. It will be also useful to cite article 129 of law No 23 of 1971 on Criminal Procedure Code concerning the possibility of appeal bargains and amnesty to those who admit to their abuses and provide information about other suspects in the interests of a proper investigation. Such steps will give those people hope and encourage them to defect.

C- **Economic benefits and bribery**

During his years in power Saddam has created an army of beneficiaries, whether by perks or privileges to officers serving in the republican guard and special republican guard and other personnel in the security agencies, his body guards, etc. Others are bought off by cash rewards

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distributed every now and then. Contractors are bribed by lucrative deals. Even dissidents and expatriates have been stigmatized with salaries, allowances and grants to start up businesses. Others have been hired as consultants to government oil companies.

The discourse to be adopted in this regard should be reassuring to those who have legitimately benefited from doing business with the regime, who have received payments for certain normal services and those who have won contracts in clean bidding.

D- New class

Saddam has created a new class of tribal chiefs who have been given money, arms and limousines in return for controlling their tribesmen.

Those tribal leaders can be won over through contacts they still have with Iraqi exiles or by a clear message that they can keep their privileges so long as they side with the people against dictatorship.

E- Score settling and vengeful acts

Saddam Hussein and his cohorts are guilty of war crimes, genocide, crimes against humanity, extrajudicial killings, plunder, rape, torture, displacement and unlawful expropriation of property. These atrocities have created entire groups of victims impatient for revenge and score-settling when the opportunity presents itself after a regime change with a possible breakdown of security structures. That is what happened during the March 1991 uprising. Actions by victims or their relatives are bound to be accompanied by common criminal acts. After all, crime is a phenomenon seen in all societies with various degrees depending on economic, political, psychological, social and genetic factors. Iraqi society is no different. It has its own criminals who are a product of these conditions. Saddam's regime has further aggravated these factors by its inhumane policies in all spheres. Indeed, it has released all common criminals some of whom are likely to revert to their old habits. The period immediately after regime change might offer these criminals an opportunity to engage in acts of killing, plunder, looting, etc. .

To foil people seeking revenge and the potential acts of common criminals, it is necessary to take a host of decisive measures, including:

1. Impose a 24-hour curfew on the first day to be gradually relaxed according to the extent of security and order established.
2. Order all police forces to be on their guard and arrest all offenders.
3. Organize military patrols by coalition forces in all major cities to prevent lawlessness, especially against vital utilities and key government facilities.
4. Instruct tribal and clan leaders to use their authority to control rural areas.
5. Propagate the new laws and decrees via all mass media, including the use of airplanes. A stern warning is to be issued against any revenge acts targeting government officials as a crime punishable by law. It should be made clear that law,

order and justice are a prime concern and that all criminals against the people will be brought to trials.

6. Give explicit orders to the border guard and army units stationed on the border to tighten their control and block all escape routes that may be used by wanted criminals or for intervention by other forces to cause disturbances in Iraq.

7. Make appeals to all hospital, ambulance, civil defense, water, electricity and other utility personnel to immediately report to duty.

8. Make appeals to all government employees and the public as a whole to maintain law and order and protect state property, including museums, public buildings and other facilities against any acts of sabotage or vandalism.

9. Assemble investigation teams, truth and reconciliation committees and criminal courts without delay in order to reassure the people that the new administration will safeguard their rights.

5. Public Education and Awareness of Human/Civil Rights

Legal awareness is lacking even among Iraqi intellectuals. The reason is indifference by Iraqi society and disinterest by the state towards laws as they have both been in the grip of despotism.

Awareness of laws and rights will help people shed the despotic, dictatorial thinking in favour of tolerance, understanding the need for public participation in governance as well as the peaceful transition from one administration to another in government. People with good legal understanding of their rights will be in a better position to identify danger signs which run counter to the rule of law and democratic practice. Law, after all, is the outcome of such practice when it is enacted by democratically elected legislatures.

How can public awareness of their rights be promoted? It can only be fostered by harnessing all required resources in society towards this end. We have to start with the education system and the media as well as laws that will give people a sense of security and ensure justice for them. For this awareness to be in step with the new reality, the laws that are passed must meet people's actual needs.

Considering the appalling state of culture and media in Iraq due to the regime's policy, a forward-looking vision has to be developed for Iraqi culture and media in terms of public awareness and methodology. The Saddam regime has politicized culture and turned the media into a propaganda machine serving its own purposes. That is why it is imperative for the future Iraqi media to be independent and unfettered promoting freedom of expression and transparency. The media will act as a vox populi reflector and a watchdog over government actions and state institutions. Another prerequisite of media and cultural work is free access to information and educating the young Iraqi generation in a spirit of tolerance and multiculturalism.

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That is why it is important to focus on promoting legal awareness as well in the curricula of journalism faculties and the media as a whole. Teaching legal subjects will contribute to a public culture that may serve as a mass education for democracy while excluding the culture of violence and personality cult. Saddam's regime has undermined rational, humanitarian education, misguided the young generation and trampled such values as fair play and equal opportunity. Attention should be paid to re-educate the young generation for its members to be good, well qualified and scientifically equipped citizens capable of safeguarding the people's democratic gains.

Iraq is the land of great civilizations that prospered in climates of inter-cultural coexistence. To revive such positive elements in our heritage, publications and mass communications should be free from all forms of censorship. The private sector should be enabled to compete with state-owned media, and this also goes for the arts in general as an essential component of national culture.

The rule of law will be jeopardized in the absence of legal awareness on the part of both government employees and the public. It will be absurd for state laws to remain the domain of scholars and experts. These laws should be part of the public domain for their enforcement to be meaningful. (See Appendix M/66 for Draft Law to Create Human Rights Organization in Iraq).

Appendix A (11)

**Draft Law for
Amnesty & Reconciliation**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

The Law of Amnesty & Reconciliation

Article 1:

- 1- One or more Amnesty & Reconciliation Committees shall be constituted by decision of the Judicial Council under the jurisdiction of the Baghdad Court of Appeals.
- 2- The Judicial Council may form additional Reconciliation committees in the other Courts of Appeals as needed.
- 3- These Committees shall be governed by the Criminal Code of Procedure, Law # 23 of the year 1971 and the Civil Procedure # - - - of the year - - - - as they relate to the rules of that court.

Article 2: The Committees of Amnesty and Reconciliation shall be charged with reviewing cases of the following nature:

- 1- Misdemeanors confessed by defendants, eligible for amnesty, who are seeking acquittal of those crimes.
- 2- Crimes in which the victim or his/her family relinquishes the right to carry out the imposed sentence and accepts a form of victim's compensation.

Article 3: The Committee of Amnesty & Reconciliation shall review cases pertaining to those included in the amnesty and reconciliation in cases in which the following conditions are met:

- 1- Conditions for misdemeanors are as follows:
 - a) The defendant must admit guilt for the crimes committed as well as identify those who participated in the crime and thereafter request amnesty and acquittal for those crimes.

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b) The defendant must commit him/herself to compensate the victim for damages inflicted.

2- Conditions for other crimes are as follows:

- a) The defendant must admit guilt for the crimes committed as well as identify those who participated in the crime and thereafter request amnesty and acquittal for those crimes.
- b) The victim or his/her family relinquishes the right to carry out the imposed sentence and accepts a form of victim's compensation.
- c) The defendant commits to compensate the victim or his/her family for the damages that resulted from the crimes committed by defendant

Article 4: The Committee of Amnesty and Reconciliation shall refer matters before it to the public prosecutor to pursue legal proceedings in the following cases:

- 1- Lack of jurisdiction in the event the case does not involve one of the conditions specified in Article 2.
- 2- Failure of the defendant to admit guilt for the crimes committed.

Article 5: The Committee of Amnesty and Reconciliation shall have authority to issue the following decisions:

- 1- Acquit and offer amnesty to those governed by this law.
- 2- Refer cases, in which the defendant does not meet the conditions contained in this law, to the public prosecutor for investigation and further legal proceedings.
- 3- Impose sentences on defendants to serve as volunteers in community service with philanthropic organizations for no more than one year.
- 4- Dismiss cases in which there is insufficient evidence.

Article 6: The provisions of this Law shall be effective for a period of one year after being published in the media and official gazette. All concerned Ministers and authorities shall implement these provisions.

Rationale

Due to what the former Iraqi regime has caused in terms of the disintegration of Iraqi society, planting hatred and animosity among its people, using people to achieve its ill-willed intentions, causing rampant

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crime, have all led to making the implementation of the Penal Code fruitless and is resulting in an increase in the potential for vengeance between citizens of the country.

Since the objectives of the new system are to eliminate those effects left over by the former regime and to rebuild a modern society based on compassion and brotherhood and to do away with the feelings of revenge, therefore it is time to apply the amnesty and reconciliation principles instead of applying the criminal punishments set forth in the Penal Codes for these lesser offenses.

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APPEA - NO. 12
 Organizational Chart for Truth, Accountability and Reconciliation Process
 Transitional Justice Project - Final Report

Higher Committee of Truth, Accountability & Reconciliation
 (associated with the Supreme Judicial Council)
[Comprised of Judges and Specialized Investigators to Review and Refer Cases to the Truth & Reconciliation Commissions or to the Criminal Investigative Committees as appropriate]

Truth and Reconciliation Commissions

Perform the required procedures to discover the truth and review/approve plea bargains/amnesty for lesser offenses (those w/penalties that do not exceed 5 years in prison). The main objective of these commissions is to arrive at the truth and achieve reconciliation through the following:

1. Discovering and clarifying the truth surrounding prior violations of human rights in an official and public manner.
2. Facilitating the carriage of justice, either by granting amnesties for these lesser offenses or by imposing non-penal consequences or by authorizing victim's compensation.
3. Admitting and accepting responsibility for the violations committed
4. Rising above calls for vengeance, vendettas and violence.
5. Amnesties shall not be available to anyone who refuses to accept responsibility for his crimes and offer a public apology for their actions.
6. In the event these commissions discover that crimes were committed of a more serious nature (punishable by more than 5 years of prison), these cases shall be removed to the Criminal Investigation Committees to be referred to the appropriate criminal court.

Criminal Investigation Committees

Investigative committees shall be formed, presided over by an Investigative Judge pursuant to the Iraqi Criminal Code of Procedure No. 23 of 1971. The committees shall investigate crimes under both international criminal laws and the Iraqi Penal Code and based on their findings shall refer the cases to the appropriate court as follows:

Special Domestic Criminal Courts Ordinary Criminal Courts

Each court consists of 3 judges and is formed pursuant to Iraqi Criminal Code of Procedure to hear cases involving international crimes (war crimes, crimes against humanity, aggression, genocide) after setting Court rules and procedures to establish its authority, the types of crimes it will rule on and the corresponding sentences.

These courts shall hear all other criminal cases referred to them which are covered under the Iraqi Penal Code.

Experts Office

This office consists of a group of legal experts and others specialized in International Criminal Law to benefit from their expertise in other criminal courts.

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Appendix B (21)

**Draft Law of
Victim's Compensation**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

The Law of compensation for those affected by the arbitrary acts of the former regime and its associates.

- Article 1: Every Iraqi is entitled to request compensation for any action resulting in an arrest, detention, or imprisonment without due process of law.
- Article 2: Every Iraqi is entitled to request complete compensation for any physical or emotional damages suffered by him/her as a result of any act attributed to any of the elements of the former regime and its associates, regardless of their bureaucratic or party rank, or their relationship to the regime or the Arab Ba'ath Socialist party.
- Article 3: Every Iraqi is entitled to request complete compensation from the perpetrators of any physical or emotional damages suffered by him/her, or which affected his/her assets or income.
- Article 4: In the event the perpetrator has no money to compensate for the physical or emotional damages suffered by the complainant, the state should strive to offer monetary compensation to all of the following:
- a) Victims who suffered major disabling physical injuries, or made physically or mentally ill as a result of the crimes committed against them.
 - b) Families of deceased persons, or those who have become disabled, physically or mentally, as a result of harm inflicted upon them, especially those who depended on the deceased persons for their livelihood.

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- c) All Iraqis who have been stripped of their Iraqi nationality and forced to live in exile, along with the return of their properties, real and personal, which were confiscated when they were forced to leave Iraq. Or, alternately they should be compensated for their properties, equal to the present market value of these properties.
- d) All Iraqis who were forceably relocated from their villages and places of residence to other areas inside, along with the return of their properties, real and personal, which were confiscated when they were forced to relocate. Or alternately, they should be compensated for their properties, equal to the present market value of these properties.

Article 5: The state should strive to offer material, medical, psychological, and social services and assistance to the affected victims through government agencies and local, social and volunteer organizations.

Article 6 (1): A high commission shall be formed to consider requests for compensation from victims afflicted by elements of the former regime or its associates, and said commission is authorized to prepare rules to implement criteria and standards for compensation, and proportional allocations for each category of damage inflicted on the victims.

(2): The commission shall pass its resolutions by majority vote, and its resolutions shall be final and not subject to any legal appeals.

Article 7: A National Compensation Fund shall be formed to compensate victims of elements of the former regime and its associates, with this fund being funded through the following:

- 1) Monies and assets available in accounts inside Iraq and out, and the real and personal properties of the perpetrators who committed these acts after their conviction in a final court ruling.
- 2) 5% of net oil proceeds.
- 3) International donations and assistance given to victims of the former regime.
- 4) Donations collected by national funds formed to compensate victims.

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- 5) Net income of charitable endowments after subtracting administrative costs of these endowments.

Rationale

The former regime and the Ba'ath Arab Socialist Party, pillars of the regime and party members have used all kinds of ways and means to deprive the Iraqi people of their rights and liberties; to strip them of their properties and money; while subjecting them to torture, harassment, imprisonment, and deprivation of their dignity and national pride; the use of the carrot and stick approach and other means that led to the destruction of the Iraqi family and the destruction of its moral basis; in addition to the forced relocation of millions of people from their homes to places and homes unfamiliar to them.

The principle of compensating Iraqis affected by the former regime and its associates should never be considered a full and complete compensation for those physical and emotional damages inflicted upon those victims, but it is a way to relieve some of the damages and to rehabilitate those people emotionally for the damages inflicted upon them by the arbitrary acts and tyranny of the regime.

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Appendix C (22)

**Draft Law to
Recover Public Funds**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

Recovery of Public Funds Law

Article 1: Anyone who was entrusted with state funds of Iraq, funds that belong to the Arab Socialist Ba'ath Party, any of the general or special Security organizations, the Iraqi Intelligence, any party affiliated with or in association with the state or the presidency of Iraq, or the Arab Socialist Ba'ath Party, any security agency, whether these assets are tangible or intangible, real or personal property, documents or other deeds proving possession of assets or any rights associated with them, in addition to bank accounts with the monies deposited in them, inside the country or out, shall return same to the state within three months of the issuance of this law.

Article 2: Anyone who is proven to have confiscated or hidden money or material or a deed proving rights in the monies described above in Article (1), or anything found in their possession and who has failed to return it to the state during the time specified by law, is subject to imprisonment.

This punishment shall be life imprisonment if the person who has taken this money was a government official or was entrusted with public service.

Article 3: The perpetrator, in addition to the punishments decided for these crimes by this law, is to return the monies confiscated and pay a fine equal to the monies he had confiscated or those portions returned of it.

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Article 4: Any person who has returned this money within the specified time frame in Article 1 of this law shall be exempted from any punishment and rewarded with an amount equal to 10% of the monies returned.

Article 5: The Minister of the Treasury shall form a committee headed by the governor of the Central bank named the "National Public Funds Recovery Commission", with members from the following ministries:

- Ministry of Treasury
- Ministry of the Interior
- Ministry of Justice
- Ministry of Industry
- Ministry of Oil
- Ministry of Economy
- Ministry of Trade

Article 6: The National Public Funds Recovery Commission will be tasked with the following:

- 1) Propose laws and regulations pertinent to recovering public funds.
- 2) Facilitate the exchange of information amongst the various commissions and the rest of the government ministries and agencies.
- 3) Represent the state in international forums and in all countries that have monies and accounts and make take all necessary actions to recover them.

Article 7: Monies to be recovered are to be deposited in the state treasury, and the Minister of the Treasury shall issue appropriate regulations for the deposit of such funds in the state treasury.

Rationale

The former regime has consistently dispersed and dissipated public funds and deposited them in accounts and entities belonging to persons and private companies in order to conduct illegal businesses which serve the illegitimate purposes of this regime, unconcerned about the fate of this money so long as the persons in possession of these funds and property obey the orders of the regime.

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As public funds are part and parcel of a nation's wealth and therefore all means and international contacts should be made to recover it, this law was passed to criminalize the acts of persons in possession of this money and those who have failed to return it in the legally specified time to do so.

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APPENDIX D (31)

**Draft Law to
Dissolve the Ba'ath Party
With All Privileges Granted to its Members**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

"Dissolve the Ba'ath Party With All Privileges Granted to its Members"

Article 1: Abolish the Ruling Party Law # 142 of the year 1974

Article 2: Dissolve the Baath Party together with all its agencies and affiliated organizations. Also prohibit the Baath party from having any political activities in Iraq.

Article 3: Cancel all privileges and immunities granted to the Baath Party members as per law # 142 of the year 1974 or other laws and regulations.

Article 4:

- 1- A committee shall be formed headed by one of the judges and consisting of a representative from the Ministry of Finance and the Ministry of Interior to conduct an inventory of all real and personal property and sums of monies of the Ba'ath Party that were controlled by the party members. This committee shall supervise the applications submitted by affected people to assist them in reclaiming these assets which originally belonged to them. It shall also decide which assets belonged to the government and ensure that they are returned to the state treasury.
- 2- Decisions of such committee shall be made by majority vote. These shall be final decisions not open for appeal.

Article 5: All those who suffered from the injustices of the conduct of the party members or any of the related agencies may have the right to

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demand compensation from concerned authorities in accordance with the law of compensations.

Rationale

It was the habit of the former regime to grant special privileges to its members to empower them to serve the party at the expense of the people's dignity and to deprive those in opposition of their possessions and assets. This was for the purpose of granting these assets to the party members to make them more party-loyal. These party members committed all kinds of acts including torturing people, throwing them in jail or even killing them, all in order to achieve their goals at the expense of the people. So this law is designed to compensate the affected Iraqi people and to allow them to reclaim their possessions and to return the public assets back to the treasury of the country. This is also to allow the affected Iraqis to reclaim their rights as per the compensation law.

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Appendix E (28)

**Draft Law to
Repeal the Amendments to the
Penal Code, Law #111 of 1969
Criminal Code of Procedure, Law #23 of 1971**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

- 1- Repeal all amendments, attachments, decisions, and instructions that were issued after the enactment of the Penal Code, Law #111 of 1969 and the Criminal Code of Procedure #23 of 1971, whether they were amendments or new penal codes.
- 2- Repeal articles # 20, 21, & 22 of the Penal Code, Law # 111 of 1969 as it is unnecessary to divide the crimes into "Regular" and "Political" crimes.
- 3- Add Paragraph "C" to Article # 126 of the Criminal Code of Procedure, Law # 23 of 1971. It shall read as follows: C) the attorney of the accused shall have the right to attend and review all investigative documents and the trial proceedings at all levels. The attorney may also visit the suspect alone without any interference from the authorities.
- 4- Release all those arrested, detained, or imprisoned because of these amendments, decisions or instructions immediately and forthwith unless they are detained for other reasons.
- 5- All those harmed or affected by these unjust rulings shall have the right to submit their request for compensation to the special commissions formed for this purpose.
- 6- This law shall be applied to all those who have been accused and convicted in the event it is in their best interest.
- 7- This law shall be effective as of the date of its issuance.

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Rationale

The Penal Code, Law # 111 of 1969 and the Criminal Code of Procedure, Law # 23 of 1971 were drafted by a distinguished elite of law professionals, judges and law professors to reform the criminal justice system in light of the latest developments at the time in the International criminal justice proceedings, taking into consideration the circumstances of Arab countries, especially the specifics of the Iraqi society. This made it a law that would address the requirements of the Iraqi society in realizing security and assurances. Therefore, this is considered an adequate and relatively modern legislation. The law was subjected to severe changes and successive amendments that made it lose its fundamental understanding for which it was issued in the first place. It was supposed to be a balanced criminal justice policy for the society.

Instead, with these amendments, it created an atmosphere of terror in the hearts of the citizens due to the harsh and inhumane violations against human rights and due to the unjust and unsuitable punishments inflicted upon the people. Because of all these, these amendments are deemed incompatible with the requirements of this transitional period, until the issuance of a completely new Penal Code in compliance with the requirements of this coming democratic era in the society.

In accordance with the building of a democratic pluralistic society there is no need to divide the crimes into "Regular" and "Political" as political crimes would no longer exist. Crimes in nature do not accept divisions.

To further protect the rights of the accused to defend himself before the investigative and legal authorities, the law shall provide the right to an attorney and ability of the attorney to meet with the accused alone throughout all stages of the trial.

Judge /

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Judge

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Appendix F (8)

**Draft Law to
Repeal the Service of Process Provision of
The Military Code # 106 of 1960.**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

1. To repeal the service of process provision of the Military Code number 106 of 1960, with all its amendments and addenda, and all those covered under this law shall be bound by the service of process provisions applicable to civilians.
2. Ministers and other concerned parties are required to enforce this law.

Rationale

The Military Penal Code was passed during the royal era in 1940 & 41. It was necessary for those times as they addressed the circumstances relevant to the specific conditions consistent with those circumstances. Despite the fact that these laws do not meet the requirements of military service today and the substantial development that has transpired since then, they can still be applied during the transitional period until things are normalized for the new regime; therefore, it was decided to keep these laws enforceable for the transitional period.

As for the service of process provisions of the Military Code # 106 of 1960, it gives military personnel immunity unmatched anywhere in the world. According to these provisions, military personnel may not be arrested unless they have committed a major crime with eye witnesses present, and even then, they should be turned over to the closest military authority. According to article 2 of this law, this crime could be considered as arising from this person's military duty pursuant to a decision of the military investigative council, and the issuance of such a decision would be considered a complete bar to any legal proceedings against them, which is a violation of the most basic humanitarian

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principles and human rights.

It should be noted that this law applies to all members of the police, intelligence, special security, Fedayee Saddam, the popular army in addition to the regular army.

This law to be repealed constitutes a grave danger to the safety and security of the people at large.

Judge /

Judge /

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Appendix G (29)

**Draft Law to
Replace the Iraqi Nationality Law**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

The Iraqi Nationality Law:

Article 1:

The following terms shall be defined as follows:

- 1- **IRAQI:** Any person holding Iraqi citizenship.
- 2- **RESIDENT:** a person who entered Iraq legally with the intention of residing in it and who has been there continuously for no less than a year
- 3- **Age of Majority:** any person who has completed his / her 18th birthday.
- 4- **IRAQI PEOPLE:** the people of Iraq who hold Iraqi nationality.
- 5- **MINISTER:** The Minister of Interior

Article 2: Any person who obtains the Iraqi nationality by virtue of this law, or by virtue of former laws, is considered an Iraqi citizen.

Article 3: Any person shall be considered an Iraqi citizen if he / she meets any of the following criteria:

- 1- Any person born in Iraq to at least one Iraqi parent;
- 2- Any person born in Iraq whose mother is an Iraqi citizen and an unknown father;
- 3- Any person born in Iraq to unknown parents. Such person shall be considered an Iraqi citizen unless proven otherwise.

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Article 4: Any person born in Iraq to foreign parents may acquire Iraqi citizenship provided that he/she submit an official request to the concerned Minister directly. This is to be done within one year of his/her reaching legal age. He / she must meet the following criteria:

- 1- He/she must be of good standing and should be free from any felony conviction or any misdemeanor involving moral turpitude;
- 2- He / she may not pose a security or safety threat to Iraq;
- 3- He/she must be self-sufficient and capable of supporting his/her own livelihood;
- 4- Must be able to speak any one of the local languages; namely: Arabic, Kurdish, Turkman, or Assyrian.

Article 5: A foreign person may be naturalized if he / she meets the following criteria:

- 1- To have reached the age of majority;
- 2- Entered Iraq legally and he / she is a legal resident at the time of applying for naturalization;
- 3- To have been a legal resident of Iraq for the past seven years continuously;
- 4- To be of good standing and never been convicted of any felony or any misdemeanor involving moral turpitude;
- 5- He/she must be self-sufficient and capable of supporting his/her own livelihood;

Article 6: As per the recommendation of the minister, the Council of Ministers may accept naturalization petitions of a foreign person who possesses special characteristics that would provide beneficial services to the country and the public interest such as those who have:

- 1- Highly specialized qualifications;
- 2- Internationally known in the field of sports
- 3- Internationally known in the fields of arts & sciences
- 4- Financially strong businesspersons with capital of no less than one million US Dollars to establish industrial, business and service projects.

Article 7: In applying the provisions of article # 6 above, the foreign applicant for naturalization must meet the following criteria:

- 1- He/she must be of good standing and should not have been convicted of any felony or any misdemeanor involving moral turpitude;
- 2- He/she should have entered the country legally and resided in it legally for no less than two consecutive years

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continuously;

- 3- He/she should not pose any danger to the safety and security of the country;
- 4- He/she shall speak one of the local languages, namely Arabic, Kurdish, Turkman, or Assyrian.

Article 8:

- 1- If the foreign national acquires the Iraqi nationality, all his/her minor children become Iraqi citizens derivatively.
- 2- The wife of the foreign national, who acquires the Iraqi nationality as per paragraph 1 of this article, may acquire the Iraqi nationality only after one year residency with her naturalized husband in Iraq.
- 3- The provision of paragraph 2 above also applies to the husband of a naturalized Iraqi wife.

Article 9: Adult children (at or over the age of majority) of foreign parents, one of whom has acquired the Iraqi nationality, may apply for Iraqi naturalization after 7 years from the date of which his/her parent acquired the citizenship for non-residents. In case of legal continuous residency, that person may apply after three years of his parent's acquiring the citizenship. Such person must meet the following criteria:

- 1- The person applying for citizenship must be of good standing and should not have been convicted of felony or any misdemeanor involving moral turpitude.
- 2- Should possess a good means to earn his/her living or his/her parent may submit an affidavit of support on his/her behalf.
- 3- Should not pose a danger to the safety or security of the country
- 4- Should speak one of the local languages namely Arabic, Kurdish, Turkman, or Assyrian.

Article 10:

- 1- The parents of a naturalized Iraqi child may apply for Iraqi naturalized citizenship five years after the child has obtained his/her certificate if these parents have been residing legally in the country.
- 2- In order to apply the provisions of the above paragraph, the former conditions of paragraphs # 1, 2, 3, & 4 of article # 8 should be met.

Article 11:

In case the parents give up their Iraqi nationality at their request,

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their minor children may lose theirs too. In case those children request to reinstate their citizenship, they may apply for it within one year of their reaching the age of majority and during their stay in Iraq.

Article 12:

The naturalized Iraqi citizenship that was obtained legally may not be cancelled or revoked unless requested by the applicant and approved by the Council of Ministers.

Article 13:

- 1- If an Iraqi citizen acquires a foreign nationality, he/she does not necessarily lose his/her Iraqi nationality unless he/she requests that it be revoked.
- 2- As a precaution to Iraqi citizens, an Iraqi citizen who acquires citizenship from a country that is in a state of war with Iraq or during that period of war, may be considered as abandoning his/her Iraqi citizenship.

Article 14:

If an Iraqi citizen loses his nationality according to this former article, he may request to re-instate it within one year of losing it. This means that he must revoke his foreign acquired naturalization citizenship according to paragraph 2 of that article.

Article 15:

Iraqi nationality is considered one type, one kind, and one level before the law as far as rights and duties of citizens. They are all equals and there is no preference of one over the other wherever this term occurs. However, conditions and regulations may be established to restrict the holders highly sensitive positions pertaining to the presidency and internal and external security of the nation to those who acquired their nationality by birth.

Article 16:

- 1- A foreign national may not acquire the Iraqi nationality unless he/she swears the nationality allegiance to the Republic of Iraq before the naturalization director within three months of informing him of the approval. Once he/she goes through the searing-in ceremony, he/she is considered an Iraqi citizen.
- 2- The Allegiance: "I swear by Allah (God) The Almighty, in my beliefs, and on my honor to be a sincere and good citizen to the Republic of Iraq with total allegiance and to defend,

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protect its interest, and maintain its security and sovereignty”

Article 17:

- 1- Disputes related to the applications of this law shall be settled by the courts.
- 2- The Minister of Interior and all those concerned, in addition to their positions, may appeal the decision of the courts to the Court of Cassation within 30 days of the date of service.

Article 18:

- 1- Upon the issuance of this law, all Iraqi citizenship shall be reinstated to all exiled, deported, or those forced to migrate or those whose citizenship was revoked due to political, religious, or racial/ethnic discrimination. They shall be allowed to return to Iraq without any pre-condition. All consulate offices abroad may facilitate issuing them the appropriate documents to re-enter their Iraqi homeland.
- 2- Special joint committees shall be formed between the ministries of interior, justice, health, labor, social affairs, and finance to facilitate the return of those who were expelled or forcibly emigrated. Facilities of room and board shall be made available for them until such time as they can resettle and establish themselves.
- 3- Children and spouses of those mentioned in paragraphs 1 & 2 above shall have the same treatment as their parents and spouses.

Article 19:

All those displaced, expelled or forced into exile for political, racial/ethnic or religious reasons and who were former Iraqi residents, may have the right to submit their petitions for naturalizations to the immigration authorities in the cities where they used to reside before their departure. They may apply for themselves and their spouses and children to obtain the Iraqi nationality once they meet the legal requirements.

Article 20:

- 1- A foreign wife of an Iraqi citizen may obtain her husband's nationality provided that she applies for it two years after their marriage and residence with him in Iraq. She may return to her old nationality three years after her divorce or death or her husband. In this case she may apply to cancel her Iraqi naturalization from the date of submitting the

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- petition and the approval of the appropriate Minister.
- 2- A foreign husband of an Iraqi citizen may acquire the nationality of his Iraqi wife provided that he applies for it two years after their marriage and residence with her in Iraq. He may revoke the (Iraqi) nationality three years after the death of his wife or his divorce. In this case he may apply to cancel his Iraqi citizenship from the date of submitting the petition and the approval of the appropriate Minister.
 - 3- Said person should meet the requirements mentioned in Article 4 of this law, paragraphs 1, 2, and 3.
 - 4- The petitions for Iraqi citizenship should be submitted to the naturalization department, and the Minister shall have full authority to issue the decisions concerning those petitions in compliance with these regulations.

Article 21:

It is the responsibility of the Minister of the Interior to publish the necessary instructions for the implementation of the provisions of this Law.

Article 22:

The amended law (number 5, year 1975) pertaining to the granting of the Iraqi citizenship to Arabs is hereby cancelled.

Article 23:

The citizenship law (number 43, of 1963) with all of its amendments is hereby cancelled.

Article 24:

This law shall be effective as of its date of publication in the official gazette.

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APPENDIX H (30)

**Draft Law to
Repeal the Ruling Party Law**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been repealed:

Law of the Ruling Party (number 142, of 1974), and the Law of the Reformation of the Legal System (number 35, of 1977), and all amendments, provisions, decrees, and orders pertaining to them.

Rationale

This draft law is necessary to abolish the Law of the Ruling Party (number 142, of 1974) and the Law of the Reformation of the Legal System (number 35, 1977). These laws were used by the prior regime to unjustly serve its ambitions and to strengthen its full control over each and every state apparatus. That regime wanted to empower the ruling party to control all systems including the justice system in society. It is clear that this regime does not share the objectives and aspirations of the Iraqi people nor the principles of democracy adopted by the new system of Iraq. Therefore, it has been resolved to abolish the Law of the Ruling Party #142 of the year 1974 as well as the Law of the Reformation of the Legal System #35 of the year 1977 with all their amendments, decrees, regulations and orders related to them. It has also been decided to cancel all employment positions created to implement those regulations and to fortify the grip of the Party's supervision over all government operations.

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APPENDIX I (49)

**Draft Law to
Amend The Military Court Trial Procedures
and Elimination of Emergency and Special Courts**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

Article 1:

Repeal Article # 19 of the amended Military Court Procedures # 44, of the year 1941. It shall be replaced by the following:

Article 19 pertains to the jurisdiction of the military courts and the internal security forces for military-related crimes, as mentioned in the Military Penal Code and its amendments. Furthermore, military personnel shall be tried before a civil court in relation to any crimes committed against civilians, or in accordance with any Penal Code other than the Military Penal Code which shall only govern crimes by military persons against other military persons.

Article 2:

The military Supreme Court and the internal security Supreme Court shall be eliminated, wherever they are mentioned in the amended law of the Military Court Procedures (number 44, of 1941), and its appendix # 177 of 1970. A special committee shall be formed within the Supreme Court. This committee shall deal with military matters and shall consult with military personnel who have the expertise in technical matters to look into the appeals of decrees issued by the military courts or courts of the internal security forces.

Article 3: All Special and Emergency Courts, especially those connected with the Ba'ath Party and in any department or agency of the state, shall be eliminated, in addition to every Special Court privilege granted to any of the officers or administrative personnel, or any other person or agency.

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Article 4: All cases awaiting hearing before the Military Supreme Court and the Supreme Court of the internal security agencies shall be turned over to the Special Military Committee which is formed by the Supreme Court.

Article 5: All cases awaiting hearing other than military-related cases, and which are governed under Article 1 above, shall be turned over to the civil courts all in accordance with their respective jurisdictions.

Article 6: Any legal provision which contradicts the provisions of this law shall be repealed.

Article 7: This decree shall be effective as of the date of its publication in the media and official gazette.

Article 8: The responsibility for implementation of this decree shall be on all Ministers and concerned authorities.

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Rationale

1. It was found that the law of Military Court Procedures (number 44, of 1941, with its appendix number 177, of the year 1970 gave special wide ranging privileges to the military courts, such that many privileges were stripped from the civil courts, which should have the general authority over all courts of Iraq. For example, the military courts would hear criminal cases having little or nothing to do with the military. Therefore, these special privileges granted to the military courts and courts of the internal security forces have far-reaching influence over the course of justice, especially considering that the judges of these courts are typically unfit and unqualified to judge in these matters.
2. After identifying the responsibilities of the military courts and the courts of the internal security in relation to those military crimes mentioned in the Military Penal Code, and in consideration of the fact that the presence of these Supreme Courts does not uphold the principles of justice. In witness whereof, it has been decided to repeal or eliminate the military supreme court and the court of internal security forces and transfer their responsibilities to the military committee in the Iraqi Supreme Court.
3. In addition, the emergency and special courts, specifically those that belonged to the dissolved Ba'ath party or other departments, and similarly those special privileges granted to some of the officers and administrative personnel and selected committees, greatly violate the justice system, and subjugate people's rights, we have therefore decreed to dissolve and eliminate them in order to guarantee the integrity and safety of justice system.

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Appendix J (50)

**Draft Law to
Amend the Judicial Reorganization Law**

In the Name of the People,

Pursuant to provisions of paragraph (- -) of article # (- -)
of the interim constitution it is hereby resolved as follows:

Law number (- -) enacted in the year - - - -

1979 Judicial Reorganization Law no. 160

Article 1: The 1979 Judiciary Reorganization law number 160 shall be renamed the Judiciary Authority Law superseding Judiciary Reorganization law wherever it is mentioned in this law and other rules and regulations

Article 2: All the provisions contained in the Ministry of Justice 1977 law no. 101 or any other provisions of law granting the Minister of Justice the authority to preside over, supervise or even membership in the Justice Council or the interference with its activities or giving any of the administrators and managers working for the Ministry of Justice the right to membership in the Justice Council is hereby repealed and eliminated.

Article 3: The title, Justice Council, shall be replaced by, Judicial Council, whenever mentioned in this law and the 1977 Ministry of Justice law 101 as well as in other rules and regulations.

Article 4: The Judicial Council shall be composed of the following:
The Chief Justice of the Supreme Court and his/her associate Justices;
The Presiding judges over the civil, personal status, administrative and criminal divisions of the Supreme Court;

The Presiding judge of the High Constitutional Court and his/her associates;

The head of the State Consultative Council and his/her deputies;

The head of the Prosecutorial office;

The head of the Justice Investigative Agency;

The head of the Legal Recorder's Office; and

The presiding judges of the Appellate Courts.

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Article 5: The Emergency General Commission shall elect the president of the Judicial Council. This commission shall include the Chief Justice of the Supreme Court, the presiding judge of the High Constitutional Court, the head of the State Consultative Council, the head of the Justice Investigative Agency, the head of the legal recorders office, and the head of the prosecutorial office.

Article 6: The State Consultative Council shall review the decisions of the administrative courts and of the General Discipline Council in conformity with the 1989 law no. 106 amending the 1979 law no. 65.

Article 7: The Supreme Court shall exercise judicial review of the constitutionality of laws regarding the constitution, individual's rights and liberties and the interpretation of laws, rules and regulations, bills and decisions in accordance with the provisions of the constitution until the law creating the High Constitutional Court is enacted.

Article 8: The following Articles shall be repealed and replaced as specified hereunder:

a) Article 1 shall be repealed and replaced by the following:

New Article 1: The objective of the Judiciary Authority Law is to secure justice and equality among litigants and to guaranty legal protection for the public at large and to ensure the enforcement of the laws for the purposes for which they were intended.

b) Section 4 of Article 7 shall be repealed and replaced by the following:

4. The location of the Judicial Council shall be in the administrative center unit where its operation is located unless the Judicial Council determines another location deemed more appropriate;

c) The following will be added to the types of courts outlined in Article 11:

- No. 11- State Consultative Council;
- No. 12- Administrative Judicial Court;
- No. 13- High Constitutional Court;

d) Add to the duties of the general body of the Supreme Court the election of the Chief Justice of the Supreme Court by deleting

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paragraph [a] of section 1 Article 13 to be repealed and replaced as follows:

Article 13 new: First – 1. the General Body of the Supreme Court will be as follows:

a) **General Body-** The General Body will be presided over by the Chief Justice of the Supreme Court or his/her most senior associate justice [whenever he/she is absent or legally prevented or during the process of electing the Chief Justice of the Supreme Court] along with the membership of the associate justices and all the judges working therein. The General Body shall undertake the following tasks:

- 1- Election of the Chief Justice of the Supreme Court;
- 2- Cases referred to it by other divisions to resolve questions of law of first impression, not addressed in previous Court rulings;
- 3- Cases involving the imposition of the death penalty sentence;
- 4- Cases requiring resolution of issues involving conflicting judgments and decisions emanating from the Supreme Court.

e) Paragraph 2 of Article 31 shall be repealed and replaced by the following:

2. The Civil, Personal Status, Administrative and Criminal Divisions will be chaired by the president of the division selected by the Chief Justice of the Supreme Court along with at least two members among the Court's associate justices.

f) The first section of Article 15 shall be repealed and replaced by the following:

Paragraph 15- First- 1. The duties of the Chief Justice of the Supreme Court shall be as follows:

- a) The management of the Court;
- b) Chairmanship of the Executive Committee;
- c) Presiding over the General Body and all divisions of the Supreme Court;
- d) Appointment of the heads of Civil, Personal Status, Administrative and Criminal divisions;
- e) Inspection of the operations of the Supreme Court;
- f) Refer appeals cases submitted to the court for filing fees, bonds,

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- and registration;
- g) Approve time off for judges, employees and staff;
 - h) Preparation of employees annual performance appraisals;
 - i) Authorization of official correspondence with the ministries.

g) The third section of Article 16 shall be repealed and replaced by the following:

Article 16 section 3 shall read:

3. Closing and transferring one or more appellate courts to existing appellate courts may occur upon the recommendation of the presiding judge of the appellate court and by decision of the Judicial Council. Likewise, eliminating or creating new appellate courts may occur by an official decree of the state based upon a decision of the Judicial Council.

h) The second section of Article 17 shall be repealed and replaced by the following:

Article 17 section 2 will read:

2. The appointment of the president, the members and the organs of the appellate court shall be undertaken by the Judicial Council upon recommendation of the presiding judge of the appellate court. No substitution of the presiding or any member can occur except when required by utmost necessity.

i) Paragraph [a]; section 3 of Article 19 shall be repealed and replaced by the following:

The new paragraph [a] will read:

a) to study the difficulties and problems confronted by the appellate courts and submit recommended solutions to the Judicial Council.

j) Article 22 shall be repealed and replaced by the following:

The Judicial Council, upon recommendation of the presiding judge of the appellate court has the authority to create a court with jurisdiction over one or more types of complaints upon notice by the Ministry of Justice to create such a court.

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k) The second section of Article 24 shall be repealed and replaced by the following:

2. The Judicial Council upon notice by the Ministry of Justice can create administrative courts within appellate courts and determine their jurisdiction and their physical location.

l) Article 27 shall be repealed and replaced by the following:

The Judicial Council, upon recommendation of the presiding judge of the appellate court, can create a personal status court with jurisdiction over one or more types of complaints upon notice by the Ministry of Justice to create such a court.

m) The second section of Article 29 shall be repealed and replaced by the following:

2. The Judicial Council upon notice by the Ministry of Justice can create criminal courts as needed within the provinces and shall determine their jurisdiction, the nature of the cases and the physical location.

n) The third section of Article 30 shall be repealed and replaced by the following:

3. The Judicial Council upon recommendation of the presiding judge of the appellate court will appoint the presiding judge of the criminal court as well as the permanent members and alternates.

o) Article 32 shall be repealed and replaced by the following:

The Judicial Council upon recommendation of the presiding judge of the appellate court and upon notice by the Ministry of Justice has the authority to create misdemeanor courts with jurisdiction over one or more types of complaints.

p) The third section of Article 33 shall be repealed and replaced by the following:

The Judicial Council upon recommendation of the presiding judge of the appellate court will appoint the president of the arbitration commission, the arbitrators and their alternates.

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q) The second and third sections of Article 35 shall be repealed and replaced by the following:

2. The Judicial Council upon recommendation of the presiding judge of the appellate court and upon notice by the Ministry of Justice has the authority to create a court to investigate one or many types of crimes.

3. The Judicial Council has the authority to create an investigative body to deal with one or many types of crimes presided over by a designated criminal investigation judge. This body will have the competency of a judge of inquiry.

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Chapter 11
State Consultative Council

Article 35 is repeated

First: A State Consultative Council (SCC) will be created and its headquarters will be in the province of Baghdad. It will be comprised of a president, two vice-presidents, at least 12 advisors and a number of assistant-advisors whose number shall not exceed half of that of the advisors;

Second: SCC shall review the decisions of the administrative courts, the general discipline council, and provide counsel in legal issues relative to the state;

Third: The president of the State Consultative Council, his/her assistants, the advisors and their alternates will be appointed by decree upon decision of the Judicial Council;

Fourth: Articles 1, 4, 5, and 10 of the 1989 law #: 106 pertaining to the second amendment of the State Consultative Council of the 1979 law #: 65 shall be repealed. It will be replaced by Article 35 as repeated.

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Chapter 12
Administrative Court

Article 36 is repeated.

First: One or more administrative courts will be created within the territorial area of the appellate district of Baghdad;

Second: The Judicial Council upon recommendation of the State Consultative Council and upon decision of the Ministry of Justice can create administrative courts in other appellate court districts outlining the jurisdiction and the physical location.

Third: The administrative court is specialized in the legality of orders and administrative decisions issued by state managers, organizations and entities in conformance with the provisions of Article 7, section 2 of the 1979 second amendment of the State Consultative Council law no. 65.

Chapter 13
High Constitutional Court

a) Article 37 is repeated.

First: The High Constitutional Court will be established and will be located in the Baghdad province. Its composition includes a president, two vice-presidents, and a sufficient number of members. Its sessions are chaired by the president, the vice-president, or one of its most senior members. Its judgments and interpretation decisions are rendered by seven members.

Second: The High Constitutional Court is specialized in the following:

1. Judicial monitoring pertaining to the constitutionality of the laws, regulations, bills, and decisions to ascertain their conformity with the Constitution and the principles of human rights and freedom in accordance with the International Declaration of Human Rights (December 10, 1948), the International Covenant on Economic, Social and Cultural Rights (December 16, 1966), and the International Covenant on Civil and Political Rights (March 23, 1976);
2. Interpretation of the laws, regulations, bills, and decisions in accordance with the provisions outlined in the Constitution

Third: The president of the High Constitutional Court, his/her two vice-presidents, and the members are appointed by decree upon based upon a decision of the Judicial Council.

b) Article 37 is repealed and replaced by the following:

First: The Judicial Council determines the court in which a judge will be assigned after an official act of state appointing him/her as a judge;

Second: The judge will not start his/her functions before the swearing ceremony = [I swear by God that I will render my decisions among the parties in a just manner and that I will administer justice with integrity].

c) Article 39 is repealed and replaced by the following:

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First: Promotion of a judge from one grade to another will be made by decision of the Judicial Council after fulfilling the requirements of his/her grade as determined in section 1, Article 38 of this law;

Second: The Judicial Council in the process of granting a judge a promotion will take into consideration the evaluation reports of the presiding judge of the appellate courts for judges of ordinary courts and the reports of the president of the State Consultative Council regarding judges serving in administrative courts and legal supervisor based on the judge's professionalism and good management;

Third: The Judicial Council makes the promotion decision if the judge qualifies for promotion. Then, the Ministry of Justice shall issue the order to implement the promotion;

Fourth: The Judicial Council has the authority to postpone for a period not less than three months and and not more than one year, more than once if necessary, the promotion of a judge if the judge is found not deserving of the promotion;

Fifth: A judge may be removed or placed in the civil service by official state decree based upon a decision of the Judicial Council if a judge is denied promotion two consecutive times while in the same grade.

d) The second and third sections of Article 41 shall be repealed and replaced by the following:

First: The Judicial Council may grant a judge, who served for three years, a two year study period with full-pay in Iraq or abroad to study and specialize in a related legal field and to obtain a Master or a Ph.D. This period may be extended for another year;

Second: The Judicial Council may grant a judge a second study-period if he/she graduated with an M. A. degree and worked a year after the completion of said degree. This period is intended to prepare for a doctoral degree in the related legal studies [as mentioned in Section 1]. This period can be extended for another year.

e) Article 43 will be repealed and replaced by the following:

Complaints arising from this law shall be introduced before a committee of judge's affairs composed of three members selected by the Judicial Council among member judges at the beginning of each year.

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Their decision is subject to appeal before the Supreme Court general body. The appeal can be undertaken by the prosecution and the judge against whom the decision has been rendered within 30 days from the date of publication. The decision is final.

f) The second section of Article 45 shall be repealed and replaced by the following:

2. The judge is promoted from one category to another upon a decision of the Judicial Council and upon a request made by the judge to the Ministry of Justice provided that:

a- The judge has obtained the lowest salary of the promotion category sought;

b- The judge has prepared a research paper in the field of specialization. In case the candidate to a promotion has obtained a Masters, he/she will be excused from the research paper and advances with one promotion. In case the candidate has a doctorate, he/she will be excused from the research paper and advances with two promotions.

g) The sections 1, 2, 3, and 4 of Article 46 will be repealed and replaced by the following:

First: In the course of a request for promotion, the Ministry of Justice will seek the opinion of the Chief Justice of the Supreme Court and the presiding judge of the appellate court whenever the case involves judges of ordinary courts and the presidency of the State Consultative Council.

As far as the competence and capacity of judges of administrative courts and the presidency of the justice supervisory committee, the Ministry of Justice will seek the opinion of the State Consultative Council;

Second: The Ministry of Justice will communicate the request and the above-mentioned evaluation in section 1 along with its opinion to the Judicial Council for consideration;

Third: In its evaluation of the request, the Judicial Council shall rely upon the information contained in the following: sections 1 and 2 above, annual reports sent by superiors, reports of justice supervisors, the research paper, and the judgments rendered by the candidate showing the knowledge of law and legal opinions which indicate the continuous pursuit of the doctrine and jurisprudence. The Judicial Council shall issue the decision of promotion if the documents warrant such a promotion. In

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case of denial, a new request may not be considered for at least six months, and a detailed decision with explanation shall be sent to the candidate in question.

Fourth: The Judicial Council considers promotion requests in January and July of each year. Its decisions are final and cannot be appealed;

h) Article 47 shall be repealed and replaced by the following:

First: The selection of the deputy-presiding judge and the judges of the appellate court from the first or second degree category upon decision of the Judicial Council based upon recommendation by the presiding judge of the appellate court;

Second: The presiding judge of the appellate court is selected from the first category among deputy-presiding judges of appellate courts by decision of the Judicial Council;

Third: The justices in the Supreme Court will be appointed by decree by decision of the Judicial Council. They are selected among the first category and among those who worked in the following positions for at least two years:

The presiding judge of the appellate court;
The deputy presiding judge of the appellate court;
Judge of the appellate court;
The president of the justice supervisory committee and the committee supervisor;
The state general prosecutor and Deputy-president of prosecution

Fourth: The deputy Chief Justice of the Supreme Court is appointed by decree upon recommendation of the Judicial Council among its judges who served for at least three years;

Fifth: The Chief Justice of the Supreme Court is appointed by decree upon election by the general body of the Supreme Court.

i) Article 48 shall be repealed and replaced by the following:

Seniority of judges shall be based upon their positions, category, and the dates of appointment. In case of equal years served among judges, the Judicial Council shall make its decision.

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j) Paragraph [b], first section of Article 49 shall be repealed and replaced by the following:

It is possible for a judge of the Supreme Court to accept a request in writing to serve in another assignment upon a decision of the Judicial Council such as legal advisor to the presidency of the republic secretariat, or to the ministry of foreign affairs itself, or to its diplomatic corps, or to head one of the departments and divisions of the Ministry of Justice, or to head the department of agriculture reform agency or education at the university or the judicial institute, provided that the judge retains his/her status and the rights therewith.

k) The second section of Article 49 shall be repealed and replaced by the following:

It is possible for a judge to accept a request in writing to serve in another assignment upon a decision of the Judicial Council such as joining the department of justice and its departments provided that the judge retains his/her status and the rights therewith as well as the specialization previously acquired. Special attention shall be paid to the assigned position and its classification;

No assignment of a judge shall be allowed to official government positions or public sector enterprises at the exception of functions such as legal advisor to the presidency of the republic secretariat, or to the ministry of foreign affairs itself, or to its diplomatic corps, or to head one of the departments and divisions of the Ministry of Justice, or to head the department of agriculture reform agency or education at the university or the judicial institute, provided that the judge retains his/her status and the rights therewith.

l) The second section of Article 50 shall be repealed and replaced by the following:

A judge will not be transferred before spending three years in the current position. Transfer is allowed by the Judicial Council upon motivated reports for health reasons attested to by sworn doctors or if circumstances prevent him/her from undertaking the job in the current position in a satisfactory manner to the point that the administration of justice is adversely affected.

m) The fourth and fifth sections of Article 50 will be repealed and

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replaced by the following:

Section 4 will read: The Judicial Council provides waivers from conditions outlined in the section 1 above of this law for female graduates and for the top three males of the class of the law school every year before or after this law enters into force. These graduates can work anywhere including in Baghdad province.

Section 5 shall read: Upon a decision of the presiding judge of the appellate court, a judge may be allowed to work in another appellate court whenever public necessity warrants it for no more than four months

n) Article 51 shall be repealed and replaced by the following:

Upon agreement of the Judicial Council, judges are transferred each month of July or any other month if the public interest warrants it;

o) The first and the second sections of Article 52 shall be repealed and replaced by the following:

Section 1 shall read as follows: Upon recommendation of the concerned appellate courts and a decision of the Judicial Council, a judge is entitled to a year sabbatical inside or outside Iraq to undertake studies or research in a related legal area. The candidate provides a request for that purpose indicating the location and the subject to be studied during the sabbatical.

Section 2 shall read: Sabbatical is granted to the following category: judges of the Supreme Court; judges of the first and second degree courts; judges / advisors serving in the High Constitutional Court ; and judges in the State Consultative Council.

p) The first section of Article 53 shall be repealed and replaced by the following:

The first section shall read as follows: The judge benefiting from a sabbatical shall commit to the following:

Not to change the objective of the sabbatical unless upon the agreement of the Judicial Council provided that the request is introduced within three months of the date of the sabbatical;

Not to change the location of the sabbatical unless upon the

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agreement of the Judicial Council excluding temporary trips required by the research; Not to take any days off during this period except for sick leave;

Provide three copies of the study or research paper to the Judicial Council three months upon completion of the sabbatical;

Compensate for the sabbatical by serving in the judiciary for an equal period.

q) Article 54 shall be repealed and replaced by the following:

The second degree judge can specialize in one or more fields in the next grade as per instructions to be published by the Judicial Council.

r) Article 55 will be repealed and replaced by the following:

The first section shall read as follows:

1. The Judicial Council supervises all the courts, the judges, those with legal functions such as the employees, organizations and committees. In addition, the council follows up on courts quality management as well as the activities of the court employees, their personal and official behavior. It also monitors the proper filing of the records and registry of documents, and the employees in charge. Finally, it monitors the judges' respect of their duties as specified in Article 7 of this law.

In the implementation of its functions of supervision and monitoring outlined in the section [a], the Judicial Council can deputize a judge of the Supreme Court or the High Constitutional Court or the State Consultative Council or the president of the justice supervisory committee or judges entrusted with supervision or any other judge, to inspect all courts and employees entrusted with legal authority;

Inspections pertaining to the activities and cases of the Supreme Court, the High Constitutional Courts and the State Consultative Council will be undertaken by the respective presidents provided they present a yearly report relative to the court activities to the Judicial Council;

The second section shall read as follows:

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The president of the Supreme Court exercises supervision over all judges in his/her area. He makes sure that duties pertaining to the job, administrative tasks and accounting are satisfactory. He shall also present a yearly report about the judges to the Judicial Council he/she where he/she outlines his/her observations relative to competence, execution of duties, administrative and accounting issues in their courts, and any other issue falling under his/her supervisory function. All these observations shall be kept in his/her personal file;

The presiding judge of the appellate court can deputize one of his/her assistants to undertake court inspection in any area.

s) Article 56 shall be repealed and replaced by the following:

Authorities of the Supreme Court, High Constitutional Court, State Consultative Council, appellate courts, and criminal courts are required to prepare periodic reports outlining a judge in grave error of law and facts upon review. Copies of these reports are to be sent to the Judicial Council to be kept in the personnel folder of the judge or advisor to serve as a basis for determining promotions and advancement;

The Judicial Council, the Supreme Court, the State Consultative Council, and criminal courts shall keep file of these errors as per instructions to be issued by the Judicial Council.

t) Article 57 will be repealed and replaced by the following:

First: The Judicial Council shall inform the judge of legal and administrative errors which are discovered in the course of inspections as well as of anything that interferes with the duties and requirements of the profession;

Second: The Chief Justice of the Supreme Court and the State Consultative Council and the presiding judge of the appellate court shall inform the judge of the legal errors that appear during the appeal review;

Third: The presiding judge of the appellate court shall inform the judge in his/her jurisdiction of any violation of duties relative to the profession;

Fourth: The information shall be directed to the judge in writing with a copy to the Judicial Council and a copy to be filed in the dossier.

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u) Article 58 shall be repealed and replaced by the following:

The committee of judge affairs set in place by the Judicial Council looks into disciplinary action against a judge and renders one of the following decisions:

First: A warning leading to six months without pay or promotion;

Second: Postponement of promotion or pay or both for a period of no less than six months and no more than three years from the promotion period or upon completion of the said period;

Third: Job termination if the judge has been condemned by a specialized court for an act which does not fit the honor of the legal profession or if the judicial committee determined that the judge is unfit to practice the profession.

v) The first section of Article 59 will be repealed and replaced by the following:

The Judicial Council can terminate the function of a fourth category judge or can offer him/her a job as a public servant by decree with a detailed decision with explanation that he/she is unfit for the profession.

w) Article 60 shall be repealed and replaced by the following:

First: Disciplinary action relative to a judge shall be undertaken by a decision of the Judicial Council by presenting it to the committee of judge affairs. The decision has to contain the crimes and the evidence therewith. The decision will be communicated to the general prosecutor and to the concerned judge;

Second: The committee of judge affairs shall set up a date to study the charge and will inform the Judicial Council, the head of the Prosecutorial office and the judge;

Trial shall be held in executive session (not public) and the decision shall be public;

Trial shall take place in the presence of the head of the Prosecutorial office or designated prosecutors, the judge and his/her attorney;

The committee shall undertake all necessary investigation;

The committee shall render its decision upon completion of the

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investigation, hearing the evidence from both the prosecution and the judge's attorney. The decision shall then be communicated to the Judicial Council, the head of the Prosecutorial office and the judge; The committee shall follow in its proceedings the rules and procedures contained in the code of criminal procedures.

x) Article 61 shall be repealed and replaced by the following:

If the committee of judge affairs determines that the charge is a crime or a misdemeanor, it shall send it to the specialized court along with the supporting file after the Judicial Council removes the judge in accordance to state employees' disciplinary law

y) Article 62 shall be repealed and replaced by the following:

The head of the Prosecutorial office and the judge have the right to appeal the decision within 30 days of notification before the Supreme Court committee at large by decision of the committee of judges' affairs as per the provisions of this law. This committee at large can invite the prosecution and the judge for a hearing of arguments so that it renders its decision to uphold the decision of said committee, to void it or to modify it. This decision is final.

z) The second section of Article 63 shall be repealed and replaced by the following:

If there is more than a judge in a court, the senior judge shall be in charge of the management and work assignments. The Judicial Council can appoint a judge of its choosing.

aa) Article 64 shall be repealed and replaced by the following:

A judge is not to be arrested and criminal charges cannot be leveled against him/her if the crime is not witnessed, unless an authorization is obtained from the Judicial Council.

bb) Article 67 shall be repealed and replaced by the following:

The court schedule is set by a decision of the Judicial Council and a directive of the Ministry of Justice provided that there are at least 5 working hours daily. Special schedules can be arranged during the month of Ramadan provided there are at least 4 hours daily.

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Rationale

The foregoing takes into account the principle of the separation of the legislative, executive and the judiciary powers. It is based upon the respect of the duties and responsibilities of each power while entrusting the judiciary with a supervisory function upon the legislative and the executive as far as the implementation of the laws are concerned. This is undertaken in a manner consistent with the constitution that forbids any encroachment upon the competence of other powers. The judiciary power executes the laws and ensures their constitutionality. Therefore, it is entrusted with the competence over all individuals and corporate entities both public and private. The judiciary is also entrusted with the protection of human rights and freedoms which are the core of enacted regulations and laws. In the end, all the powers generate their legitimacy from the people.

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APPENDIX K (37)

**Draft Law to
Abolish The Special Security Apparatus**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

Article 1- .The Special Oppressive Apparatus of the former regime shall be abolished. The special buildings that were assigned to that apparatus shall be taken over together with their equipment and improvements attachments by the special courts pending a decree in this regard. The aforementioned apparatus includes the following:

- 1st) The General Intelligence Headquarters;
- 2nd) Special Security Apparatus;
- 3rd) The Organization of Saddam's Fidaeen;
- 4th) The Special Republican Guards

All concerned ministers shall implement this law as of the date of its issue.

Rationale

Since the establishment of the above-mentioned apparatus' was with the objective of protecting the ill-fated regime and to help it repress all internal and external opposition and to serve as tools of oppressing the Iraqi people in general, it has been decided that all those departments shall be abolished. All of their allocated assets and equipment which were used to achieve their goals shall be liquidated by court order.

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APPENDIX L (54)

**Draft Law to
Amend the Laws of Prisons**

In the Name of the People,

Pursuant to paragraph # (- -) of article # (- -) of the interim constitution, the following has been issued:

Law Number (- -) for Year - - - -

“A draft law to amend the Law of Prisons (number 151, of the year 1969)”

Article 1: Paragraph 5 of article 56 shall be repealed and replaced by the following:

The Minister shall grant the general manager of the facility of the prison and its directors the authority to impose the following punishments to any inmate upon his/her transgression or violation of the rules of the prison in accordance with this law and the rehabilitation program. This should be done after a written investigation with the inmate and a hearing of his/her defense. The punishment decision shall be final:

- 1) Exclusion from participating in any athletic or recreational activities for a period not exceeding three months.
- 2) Exclusion from writing or receiving mail for a period not exceeding three months.
- 3) Exclusion from purchasing any supplies usually allowed for prison inmates for a period not exceeding three months.
- 4) Exclusion from periodic tournaments for a period not exceeding three months.

Article 2: Section 7, pertaining to dealing with the prison inmates and the political detainees shall be repealed .

Article 3: A prison inmate or a detainee shall have the right to meet with his/her attorney in private, and the foreign prisoners or detainees shall have the right to contact their consulates or other agencies that handle their affairs, after obtaining permission from the general prosecutor / attorney general of the area.

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Article 4: No personnel of the general authority shall be allowed to contact any detainees in the prison except with permission from the general prosecution. The prison administration shall register in a special notebook the name of the person who was granted that permission, in addition to the time and duration of the meeting, and the date the permission was granted and why.

Article 5: The pregnant inmate shall be given special treatment beginning in the appearance of her pregnancy. She should be granted special medical attention in terms of food and bed time, in addition to postponing any punishment until after her delivery or until the end of the presence of her child with her, in accordance with the condition.

Article 6: The pregnant inmate shall be transferred to the hospital when the time of delivery is near. She shall remain therein until delivery and when the doctor agrees to her release. Furthermore, all care shall be taken to provide for her and her child the necessary food, clothes, shelter and safety.

Article 7: The female inmate must care for her child until that child reaches two years of age. Thereafter, if she does not wish to keep him/her with her, or reaching that age, then she may give her child to whomever she chooses who has the custody right to care for it (preferably the father). If such a caretaker is unavailable, then the child shall be placed in an orphanage, always notifying the mother of her child's whereabouts and facilitating her seeing her child, in times which the prison guards agree to. In all cases, care should be taken not to mention to the child's birthplace that he/she was born in prison or a prison hospital, or that his/her mother is incarcerated.

Article 8: If it becomes clear to the prison doctor that an inmate has become mentally sick, the case of that inmate shall be presented to the health administration of that prison to verify his/her state. If they decide to transport him/her to the mental hospital, then he/she shall be transported upon the order from said committee and upon notification of the general prosecutor. The time which that inmate spends in the hospital shall be counted towards the time of imprisonment.

Article 9: If it becomes clear to the prison doctor that a certain inmate has an illness which puts his/her life or the life of others in danger, or totally incapacitates him/her, then the health administration of the prison

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shall present his/her case to the health team to examine him/her and release him/her on medical grounds.

Article 10: the attorney general / prosecutor shall issue that prisoner's release order for health reason if the it has been proven to the health committee that the health condition of that inmate necessitates his/her release. The ministry of labor and social affairs shall be informed of that decision. The police department in that jurisdiction shall request from the government medical facility to examine that person periodically every three months at the most to determine his/her condition unless he/she is deported in case he/she is a foreigner. In case the medical examiner decides that the health condition of that released prisoner is back to normal, he/she may order taking him/her back to prison to complete his/her term upon reviewing the matter with the prosecutor. The period spent by that prisoner outside the prison for health reason shall be counted towards his/her sentence term.

Article 11: According to the medical doctor's report of the prison, if the condition of that inmate becomes very serious, the prison administration shall inform his/her family to come and visit him/her without abiding by the rules of the official visitation hours.

Article 12: in case the prisoner passes away, the prison doctor shall submit a report to the prosecutor in which he/she states the following:

- 1- The day on which the prisoner first complained of his/her illness or the day he/she was noticed to be ill for the first time.
- 2- The job he/she was performing on that day.
- 3- The kind of food he/she ate on that day.
- 4- The day on which he/she was transferred to the hospital.
- 5- The kind of disease he/she was complaining.
- 6- The last time the medical doctor examined him/her before he/she passed away and the kind of medication prescribed for him.
- 7- Date and time death occurred

The family of the deceased shall be immediately informed after the death to come and receive the body. If they do not come on time, the prison might arrange for burial, in accordance with the religious rites. However, in any case the diseased may not be buried unless the prosecutor is informed of the death to issue the certificate of burial authorization.

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Article 13: Any prisoner who has been sentenced to three years or more, he/she should be granted visitation rights of his/her family periodically according to the prison regulations, if he/she has served one third of his/her jail term in good behavior and conduct. In this case the said inmate has demonstrated some assurance that he/she is posing no threat to the society or public security by his/her fleeing.

Article 14: Any prisoner who has been sentenced to one month or more, he/she may be released upon serving three fourth of his/her term in good conduct that would give assurance that his/her release does not pose a threat to the society or public security.

Article 15: If a prisoner was sentenced for life and served 15 years in jail, he/she may submit a petition to the prison administration requesting his/her release. This administration may forward this petition together with the prisoner's file to the special committee for their opinion and to see the extent of the danger to the society and public security posed by the release of the said prisoner. This file is then submitted to the deputy prosecutor to investigate the request and inquire about the prisoner's behavior. Then, in turn, the file is submitted to the court that issued the jail sentence. The court might issue its release order if it is convinced that the person has been rehabilitated. The court also might order some additional measures as conditions to the release in accordance with the Penal Code.

Article 16:

- 1- Any detainee or prisoner may not be detained in any place not meant for prisoners according to the instructions of the ministry of labor and social affairs.
- 2- Anyone who detains a prisoner in a place not meant for prisoners, shall be sentenced to five years in jail. This is in accordance with regulations issued by the ministry of labor and social affairs.

Article 17: This shall be effective as of its publication date in the official gazette.

Rationale

The former regime used to repeatedly detain prisoners in places not meant for jails. It used to harshly treat them, violating the amended prison law #151 of 1969. It used to throw huge numbers of them in big halls torturing them and dishonoring them and their families in order to force

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them to confess to some crimes they were illegally charged with by the regime. It used to throw political prisoners and opponents places special for security apparatus filled with all means of torturing people in order to get rid of them and liquidate them. When they also died under torture the regime would not give the body back to the family.

All of this necessitates an act of reform to rehabilitate prisoners to allow them to go back into society as productive members. Special reform shall be enacted to deal with pregnant prisoners to enable her to give birth to her baby and care for it while under her care, and when it is transferred to special care homes. Special care should also be taken to treat mentally unstable or seriously ill prisoners. Such prisoners should be given visitation privileges or their release, or even reduce their jail sentence by one fourth for good behavior during the jail term, in accordance with the instructions of prison administration. A jail sentence should be applied to whoever detains a prisoner in a place not meant to be a jail. This is accordance with the instructions of the ministry of labor and social affairs.

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Appendix M (66)

**A BILL of
Human Rights in Iraq**

By:

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This is a bill suggesting the establishment of an Iraqi Human Rights Organization. This constitutes 14 articles based on respect of human rights by educating people and making them aware of rights and public freedom, and to defend those whose freedoms and rights have been violated. Following is the text:

Article 1: A respectable organization shall be established in Iraq in accordance with the rules and regulations of this law, in the name of "Iraqi Organization for Human Rights". Branches of such organization may be established in cities other than where the headquarters is located. This is a private non-profit entity.

Article 2: In applying this law, the phrase of "Human Rights" means public freedoms and rights as stated in the Islamic Shariah Law and the applied constitution in Iraq, and in accordance with international agreements or conventions of which Iraq is a signatory.

Article 3: OBJECTIVES:

- 1- Honor the principles and values that are based on respecting human rights of Iraqi citizens and all residents living in Iraq.
- 2- Make people aware of rights and public freedoms.
- 3- Defend those whose rights and freedoms have been violated through lack of honoring the guarantees provided to them by the constitution and international charters. The organization should supervise and make sure that Shariah Laws are applied in all its activities.

Article 4: In order to achieve its objectives, the organization may:

- 1- Address concerned authorities to inform about what happens with violations against human rights and public freedoms;
- 2- Publish periodicals and brochures to enlighten people of public freedoms and human rights. It may also distribute reports pertaining to human rights in Iraq.
- 3- Organize seminars, conventions, meetings and conferences that have similar objectives and to participate in similar local, regional and international meetings.

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- 4- Cooperate with similar human rights organizations abroad.
- 5- Develop legislations and legal ideas to achieve human rights protection.
- 6- Inform the concerned administrative and judicial authorities of any human rights violations and against the organization, and to provide the needed legal assistance to whoever asks for it. It may also enter as an opponent in cases pertaining to that issue. This is provided that this does not contradict what is mentioned in the Islamic Shariah Law.

Article 5: It is illegal for the organization to interfere in political or religious disputes, or to stir up racial or religious fanaticism.

Article 6: Any Iraqi citizen may have the right to apply to become a member of the organization if he meets the following two conditions:

- 1- To be no less than 21 year of age.
- 2- To be clear of any conviction of an immoral crime or misdemeanor unless that his integrity has been reinstated.

The application may be submitted to the board in accordance with the bylaws of the organization. In case the application is rejected, the applicant might appeal the decision of refusal to the court within 30 days of its date.

Members who meet the conditions may be considered as founding members if they show such interest within 90 days of the effective date of this law. This intention should be submitted in an official request authenticated by the court clerk.

Article 7: The General Assembly of the organization shall consist of registered members who have paid their dues up till the end of the former fiscal year at the time of the general assembly's meeting, which is headed by the chairman of the board or his deputy.

Article 8: The organization is run by the board of directors which is comprised of nine members elected by the general assembly for a three-year renewable term.

Article 9: The bylaws of the organization shall include the following:

- 1- The bylaws of the general assembly and the administration specifying the specialties of each with the identification of the minimum number required to pass any resolution or to hold the official meetings.

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- 2- Who shall be the representatives of the organization before administrative or judicial authorities or others.
- 3- The procedures to amend the bylaws.
- 4- The financial system and methods of auditing.
- 5- The procedures for the membership applications in addition to the rights and duties of the members.
- 6- Assessing the annual dues and methods of collecting or exemptions.
- 7- Identifying the fiscal year (when it begins and ends).
- 8- What to do with the revenues of the organization.
- 9- Reasons to terminate the membership.
- 10- Identify the administrative posts and their duties.

Article 10: The revenue of the organization consists of the following:

- 1- subscription fees collected from the members;
- 2- Donations, gifts and contributions coming from regular people and approved for by the board of directors.

Article 11: The minister of labor and social affairs may request from the court to cancel a special activity of the organization or a decision that was reached by the board of directors in case this decision contradicts this law or the bylaws of the organization or the applicable laws of Iraq.

Such decision or activity may be put on hold until such a time when the court issues its order concerning it.

The minister of labor and social affairs, to whom the organization belongs, in accordance with the provisions of this law, or at least one fourth of the board members, may request from the court to dissolve the board of directors in case it violates the provisions of this law or the applicable laws in Iraq. This may also be true in case the number of the board members becomes less than the minimum required.

In case this is requested of the court, the board of directors' agenda shall be put on hold until the election of a new board. In case the board is dissolved by the court order, or in case the old board was reinstated because the request to dissolve it was rejected, the court may appoint no less than five high-specialty members of the security council as a board of directors. This is during the period between submitting the case and the election of the new board of directors or the return of the old board. The decree to dissolve the board should identify the period during which the new board should be elected. This period should exceed six months, and it is not renewable.

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Article 12: During the period of the following 60 days after the period mentioned in article # 6, the minister of labor and social affairs may call the founding members for a meeting as a founding committee. This meeting is considered valid if it is attended by no less than half the number of members. If the required number was not in the session, another meeting shall be called for within 15 days from the day of the first meeting. This second meeting shall be considered valid no matter how many members were present. This shall be headed by the eldest present member. Its decision shall pass if voted for by the majority. In case of a tie, the decisive vote shall be that on which the president is on.

Article 13: the founding committee shall elect from its members a temporary board of directors comprised of nine members for a period of one year. The task of that board shall be to draft the basic bylaw of the organization and its administration, receive the membership applications, and call for the first meeting to review its draft of the bylaws.

Article 14: the ministers shall work on implementing this law, each in his own specialty.

MEMORANDUM: Following is the Explanatory Note of the bill:
Islam recognized human rights and guaranteed them more than 15 centuries ago. On Dec. 10th, 1948, the Security Council of the United Nations recognized the international human rights charter after the world had witnessed on all levels the coups that raised the Fascist & Nazi flags against the heritage of freedom that peoples had enjoyed through their long history.

On Nov. 4th 1950, most of the European nations signed a new charter of human rights, which was implemented on Sept. 3, 1953.

In 1961, Amnesty International was established on the centennial anniversary of liberating the blacks in Russia and America. This was considered an intellectual humanitarian organization to provide fair and open trials for all those accused of religious or racial violations and to respect the right of seeking political asylum, in addition to establishing an active world system that would guarantee the freedom of opinion.

On Sept. 3, 1968, the Council of the Arab League approved the establishment of a permanent Arab Human Rights Committee.

On Dec. 1st, 1983 the Arab Human Rights Organization was established. The constitution of Iraq guaranteed justice, freedom and

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equality as the basic foundations for the society protected by the government. It also guaranteed security, equal opportunity, and the protection of personal property. It also acknowledged that people are all equal in human dignity. It guaranteed the freedom of religion, opinion, personal freedom, the protection of residences, the right to work and the right to demonstrate.

The Iraqi constitution recognized the freedom of forming associations on national foundations by peaceful means in accordance with the provisions stated by the law.

In the framework of this constitutional system, this bill has been prepared to establish the Iraqi Organization of Human Rights

It is not subject to government supervision:

This organization is to be established through the law instead of a regular association subject to government supervision. Its neutrality, non-partisanship, independence, trust and integrity are considered the basic principles on which all the human rights organizations in the world are established. Additionally, full government supervision over the organization shall definitely affect the cooperation between this organization and other regional and international human rights organizations abroad. This is the kind of cooperation which would enable it to convey the truth about Iraq to the whole world.

No Dissolution Except by a Decree:

In order to realize this objective, this bill includes the following principles:

- 1- Each Iraqi citizen (male or female) who has reached the age of 21 may have the right to join this organization.
- 2- Each member may be considered a founding member if he expresses his desire to join within 90 days of the date of this law, provided that his intention is submitted in writing and authenticated by the court clerk.
- 3- Once this law is ratified, the organization shall be considered valid
- 4- The organization may not be dissolved voluntarily or by force, as it is established by the ratification of a bill.
- 5- The board of directors may not be dissolved except by a court order. Article one states that an organization shall be established in Iraq in the name of "The Iraqi Organization of Human Rights" as a legal entity. It may also have the right to establish branch offices in different cities other than that

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where the headquarters is located. It is also a non-profit organization.

Article two of the organization identified its main framework and task by identifying what is meant by "Human Rights". It stated that it meant the public freedoms and rights as recognized by the principle of Islamic Shariah, the constitution of Iraq, and the international agreements signed by Iraq or which Iraq became a part of. This shall not stop as an obstacle between the organization and Iraq's seeking to join other pacts or agreements in which it guarantees more rights and freedoms.

In The Framework of Shariah:

Articles three and four stated that the organization shall work on strengthening and respecting human rights and public freedoms of all Iraqi and non-Iraqi people living in Iraq without any discrimination based on sex, nationality, color, religion, political or ideological affiliation. It shall also work on cooperating with other similar human rights organizations abroad. It shall identify the objectives of the organization to defend individuals or groups of people whose rights have been violated in accordance with international charters and laws. It shall publish pamphlets or brochures to make the public aware of human rights and issue reports about human rights conditions in Iraq. It shall organize meetings, lectures, and conferences and participate with them on different levels locally and internationally. It may address the concerned authorities about human rights violations. It may provide legal assistance to those in need as well as interfering as an opponent or plaintiff in cases pertaining to human rights. It shall emphasize that in its work, the organization is working in accordance with the Islamic Shariah. Article five also states that the organization may not interfere in political, racial or religious disputes, which is something all private interest associations suffer from.

Membership differences:

Article six explains the conditions of the organization membership. The most important of this is that the member should be no less than 21 years of age. A member is considered a founding member if he expresses his intention of becoming one in writing within 90 days of the effectiveness of this law. In order that no one should suffer from a decision of canceling his request to become a member, the person whose application has been denied approval may request from the court to appeal that rejection within 30 days of its issuance.

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Articles (7 & 8) explained the basic principles of the general assembly and the board of directors. The details of these shall be listed in the bylaws of the organization.

Article 9 stated the kind of subjects that should be addressed. This is considered the basic charter of the organization and its bylaws as adopted by the general assembly. This does not stop the board of directors from identifying details of the organization's agenda which might not be listed in the bylaws.

Article 10 identified the revenues of the organization, which includes grants, donations and assistance. These should be approved by the board of directors whether conditioned or free of any kind of conditions. It listed that these grants, donations, or gifts should be in accordance with the objectives of the organization as stated in this law.

Regulations:

To monitor and supervise the actions of the organization, article 11 stated two conditions:

- 1st) With regard to a specific activity or a decision issued by the board of directors of the organization, the minister of labor and social affairs might see that contradicting with the bylaws of the organization or the laws in Iraq. In this case the minister might request from the court to cancel such activity or decision. Once a petition has been submitted to the court, such activity shall be put on hold until a decision is issued by the court in that regard.
- 2nd) Conditions for Dissolving: the minister of labor and social affairs or no less than one fourth of the board members may have the right to request from the court dissolving the board of directors. The bill gave the following guarantees:
 - 1- It identified the reasons on which the dissolution is based. That is in case the board of directors violated the applicable law in Iraq.
 - 2- The dissolution order identifies the period during which a new board of directors should be elected. It is no more than six months, not renewable.

The Law of the Associations:

Filing a petition to dissolve the board of directors necessitates a temporary hold of the board's agenda until a new board is elected, or until reinstating the old board in case the petition has been denied. To guarantee the amount of freedom that would allow it to continue its task

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by using the available means, it is stated that the organization may not be obliged to follow or abide by the regulations of public associations as this might contradict with the nature of the organization's activities and its independence. This is what was guaranteed by article 12.

Article 13 included a transitional ruling stating that by the expiration of the 90-day period mentioned in article # 6, the minister of labor and social affairs might call the founding members within 60 days to convene to elect 9-member interim board. This may temporarily run the organization by performing tasks such as receiving membership applications, choosing the location for the headquarters, draft the bylaws for the organization, and call the general assembly for its first meeting to ratify the bylaws.

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Appendix N (No. 14)



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Ways to Activate the Reconciliation Process in Iraqi Society

There is absolutely no doubt that the conditions, tragedies, and disasters that afflicted Iraqi citizens have exceeded all imagination in their gravity and magnitude. The victims were from the diverse classes and sectors of Iraqi society from the north to the center to the south. Therefore, after the ouster of the regime, all these points should be taken into consideration in any discussion of a reconciliation process, [particularly] when defining the means and practical steps to reach reconciliation in order to start off correctly and effectively. This should be done by adopting practical measures and means that are compatible with the character of the Iraqi society and the depth of its wounds, pains, and suffering as well as the emotions and sentiments of the victims and their families and kin. These measures and means should aim at restoring the moral and psychological balance of the victims and compensating them for their pain and their psychological and physical damage. Therefore, these ways and means should treat the pain and the physical and psychological damage that afflicted the victims, their families, and their heirs.

Some of the most important ways to bring about reconciliation are the following:

1. The containment and soothing of the emotions of the victims. No doubt, the most important goals of reconciliation are to take into account the emotions of the victims and their families, bring them psychological security, console them, restore their psychological balance, and to rehabilitate them psychologically. This can be done by recognizing their physical and psychological suffering and pains and by highlighting their heroism and sacrifices for their principles and their homeland. This should be done through programs that should be explained through the various audio-visual and print media. Reference should be made to the suffering of other societies that have borne ordeals, catastrophes, injustices, and devastation and how their situations eventually resulted in the healing of the damage, the restoration of their peace of mind and psychological security, and their readiness to accept the rule of law and contain the desire for revenge.

2. The system of reconciliation in Islam and its effect in attaining reconciliation: The system of reconciliation in Islam is one of the most important systems that can be used to bring about reconciliation. This system has had practical successes in ending animosities and conflicts between rivals and archenemies. It led to reconciliation, fraternity, and amity between the tribes of Al-Aws and Al-Khazraj, two archenemies. This system has also been applied to crimes of murder, crimes of wounding and hurting, crimes of retaliation, and crimes of aggression on lives and limbs. In Islam, the penalty may be equal to the crime or reconciliation through the payment of damages or a full pardon without anything in return. However, Shari'ah [Muslim jurisprudence] urges, encourages, and was reared on reconciliation. This system has proven to have succeeded in minimizing crimes of murder and revenge in view of the fact that it takes into consideration the emotions and psychological suffering of the victim and the damaged party. This system can be applied to the Iraqi victims in order to erase the causes for disputes, end animosities, and minimize the degree of hatred among the members of society.

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3. **The Effect of human principles and tribal values, norms, and traditions:** Iraqi society is characterized by a number of values and traditions that govern its social and moral ethos, which abound with virtuous human principles. The most prominent of these human principles and values are: pardon when you are capable of pardoning is a real man's virtue; one who shows tolerance is honorable; affection and amity; chivalry and gallant deeds. When the Prophet Muhammad, may God's prayers and peace be upon him, conquered Mecca, he pardoned and released its inhabitants despite all the material and psychological harm to which the chosen prophet, may God's prayers and peace be upon him, and his followers and companions were subjected. The prophet is remembered to have said, "What do you think I should do to you?" They answered, "You are a generous brother and a generous cousin." He said, "Go, I release you." The chosen prophet also said: "No one is better in speech than the one who calls men to Allah, acts righteously, and says, 'I am of the Muslims.' "Nor can goodness and evil be equal. Repel evil with what is better: Then the one between whom and thee was hatred become as it were thy friend and intimate." [Koran, 41:34]. Other stands taken by the prophet also highlight the value and virtues of forgiveness and reconciliation and their good effects on the individual and society.

4. **The formation of truth and reconciliation commissions and the correct selection of their members.** The truth commissions reach the truth and apply justice. Truth and justice are key elements to which the damaged parties and the victims aspire in order to apply the law and spurn the instinct for revenge and vengeance. However, to realize these goals in the best manner, the members of such commissions should be selected based on objective and precise criteria that take into account objectivity and personal requirements, such as willingness and ability to work in such commissions. These commissions shoulder important responsibilities and huge tasks. Their members hold prominent and respected social or tribal or legal positions. They must enjoy a good reputation and social status in order to be able to form such new commissions in order to achieve their goals.

5. **Fair and Rewarding Compensation:** In view of the acute pain and the severe psychological suffering of the victims and the damaged parties from the injustices of the tyrannical regime, and in view of the new political system's determination to pay attention to the sentiments and consolation of the sufferers, it is important to issue a compensations law. This law gives every Iraqi the right to demand full compensation for the material and psychological damage inflicted on him. The various media outlets should educate the victims and the damaged parties about their legal rights so they can benefit from the law. They should be educated about their rights and about the concept of compensation and the means to demand compensation. They should be encouraged to exercise their rights easily and without any difficulty.

6. **Explaining the importance of the amnesty law and its goals to the victims and to other damaged parties:** In order to achieve harmony, concord, and integration among the members of the one united society, and in order to weave him the national fabric of this society, the new political authority should clarify the concept of amnesty. In this way, we can end the mistake rather than end the person who made the mistake. In other words, the one that committed the mistake should be led by the hand toward building a new society, a society of tolerance, amity, love, and fraternity based on the terms stipulated in the amnesty law, the most important of which are that the person included in the amnesty should give himself up during the amnesty period, accept full responsibility for his

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crime, apologize and offer his regrets to the victims and other damaged parties, and pledge not to repeat his actions in the future in order to realize the goals of reconciliation.

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Appendix O (No. 15)

[REDACTED]
(Pages 173 - 185)

B6

Report on the Responsibility and Reconciliation Committee

Introduction

As a result of the violent and harsh practices to which they have been subjected by the policies of the dictatorial regime, the Iraqi people have suffered from shocks and calamities that are beyond description. No price can be put on their ordeal and pains, especially those suffered by the families of the victims. The perpetrators of human rights violations were behind these ordeals since they were the suppressive tools of this dictatorship. They perpetrated large-scale violations against their own people, deriving from the character of the ruling regime and the ruler, directives and methods for dealing with the Iraqi people and other victims. These government officials, most of whom occupy various positions and ranks in the ruling party, in addition to their government posts, come mainly from the northwestern regions of Baghdad and are loyal to the Ba'thist regime through tribal affiliation or tribal alliances or regional support. They were chosen to work in the oppressive organs based on political sectarianism and tribal allegiance to ensure the safety of the regime.

The Formation of the Suppressive Organs

After the military coup of 17 July 1968, the ruling Ba'th Party established numerous oppressive, autocratic security and intelligence organs. The members of these organs number in the thousands. They occupy senior posts in organizations and establishments that humiliate and persecute the Iraqi people and wage war on them with respect to their livelihood, housing, money, security, and all the social, political, economic, and religious aspects of their lives. These organs have developed significantly in terms of the quality of their trained members, foreign experts, and the highly sophisticated tools for suppression that they have imported from the countries of the former socialist camp. The ugly and extremely ferocious tools of suppression and the savage violence that they use are unprecedented. These organs systematically, blatantly, aggressively and secretly violate human rights. Following are the names of some of these organs:

I. National Security Council. It comprises the commanders of the following military and security organizations:

1. Some units of the Iraqi Army
2. The Republican Guard
3. The forces of Saddam's fedayeen
4. The members of the General Security Directorate
5. The organs of the Public Police

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6. The Presidential palaces Office
7. The Special Security Organ
8. The security organs in the Al-Quds Forces
9. The General Intelligence Directorate

There is also the Joint Operations Room, which conducts special security and military operations that pertain to the security of Baghdad and the protection of the regime. The headquarters of this joint operations room is in the Republican Palace in Baghdad. It has unlimited powers to arrest or detain or kill anyone it wishes under the guise of maintaining security and public order and protecting the party and the revolution. Some of these oppressive units are the following:

1. The rapid intervention organ of the Special Republican Guard
 2. The rapid intervention organ of the General Security Directorate
 3. The rapid intervention regiment of the Military Intelligence Directorate
 4. The security organ of the Military Intelligence Directorate
 5. The Emergency Forces
- II. The offices of the ruling Ba'th Party spread throughout all regions of Iraq.
- III. The investigation and interrogation departments that come under the security officer in all the state departments.
- IV. The detention camps, prisons, and secret torture chambers of the various security organizations.
- IV. The torture chambers, extortion rooms, and so on in the Iraqi intelligence stations that are based in the Iraqi embassies abroad.

Tens of thousands work in these oppressive establishments and organizations that have led to this bleak and destructive situation in Iraq's society. In light of the above, what are the best strategies to adopt in order to bring about reconciliation in a society made up of diverse ethnic groups, sects, and competing political currents, a society where tribal values strongly supported by the ruling regime prevail? What are the restrictions that are preventing the spread of the culture of peace? How can we act to raise the culture of peace to the level of an effect if the value in society? What are the practical measures that should be taken to eliminate the culture of violence and prohibit torture? Should we seek the assistance of the United Nations and non-governmental organizations that are experienced in building societies in transition? Should we rely on our own capabilities in view of the different natures of societies and oppressive regimes? Can we reassimilate the perpetrators of human

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rights violations in society after calling them to account? How can the media help raise awareness of new peaceful trends in society?

The Fact-finding and Allocation of Responsibility Commission:

Successful answers to the questions raised above lie in the formation of a commission to gather the facts and allocate responsibility. Such a commission should be proclaimed on the first day after the fall of the regime. It is one of the most important pillars to entrench the aspired justice and stability in post-Saddam Iraq. The success of such commissions has been demonstrated in the societies where they have been established. These commissions interrogate and record the confessions of perpetrators of violations against Iraqi citizens. They make sure that these perpetrators are brought to justice after interrogating them, charging them, and referring them to the courts. At the same time, they seek to rehabilitate the camps and compensate those who need and deserve compensation while working to reassimilate the perpetrators in Iraqi society.

Over the past two decades, truth and reconciliation commissions have gained experiences that are rich with lessons and morals:

1. These commissions have succeeded in their primary task of spreading justice and stability, defusing tension, and entrenching the rule of law instead the law of the jungle and the wishes of the dictatorial tyrant in power.
2. These commissions have turned into an important foundation for any transformation process toward a society that adheres to the mechanisms of democracy and resolution of the conflicts of the past stage.
3. They have entrenched social peace in situations with a heavy legacy of horrendous human rights violations.

The most important tasks of the truth and allocation of responsibility commissions are the following:

1. Their main function is to uncover the facts and events and document the violations committed by officials of the oppressive organs.
2. They facilitate victims' obtain and of compensation
3. These committees are not criminal courts. They only refer to justice those who had been convicted of perpetrating human rights violations.
4. At the conclusion of their work, these commissions issue recommendations to prevent the repetition of such crimes.
5. These committees do not easily grant pardons to defendants that are convicted of human rights violations and put restrictive conditions on such perpetrators.

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6. Such a commission does not have the right to grant immunity from punishment that may obstruct the revelation of the facts to the public. It does not issue final judicial decisions on convictions or acquittals. It does not have the right to award satisfactory compensation to the victims and their families. This is in accordance with the recommendations of the Human Rights World Conference that met in Vienna in 1993. This conference stated, "Countries must rescind legislation that grants immunity from punishment to those who have committed serious human rights violations, such as torture. Countries should prosecute the perpetrators of such violations in order to lay a solid foundation for the sovereignty of the law."

7. Such a commission is not responsible for determining and specifying responsibility for a crime.

8. It does not impose criminal penalties on those who appear before it.

9. Its powers focus on hearing past violations that were committed during a specific period of time by the former officials of the former regime or the members of the party. Its powers do not include hearing an incident that took place after it was formed.

10. Its mandate is temporary and set for a specific period of time. Its mandate ends at the conclusion of the transitional period unless circumstances necessitate its continuation for a specific period of time.

11. Such a commission concludes its work by issuing a detailed report that documents the violations. It issues recommendations based on this report.

12. One of the basic functions of these commissions is to pardon culprits that openly and clearly confess to it and to the public their responsibility in committing their past crimes. They should also apologize to the public and cooperate with the commissions to reveal other facts.

13. The proceedings and hearings of these committees are considered an official documentation of all the painful events of the past.

14. The commissions act as an important and public information forum to educate the masses and raise their awareness. These commissions do not hold secret sessions. They give ample opportunities to the victims to introduce themselves and narrate the horror that they had experienced.

15. These committees are not a substitute for the aspired justice. They only pave the road for justice and are part of it.

16. These commissions do not summon witnesses and those who appear before it do not take an oath.

17. Politicians should not be allowed to exploit such a commission or to interfere in its affairs. Politicians should be prohibited from interfering in its formation, powers, and resources. They should not be allowed to impede its information gathering process or to weaken its ability to confront sensitive issues. Politicians should even be barred from interfering in the drafting of its final report.

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18. Such a commission should respect legal procedures. For instance, it cannot summon anyone who had been referred to court. It cannot follow the normal legal procedures since it is different from a court.

Societies where such commissions have operated have demonstrated growing acceptance of the responsibility of the state to protect its citizens. Such protection is provided not only from violations committed by government officials but also from similar practices that are committed by individuals in their private capacities. These individuals may not be state officials but belong to political movements and organizations that resort to violence to achieve their goals, especially if such practices are exercised against unarmed civilians. It is legitimate to hold accountable a state that bears responsibility to protect its citizens for the following reasons:

1. The state is directly responsible for violations that are perpetrated by individuals or organizations assigned responsibilities.
2. The state is partly responsible for acts of violence committed by individuals in their private capacities when the state endorses or is lax in dealing with such violations.
3. The state bears responsibility if it is remiss or is negligent in one way or another in providing adequate protection from such violations.
4. The international law on human rights holds a state responsible for taking adequate measures and precautions to prevent such violations and to prosecute and punish violators.

Finally, truth and reconciliation commissions must be voluntarily formed by Iraq's free will and should be administered only by Iraqi nationals. Gaining from the expertise of some specialists in this field is also possible. One of the priority missions of these commissions is to try to first procure a public apology to the Iraqi victims and then to other peoples that have been damaged by the aggressive acts of the dictatorial regime. This apology must be made by the perpetrators of crimes against the Iraqi people and others.

Escape from Punishment

Although in many countries in the world escape from punishment seems to be the rule while the exercise of justice seems to be the exception, a fresh transformation is beginning to emerge. This transformation must take place in Iraq on the day after the fall of the dictatorial regime. What are the measures that can be taken to minimize the magnitude of the violations? The only measure is the legal prosecution of the culprits since escape from punishment has been one of the main causes that encourage the perpetration of human rights violations.

Moreover, if we were to view human rights violations from another angle, we conclude that they constitute treason committed by the government authorities that are supposed to be the protectors of the public from any harm. This is especially true if the state is remiss in taking the necessary measures to protect the public from the arbitrariness of its officials. Such remissness undermined the very foundations of the criminal justice system. Moreover, the exacerbation of the phenomenon

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of escape from punishment gives the impression that perpetrators can avoid the consequences of their inhuman actions. However, punishment deters them from repeating their crimes. At the same time, the meting of punishment shows the general public that the perpetrators of crimes against human rights will not be tolerated, and that we will not once again deprive victims of justice and their rights .

The phenomenon of escape from punishment can also be considered a multiple violation of human rights in itself. It may deprive the victims and their families of their right to uncover the facts and obtain a confession to the crime. It deprives them of their right to see justice done and to receive just compensation. Punishment of such violations prevents the recurrence of harm and suffering due to the insistence on denying the violation in the first place.

From a social standpoint, violations of human rights reflect inequality in the relationship between the various forces in society. Such violations manifest themselves when we see a policeman attacking a defendant for committing a crime that had not been proven against him yet without fearing any retribution. These violations manifest themselves when ugly torture is used against a citizen for expressing an opinion that is different from that of the ruling authorities. In all these cases, the unequal relationship among various forces makes it impossible to hold the culprit accountable . Escape from punishment is used as a tool to dominate a society where the influential forces have a direct interest in upholding this phenomenon.

Legal mechanisms and procedural methods to investigate and prosecute violators of human rights are necessary. However, they are not enough to end the phenomenon of escape from punishment. What is also needed is political will to undertake essential reforms of laws and institutions. Work should begin immediately to bring about a gradual and peaceful transformation toward democratic mechanisms that educate and teach the principles of human rights.

We should be guided by what is known as the principles pertaining to the protection and reinforcement of human rights by adopting measures to combat the phenomenon of escape from punishment. These principles are appended to the general report of 1997 pertaining to the issue of escape from punishment. These principles are known as the Principles of Louis Gonet [name as transliterated]. They divide the rights of the victims into three categories:

1. The established right to know all the facts pertaining to past human rights violations, the principles concerning non-judicial investigation committees, and the principles concerning the preservation of and access to information on human rights violations.
2. The right to justice, which also includes the principles pertaining to the distribution of judicial (penal) authorities among the national, foreign, and international courts.
3. The right to compensation, which includes the principles pertaining to compensation procedures, the scope of the right to receive compensation, and principles to prevent the repetition of the violations.

Compensating the Victims

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The victims of violations are entitled to justice and in the establishment of the facts pertaining to the violation. They should be paid monetary or other compensation to repair the harm and damage they may have sustained. The alleged perpetrators of human rights violations should be referred to the courts of law and this should become a standing, routine procedure. By referring the culprits to the law courts, the new government would send a clear message that says that it would not be lax in punishing serious violations of human rights and of international humanitarian law. This measure would prevent individual acts of torture and other excesses that are committed by some from spreading or becoming a systematic crime committed by government officials.

One of the successful ways to uncover the truth is holding criminal trials. Such trials will eventually turn into a public forum that would allow the victims to narrate the catastrophic suffering they endured. This would contribute to rehabilitating the victims and convicting the culprits. It would also serve to console the victims and help them get some compensation for their suffering. A public criminal trial responds to the just demands of society in general to hold accountable those who ruled over it with suppression and contempt. It also tells the public about the serious crimes that were committed by the regime and attaches the utmost importance to adherence to the sovereignty of the law. The fact that criminal responsibility will be on an individual basis will help minimize the acuteness of factional animosities. The guilt will be ascribed to the individual who committed the crime rather than to the ethnic group or the political faction or the sect or the tribe to which the individual may belong. Moreover, reconciliation would not be permanent or efficacious unless the facts are revealed and justice prevails.

The compensation process consists of five basic elements that were outlined in the final report submitted to the United Nations Human Rights Commission session in 2000. This report was submitted by Professor Sharif Al-Basyuni, the special rapporteur on the restoration of the rights, compensation, and rehabilitation of victims of glaring human rights violations. These five elements are:

1. Equity and fairness in monetary compensation
2. Medical care for and rehabilitation of the victims to return to their previous normal lives as much as possible.
3. Guarantees that what happened will not recur
4. Offering some types of consolation, such as reinstatement of rights, reputation, and dignity and a public, clear admission of guilt by the culprits of the harm they had caused to the victims.
5. The harm and damage that the victims suffered must be rectified as much as possible.

The reinstatement of the rights of the victims includes the right to freedom, their legal rights, the right to regain their social status, the right to family life, and the right of citizenship. They also include the right of return to the original place of residence, the right to regain employment, and the right to regain their property. The victim is also entitled to full rehabilitation in society through medical and mental-health care and to all legal and social services. Monetary compensation should be given for any economic damage resulting from the violation that can be estimated. This includes

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physical or mental damage, harm resulting from loss of opportunities, and harm resulting from damage to reputation or dignity. Quite often, states are remiss in abiding by their pledges to pay suitable compensation to the victims. This is particularly true since most of the victims belong to disadvantaged and weaker sectors of society, such as women, children, members of ethnic or sectarian minorities, political opposition activists, and even members of the ruling party. Most of these are members of the working class. It is hard for these sectors to receive compensation. They may not know how to submit their grievance or perhaps they do not know how to contact the departments concerned. They may not have the funds needed to submit their grievances or perhaps the officials do not believe them. They may suffer more harm simply because they dared to lodge a complaint. Furthermore, it is very hard to determine the number of victims that have suffered from human rights violations over the past three decades, which are full of bitterness and hard, sometimes unbearable times .

Conclusion

In conclusion, [REDACTED] several sessions for Iraqis abroad that are similar to fact-finding commissions. These sessions were held between 1992 and 1994 in several countries of exile like Yotoberry [place name as transliterated], Tehran, London, and Arbil in Iraqi Kurdistan. The victims of human rights violations appeared before a panel of Iraqi judges and lawyers and gave their testimonies on what happened to them and the ordeals and torture they endured at the hands of Iraqi government officials. This rich experiment was recorded and documented on videotapes.

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Appendix P (No. 16)

By 

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Special Pardon and General Amnesty

Amnesty is an important and extremely sensitive issue and should be handled with extreme care. The main goal of an amnesty is to end internal animosities and disputes ignited by the desire for revenge to thus attain total reconciliation in society. There are two kinds of pardons:

I. **General Amnesty:** This type of amnesty covers everyone who committed crimes irrespective of the gravity of the crime with the exception of senior officials and leaders of the regime. The proponents of this view believe that this type of pardon is the only way to transition to a fresh regime. It is the price to pay to get rid of an oppressive and tyrannical regime. It evades dealing with what happened in the past and turns over a new leaf. Such an arbitrary pardon will create difficulties and contradictions regarding the provisions of international law on one hand and on the domestic level on the other. The provisions of international criminal law prohibit the pardoning of serious crimes against humanity and crimes of war, aggression, and genocide. Furthermore, such a pardon does not bring about the desired justice. A large number of individuals who work in diverse military and security establishments might be included in the general amnesty although their crimes may be more serious than those committed by the senior officials of the regime. Hence, such an amnesty would fuel the feelings for revenge on the part of the victims and their families. It would lead to instability and would not be a positive step forward toward reconciliation. The victims and their families would feel that their rights have been usurped and that the new regime is protecting the criminals.

The events that took place in Sierra Leone in 1999 attest to the failure of a general amnesty. Following the civil war, the opposition parties in Sierra Leone and the Revolutionary United Front signed an agreement in 1999 to share in administering the country. A general amnesty was issued pardoning all the perpetrators of crimes against humanity, including the crimes of torture and dismemberment of civilians to intimidate them, which were committed by the Revolutionary United Front. However, this agreement collapsed after a few months. The Revolutionary United Front attacked the opposition parties that were allied with it as well as the United Nations peacekeeping forces. The same events took place in Argentina in 1983 but were contained after the elections one year after the issuance of the general amnesty law.

II. **Special (restrictive) pardon:** This type of pardon differs from a general amnesty in substance and applicability. It does not include all crimes no matter how serious. It only includes crimes that are not as serious as crimes that are banned in international criminal law (war crimes, crimes of genocide, crimes against humanity). A special pardon is applied for a specific period of time and under certain specific conditions, including:

-- The individual included in this pardon must surrender within a specific period.

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-- The individual included in this pardon must cooperate with the fact-finding commissions to reveal the facts about the committed crimes.

-- The individual included in this pardon must apologize to his victims and society.

-- The individual included in this amnesty pledges not to repeat his actions again in the future.

South Africa applied this type of pardon. The price of such a pardon is admission of responsibility for past actions and cooperation with the investigators of the fact-finding commissions. In light of the result of the investigation, the commission decides who is to be included in the pardon based on grounds law mentioned in the investigation report. If the fact-finding commission finds that the crimes committed by an individual are serious crimes, the individual is referred to competent criminal investigation committees. These committees will in turn refer the individual to national criminal courts or international criminal tribunals. These committees may also impose other non-criminal penalties or payment of compensation by the individual. Such a decision is based on the mandate of the committee if the committed crimes fall within the committee's purview. This is the best type of pardon to contain and absorb the anger, animosities, personal antagonisms, and the desire for revenge among individuals and groups. It is also the best way to achieve comprehensive reconciliation in society since it nurtures the feelings of reassurance and safety for all the parties.

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Appendix Q (No. 17)

By

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Report on the Proposed Amnesty Law

Forgiveness as an expression of a political-ethical practice is a basic need that is urgently required to start rebuilding Iraqi society on the remains of the dictatorship. An amnesty law is one of the most important requisites to spread justice and stability in the transitional phase. It marks an important and essential beginning for genuine national reconciliation that brings together all the Iraqis despite their divergent political, religious, and ethnic currents. Pardon and forgiveness when one has the ability to pardon and forgive have a deep social significance. They reflect free love given for no return despite the bitterness and past suffering. They express a desire to forget the past, so that an individual can enjoy his human rights despite his shameless actions and violations that are punishable by law. When the truth is revealed,, a person repents for his bad actions in a moment of reflection and calm. When the reasons that led this person to join the ranks of the tyrants disappear, when he feels safe from the punishment of the regime from which he escaped, or when the ruling authorities that he fears change, he reverts to his true human nature, not aggression.

Forgiving and pardoning the crimes that were committed is a difficult and hard burden that is borne by both the victim and the victimizer. The victimizer will have deep pangs of conscience and guilt for what he had done. He realizes that he was instigated by false and misleading slogans or an aggressive mentality or a destructive culture of violence that planted illusions in him through authoritarian education by the party or through work in the organs of suppression. In such a situation, crisis-ridden history filled with sedition is adopted and the ethnic, sectarian, and political dimensions are exploited in order to liquidate the opposition. Human rights are violated and strongly suppressed based on false, transient convictions that the victimizer acquired from the régime head's directives and his ruling establishment's inculcation. [The victimizer begins to believe in] such [false slogans] as [the need to] safeguard the revolution, protect the leadership and the Ba'ath Party, prevent the disruption of internal security, and combat espionage and external aggression. The victimizer becomes deeply involved in and fully convinced of what he does. Sometimes, the victimizer even resorts to the mediation of others to win such a position that brings him status and power in a society that fears and that is awed by tyrannical power. The victimizer tries to profit from his post and enjoys many privileges. He abuses his powers, which have been put above the law. However, the victimizer eventually realizes what his sinful hands had committed in the dungeons and torture chambers and the true policies and practices of the regime are eventually bared before his eyes.

As for the victim who had suffered deep pains under torture, he feels bitter, sad, and unjustly treated. He may be suffering from a permanent disability (that is, if he stays alive under torture) for having expressed an opinion or having taken a stand that opposes the illogical and inhuman policies of the dictatorial regime. He may be the victim of a false charge made by an enemy against him. He may be the victim of a simple unintentional mistake that is exploited by one who hates him. He may be the victim of a fabricated charge brought against him because he refused to join the party or declined to cooperate with the party or the regime. Some claims made by imprisoned victims sound

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amazing at first but are very real. They say that some individuals are convicted for seeing in their sleep a coup or a conspiracy. These were punished for their dreams.

Mutual toleration is an extremely complicated and difficult process. It requires a high degree of forgiveness and compassion. Forgiveness, compassion, and a high level of ethics and morals are needed to overcome the feelings of hate and the desire for revenge. This process should be handled with caution and delicacy in order to succeed in assimilating the victim and the victimizer back in society. The only way to do that is by issuing the proposed amnesty law based on the principles of justice and respect of others. Such a law would restore dignity to the victim and victimizer and give them back their freedom. Such a law would make it easier for the victimizer to return to normal life after he confesses his sins and publicly apologizes for his errors, and the victim would enjoy justice and fairness. He would be rehabilitated and the evil injustices imposed on him would end thus ending his suffering.

However, an amnesty law can be viewed from another angle. It can be viewed as reflecting a denial of the serious crime of human rights violations if it incorporates provisions that prohibit the investigation and legal prosecution of the culprits for their serious actions. Article II, Paragraph 3 of the international charter on civic and political human rights strongly stipulates that an effective mechanism for grievances should be provided to any individual who feels that his rights and freedoms have been violated under this charter. Some people feel that the amnesty law should also apply to persons who have not been convicted of felonies but may be convicted after an investigation. I expect that the most difficult task that will face those who care for and want to apply justice is proving cases related to forced disappearances perpetrated by government agencies and mass graves. The absence of the victims, the ease of denial, and the lack of accurate information about the victims make it hard to legally prove the death of a victim. Therefore, we can resort to another solution that would bring justice to the victims. Cases of abductions and disappearances can be considered a standing crime until the victim is found. In such a case, the defendant would not be able to benefit from the amnesty law.

The amnesty law must classify the individuals covered by the amnesty law into different categories based on the kind of violation with which the individual is charged. No consideration whatsoever should be given to the defendant's official position or employment capacity when the crime was committed or at any time after the crime was committed. This point was outlined very clearly in the decision taken by the House of Lords in Britain related to the criminal prosecution of Pinochet, the former Chilean president, before a national court for criminal human rights violations committed in his country during his rule. This decision contains a precedent regarding the prosecution of criminals irrespective of when the violations took place. It is based on the principle that says, "no crime without a prior law." In other words, no action is a crime unless a law that criminalizes it existed prior to a commission of the action. This principle is recognized internationally. Jurists call it "the principle of abidance by the letter of the law".

Serious violations that are punishable by international human law -- genocide, crimes against humanity, war crimes, arbitrary execution, premeditated murder, the taking of hostages, savage torture, forced disappearances, and other such crimes -- do not become obsolete by prescription. In other words, there are no statutes of limitations for a charge brought against a person who commits a serious crime for which a conviction can be obtained under international law. The excuses that may

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be given by a perpetrator -- that he was following orders, was subject to compulsion, or was forced by his superiors, or [had to] comply with an order to under duress -- are not taken into consideration [by the court]. This type of violation is quantitatively and qualitatively different from a second type of violations that pertains to deliberate humiliation, harsh mistreatment, and insults during the period of detention or sequestration. As far as the first type of criminal violations is concerned, the defendant must stand trial and must not escape punishment. In the second type of violation, it is sufficient for the defendant to appear before the fact-finding and reconciliation commission and confess his crime. The defendant must also publicly apologize for his crime, ask for forgiveness, and pledge to cooperate to reveal other facts.

Under the claim that "necessity takes precedence over prohibitions," which appears in some provisions in the general amnesty law, some countries have been unsuccessful in establishing domestic peace during periods of transition toward democratic mechanisms in governance because they did not prosecute violators for their crimes. This increased the masses' distrust of the new situation. No punishment was meted to the culprits, such as dismissal from their security positions or transfer to any other position in the government. In fact, some were promoted to influential advisory posts or were left in their positions as if nothing had happened. This seriously undermined the transition process toward domestic peace. Keeping the victimizer in his security post does not build democracy. In fact, it contradicts all the values of human rights. The victimizer's retention of his post reflects the absence of democracy, justice, a state of laws and rights, the achievement of justice, and the respect for the rights of citizens.

What happened in Sierra Leone is a good example. Countries neighboring Sierra Leone -- and other countries in the world that are directly or indirectly affected by the situation in Sierra Leone -- rejected and denounced the decisions to pardon and forgive and other immunity measures that were taken in order not to punish violators of human rights. The international community also denounced these decisions as did the UN Secretary General, Security Council and General Assembly, and Human Rights Commission. They were also condemned by the international tribunal on Yugoslavia and Rwanda and by the UN commission to combat torture in Geneva. This condemnation was also stressed by UN Secretary General Kofi Annan in his report of March 2001 that he submitted to the Security Council regarding the protection of civilians during armed conflicts. In this report, Kofi Annan stated, "pardoning those who committed serious violations of human and criminal international law is unacceptable. The Sierra Leone experiment has demonstrated that such a pardon does not bring permanent peace and reconciliation."

The proposed amnesty law must strongly confront the norms and traditions that prevail in societies that are ruled by dictatorial regimes. Violators of human rights must not escape investigation, prosecution, and punishment irrespective of their tribal, sectarian, ethnic, or political affiliations. These norms and traditions are starting to crumble thanks to the efforts being exerted by the judiciary to crush the phenomenon of escape from punishment. This has been due to the growing awareness of national and international public opinion, to the extent that pioneering measures have been taken to ensure international accountability of those who are accused of such criminal violations in case they escape from the grip of justice in their own countries.

In late 1999, Gallup International, a firm that specializes in conducting public polls, surveyed more than 50,000 individuals in 60 countries in the Gallup International Millennium Survey. One of the

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many questions in the survey asked about the measure or measures that would be "very effective" or "quite effective" in minimizing and eradicating cases of torture. About 77 percent of those who were surveyed responded by saying that legal prosecutions of violators should be increased. Many human rights experts share this world opinion. In Paragraph 48 of his October 1999 report to the United Nations General Assembly, the special rapporteur on torture cases in the world stated, "the phenomenon of escape from punishment encourages, and continues to be the main cause of, the continuation of human rights violations, especially torture."

We monitored the chaotic fumbling that prevailed in Iraq [during the uprising of 1991] in dealing with the Ba'th party security and intelligence elements that humiliated, tortured, and sometimes killed their own countrymen. The situation got out of control and hundreds of elements belonging to the regime and the party were killed in vendettas and acts of revenge. Although some leaders of the uprising managed to provide protection to a number of regime officials and party elements, the regime reacted strongly and fiercely as it suppressed the uprising with blood and without mercy or humanity. It is not right to issue a general amnesty pardoning all these acts that were committed by the former regime. The perpetrators of these acts must be called to account. Therefore, the suspected perpetrators of these acts must be criminally investigated and legally prosecuted. This is especially necessary since the security organs deliberately destroy or conceal facts and information that are important pieces of evidence that will be used to incriminate and convict their members. The regime has learned from its mistakes in Kurdistan when the Kurds seized 14 tons of official documents following the uprising in 1991.

Unless the criteria outlined below apply to him, a defendant can benefit from the amnesty law. However, he should be first investigated and prosecuted for the charges brought against him and then he may be acquitted. A defendant is guilty of perpetrating a human rights crime or of being an accomplice to the crime if he is found to be guilty of one of the following actions:

1. If the defendant's participation in a glaring violation of human rights, for instance, torture, is proven.
2. If the defendant's participation in accomplishing the objective behind a violation is proven, i.e., his intent to procure information, wrest a confession, punish the victim, or get rid of the victim by killing him, etc. is proven.
3. If it is proven that the defendant abetted or encouraged the perpetration of a violation by claiming that he was carrying out orders. Very often, the highest powers in the state enact legislation or issue directives and edicts granting the violators a degree of immunity from prosecution or are lax in dealing with them during the political transitional phase. For instance, this often takes place after a military regime is overthrown or when the state of emergency is lifted or during the implementation of the national reform program or as part of the negotiations that are held to put an end to an armed conflict. Such orders, laws, and edicts have protected from prosecution many individuals who are known to have committed horrible violations. These individuals escaped punishment under the cover of consolidating national reconciliation and stability during the transitional phase and healing the wounds of a society that should be strong to endure the burdens of transformation.

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However, the experiences of nations have shown that there is no escape from enacting and putting into effect the requisites for justice and reconciliation. Justice and reconciliation are two components that complement one another. Responding to one component does not invalidate the other. If justice is not attained that would be very costly to a society and to the victims and their families who have already paid dearly. In order to build a fresh legal-political-social system that is based on strong human rights principles and on the sovereignty of humane criteria of the law, perpetrators should be prosecuted in order to realize the most basic principles of justice, inaugurate a new phase on the ruins of the past, and end all the reasons and causes that triggered persecution and suppression.

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Appendix R (No. 18)

By [redacted]
[redacted]

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The General Amnesty Law

The following points must be taken into consideration when a general amnesty law for the Iraqi people is issued during and after the fall of Saddam's dictatorial regime:

1. The authority that should issue the decision.

The most important principle that the general amnesty law must include is the determination of the authority that will be authorized to issue this law. At present, Iraq does not have a government in exile or a provisional state. Therefore, from a legal point of view, a specific organization or party or a group of parties from the Iraqi opposition parties cannot issue such a law. Hence, this legal and political issue must be resolved by the general congress of the Iraqi opposition that is convening in Brussels. The solution lies in the formation of a committee by the general congress or by giving the necessary mandate to an administrative body appointed by the congress to issue such a decision since the congress is the legislative, political, and executive authority in this regard.

2. Who should be included in the general amnesty?

The general amnesty should include all the Iraqis inside and outside Iraq. They should be pardoned for all crimes with the exception of crimes and individuals that are excluded from the above-mentioned law. It would be better if those who are excluded from the amnesty law were referred to Iraqi courts to be tried on the basis of Iraqi laws. Furthermore, the crimes that must be excluded from the general amnesty law are crimes of human genocide and the use of chemical weapons as well as criminals that participated in committing the Al-Anfal crimes and crimes against international humanitarian provisions.

3. The authority that should implement the general amnesty edict.

After determining the authority that should issue the general amnesty law and after making sure that the general amnesty edict or law excludes the crimes listed above, the authorities authorized to implement this edict should be determined. Furthermore, the general amnesty edict should be issued before the liberation of Iraq. It should also be proclaimed through the various media outlets inside and outside the country. The necessary instructions should be given to the forces and authorities participating in the liberation process on how to implement the above-mentioned edict and how to deal with the criminals and defendants that are excluded from the general amnesty.

Wording of Edict

General Amnesty Law No. () issued by ()

This law takes the following into account:

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1. The amnesty edict shall cover all Iraqis inside and outside Iraq -- civilians, military personnel, and party members of all ranks and positions -- who have committed military and political crimes against the Iraqi people and against the various Iraqi establishments during the rule of the dictatorial Ba'thist regime from 1968 to date.

2. The above-mentioned law shall not include those persons who have committed crimes of genocide or who have used chemical weapons or who committed the Al-Anfal crimes or crimes against the provisions of international law.

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Appendix S (No. 19)

By

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Observations

I herein submit my proposal for the formation of a general amnesty and reconciliation commission. I hope that my proposal meets with your satisfaction and is completed by your observations.

1. I propose that a court of law be formed in every district center. This court should be formed of one Grade 3 or Grade 4 judge, one public prosecutor, and specialists representing the political opposition factions and parties that are participating in the liberation of Iraq. The formation of such courts in every provincial district responds to the growing numbers of those who fall under the jurisdiction of these courts in order to prevent a backlog of cases that may accumulate for many years without a decision being taken. This situation arises when there is a limited number of courts in the appeals centers or only in the capital.

2. The persons who fall under the jurisdiction of these courts:

I propose that the jurisdiction of these courts should apply on the following:

First, any former or current member of the Ba'th Party. This helps in uncovering the facts, attaining justice and equality, and erasing the hatreds and grudges. It would be the best way to achieve reconciliation.

Second, any person who placed himself -- whether at present or in the past -- at the disposal of the Ba'th Party to commit an act with the intention of causing physical damage to other individuals or causing damage to their property or causing damage to their freedom or dignity. These acts should have been committed to serve the goals of the Ba'th Party or in compliance with orders the whims and wishes of the Ba'th Party.

The jurisdiction of these courts applies primarily to the security organs and the special organs, such as the security elements, intelligence elements, military intelligence elements, and party members whose hands are not stained with the blood of other people and that had not committed war crimes or crimes against humanity. Such individuals may be tried by these courts under the following conditions:

1. These individuals should be prepared to reveal the roles that they performed and the acts that they committed when they were at the service of the Ba'th Party.
2. They should express remorse for their actions and deeds.
3. They should ask for pardon and forgiveness from the people and the victims.
4. They should be prepared to serve the people and work for the general public good.

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The penalties that can be imposed on those that are tried by these courts are:

1. They can be barred from running in elections for private and public councils.
2. They can be barred from forming organizations or political parties or from membership in organizations or political parties.
3. They should be barred from assuming public posts both military and civilian.
4. They should be barred from acquiring a license to carry arms.
5. They must do volunteer community service in public and civilian facilities for a period not to exceed three days per week for a time period determined by the court. The seeker of the pardon can be allowed to choose the place and time to carry out his community service so that this service would not adversely affect his family's standard of living.
6. The court sets the time period during which the penalty or penalties outlined above apply either absolutely or provisionally on a case-by-case basis and based on the circumstances of the case.
7. The court has the right to mete any other punishment or penalty not outlined above that does not include imprisonment or the payment of a fine.
8. Any violation by the individual who is pardoned of the conditions of the amnesty and reconciliation and any act by the individual that harms the interests of the country and society will lead to the abrogation of the amnesty and reconciliation decision. Such an individual will be criminally prosecuted by the ordinary criminal courts.
9. The court sessions will be public and the court rulings will be issued in the name of the people. The court rulings will be final, and compliance with, and service of, its rulings should be in accordance with criminal procedure code in force.
10. The court will be formed by a decision issued by the provisional administration and in cooperation with the standing legal committee.

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Appendix T (No. 20)

By [REDACTED]
[REDACTED]

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Victim's Compensation

One of the most important pillars to achieve reconciliation in Iraqi society is compensation to the victims who have been damaged at the hands of the Baghdad regime since its establishment in 1968. The payment of compensation and damages generates trust between the victims and the new political system. The regime in Baghdad has practiced the worst and most inhumane violations against the sons of the Iraqi people. Iraqis have been displaced from their homes, tortured, and thrown in jails and detention camps without just trials. The Baghdad regime has also committed all sorts of other violations against the Iraqi people. The Iraqi victims have suffered under all sorts of damage. They have lost some members of their families in Iraqi jails and detention camps and their movable and immovable properties have been confiscated. They have suffered physical injury and psychological traumas. They have suffered acute economic hardships as a consequence of these practices and their standards of living have dropped drastically due to loss of employment and their chances to make a decent living. These Iraqi victims are in dire need of moral and material compensation in accordance with international laws that force countries to pay damages to victims of human rights violations. Even the Iraqi civil code imposes the payment of such compensation when harm of this kind is committed.

The compensation must be rewarding enough to insure the future of the victim and mitigate the extent of harm done to him. In other words, and as much as possible, the status of the victim must be restored to what it was before his rights were violated. This is especially true since Iraq is a rich country and can carry out such an enormous task despite the large numbers of victims of Saddam's regime. In order to avoid frictions inside Iraqi society, the compensation should be just and fair to all persons who deserve it without any distinction. Strict laws must be enacted to punish those who may pull strings or resort to nepotism or racial discrimination or sectarian discrimination in the distribution of compensation.

Compensation should be of two types:

First, material compensations. This type of compensation must include the restoration of movable and immovable properties if they still exist or in lieu of such property, compensation or the allocation of grants and pensions or scholastic scholarships or free medical and health services and so on.

Second, moral compensations. These can include an official apology for the violations that took place, memorials for the victims in every city in Iraq, and the erection of a central national museum for all the inhumane practices of the regime and its security organs.

Third, the names of all the victims should be recorded in a register and a day in the year should be designated to commemorate the victims. This will remind the future generations in Iraq of the crimes that were committed by this regime.

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It should also be noted that the state should pay all compensation for the harm done by the current regime even when the actual perpetrators cannot be identified for one reason or another. However, if those responsible for the harm can be identified, they should bear responsibility and pay damages based on their financial abilities and the laws in force.

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Appendix U (No. 10)

(Pages 104 - 107)

Facts Gathering Commissions

In the past two decades, one of the most important developments that have taken place on transitional justice is the emergence of facts gathering commissions. About 21 such commissions have been formed in various parts of the world, such as Nigeria, Chile, El Salvador, South Africa, Guatemala, Uganda, Bolivia, Uruguay, Zimbabwe, Nepal, Java, Germany, Sri Lanka, Haiti, Ecuador, Sierra Leone, and other countries. Facts gathering commissions developed as a result of the exchange of expertise and knowledge among the various countries that resorted to such a method and other countries that need such commissions. Facts gathering commissions are committees that are formed and whose powers and duties are determined in accordance with a decision or a bill issued by presidential decree or national legislation or as the result of an agreement between parties to a conflict (civil war). These commissions take the necessary measures to reveal the facts pertaining to human rights violations and the fate of the victims of the former regime. These measures should investigate the admission of inhumane acts or violations that had been committed. The situations that fact gathering commissions investigate to get to the truth can be summarized in two cases:

The first case applies to human rights violations in countries that practice such violations in total secrecy, such as concealing the facts from any domestic or foreign organization or any international organization. Such practices -- such as torture, murder outside the law, and other similar violations -- prevailed in several Latin American countries (Argentina, Chile, El Salvador). Therefore, there is an extremely urgent need for such commissions for the revelation of the facts and the admission of guilt. The second case pertains to countries that commit violations openly and publicly, as in Bosnia. Although the functions of the fact gathering commissions may seem to be easy, these commissions will face difficulties of another sort. This is the case in Bosnia where there are diverse ethnic groups (Bosnians, Croats, and Serbs). Therefore, fact-gathering commissions should be formed for every ethnic group in order to prevent the concealment of violations by the other ethnic groups.

In the case of Iraq, the violations comprise the two cases together. There are well known and exposed war crimes and crimes of genocide that are known to everyone on the local as well as on the international levels, and the example is what happened in the city of Halabjah. There are also other inhumane and terrorist practices that were committed in utmost secrecy, such as torture, murder outside the parameters of the law and the judiciary, rape, and other such crimes. In addition to the above, it is worth noting that the dictatorial regime in Iraq has been in power for 34 years. This makes the role of the fact gathering commissions extremely difficult. Information may have been lost due to the death of the parties in a particular case or information pertaining to the facts or the concealment of the facts may have been deliberately destroyed. This is what took place in Rwanda in 1994 regarding the crimes of genocide that were committed as a result of the destruction of all the private and public institutions in society.

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Some sources refer to three cases of fact gathering commissions in the world -- in Chile, South Africa, and Guatemala -- that were successful. This was the result of the joint efforts that were exerted in a particular society by individuals, human rights organizations, church officials, and the victims. These experiments should be applied in Iraq. In addition, other experiments in other parts of the world -- Bosnia, Sierra Leone, El Salvador, Argentina, and other countries -- have also succeeded in classifying, documenting, and compiling the evidence pertaining to human rights violations. The purpose of establishing such commissions is obvious. It is to reach the truth in order to reach the larger objective of bringing about reconciliation. However, the formation of such commissions can also sometimes be only for the purpose of achieving reconciliation, forgetting the past, and achieving other purposes, such as trials, the imposition of compensation, and other penalties. This is what happened in Guatemala after the end of the civil war in 1994.

In 1983, the military regime in Argentina issued a general amnesty law that pardoned all the military personnel that had committed crimes and considered their former actions as part of carrying out their official duties. Thus, the facts gathering commissions that were formed were to reveal the facts only and to forget the past. The commissions did not refer the perpetrators of human rights violations to special criminal courts or impose non-criminal penalties on them or the payment of compensations in order to reach reconciliation because they were included in the general amnesty law. Such commissions are almost ineffective because the perpetrators of human rights violations have no interest in revealing the facts to the commissions. Actually, they have an interest in concealing the facts in order to evade any responsibility in the future or acts of vengeance by the families of the victims. Therefore, facts gathering commissions should accomplish their goals, as follows:

First, facts gathering commissions should seek to uncover and clarify the facts regarding past violations against humanity. This should be done openly and publicly.

Second, they should contribute to the attainment of justice by referring the defendants either to specialized criminal courts or by imposing non-criminal penalties or the payment of damages or pardoning some of the defendants.

Third, facts gathering commissions should seek the admission of guilt and the responsibility of the perpetrators.

Fourth, they should seek to realize the wishes of the victims, achieve reconciliation, and spurn the desire for revenge.

These points show the extreme importance of making a connection between the amnesty decision and the work of the facts gathering commissions. The amnesty should not include anyone who does not admit responsibility and apologize publicly for the violations and actions he committed. This is what South Africa did in its experiment in this regard.

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The strength and success of facts gathering commissions lie in their readiness to gather all the parties and make them share in reaching the facts. These could be the perpetrators of human rights violations or the victims of such violations or the witnesses of such violations. They could also be anyone related to this issue whether they are politicians or men of religion or businessmen or jurists or medical doctors or men of the media or others. Sociologists and psychologists also have an important role in insuring the success of these commissions.



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Appendix U (No. 10)

(Pages 104 - 107)

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Appendix V (No. 26A-F)

Annex A (Penal Code)

By



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The Penal Code is a compilation of substantive and procedural laws that determine criminal liability for specific acts and impose appropriate punishments. The Penal Code thus comprises punitive laws representing substantive rules and procedural, penal laws constituting formal rules.

The legislating of the Penal Code is subject to penal policy. Penal policy is intended to protect society from the dangers of crime. Therefore, democratic systems seek to develop penal policy to serve the primary objective of achieving social security. The implementation of penal policy to achieve the desired objective falls within the purview of all state authorities (legislative, executive, and judicial).

Such a penal policy does not exist in dictatorships such as the Baghdad regime. Under the current régime, the law translates the will of the ruling authority or dictatorial ruler. The main goal of penal legislation is to consolidate and perpetuate the dictator's authority. After the current regime is changed, the Iraqi Penal Code should be subject to a sweeping review with a view toward developing a penal policy that is current with global developments and soundly underpinned. For this, we must first examine the amendments made to the Iraqi Penal Code during the Baghdad regime's period in power. The repeal of amendments that violate human rights and international law provisions (which are above national law) will facilitate justice affairs and the correction of deficiencies in the transitional period.

The Baghdad regime has violated all humanitarian principles under international law. The régime has:

- I. Changed the punishment for many crimes to execution in violation of international covenants that repeal or minimize resort to the death penalty. The regime has added additional acts that are punishable by death. None of these acts are criminalized under any law.
- II. Violated the principle of legality, namely that there can be no crime and punishment unless stipulated in international covenants and the Universal Declaration of Human Rights. The Iraqi Constitution and Penal Code stipulate this principle. Nonetheless, the regime has given free rein to its security agencies to arrest and torture people based on mere suspicion. Thousands of citizens have fallen victim to this policy.
- III. Violated the principle of the non-retroactiveness of the Penal Code. The Iraqi Constitution and Penal Code stipulate this principle, which is consistent with what is stipulated in international law. However, the regime has issued decrees to retroactively

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impose the death penalty for acts, e.g., the well-known decree to impose the death penalty on members of the Da'wah Party retroactively to 1980.

IV. Violated the principle that a defendant is innocent until proven guilty. This principle is established by international law and Iraq's Constitution and Penal Code. However, the regime pursues a policy contrary to this principle. A defendant in Iraq is guilty until proven innocent and thus subject to the ugliest means of torture, humiliation, and arbitrary detention, which destroy the defendant's life despite his innocence.

V. Violated the prohibition on torturing, punishing, or abusing any person in a way that diminishes his honor. The Universal Declaration of Human Rights and international covenants establish this principle, as does Iraq's Constitution and Criminal Procedure Code. However, the regime uses these means in a ghastly, merciless manner, especially against political opponents.

VI. Detained and exiled persons unlawfully. It has issued unjust decrees to detain, denaturalize, and deport innocent citizens.

VII. Not protected individual property and the sanctity of the individual's home, correspondence, and communications. The regime has seized the property of citizens based on unjust decrees that fill the *Iraqi Official Gazette*. In secret decrees, the regime has granted its security agencies the right to raid and search houses, examine correspondence, and wiretap landline communications without resorting to the courts.

VIII. Not established the right of a defendant to claim damages if he is arrested or detained illegally. No such right has ever existed in Iraqi law. Moreover, due to the absence of judicial oversight, there is no right to damages even if a person is tortured.

IX. Not entitled a defendant to know the reason for the charge against him at the time of his arrest. After the Ba'ath Party came to power, no such right existed, not only for the defendant, but also for his family or any other party, especially in political matters. On the contrary, the location of a defendant's detention is unknown to anyone.

X. Not provided for bringing an arrested defendant immediately before a judge to decide the defendant's fate. The regime uses special courts of inquiry subordinate to the intelligence and security agencies. The officials in charge of these courts are more akin to security or intelligence officers than to judges.

XI. Not allowed defendants to appeal arrest warrants, defend themselves, or be represented by an attorney. Such a right does not exist for defendants in political cases. Whoever attempts to defend a defendant will inevitably meet the defendant's same fate.

XII. Obtained confessions by torture, the use of force, and the disparagement of the individual's honor. The Criminal Procedure Code forbids such practices. However, the special courts, such as the Revolutionary Court and others, attach no concern to this prohibition.

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XIII. Violated the principle that every individual has the right to life, liberty, and the safety of his person. There is neither life nor liberty or safety for the individual in Iraq.

XIV. Violated the principle that all persons, both the ruler and the ruled, are equal before the law. Different groups receive different treatment before the law.

XV. Violated the principle of the impermissibility of punishing a person for a crime more than once. This principle is not respected, particularly in the treatment of the regime's opponents.

XVI. Violated the principle of the personhood of the punishment. In other words, a punishment may not be applied to any other person, save for the perpetrator of the crime. The regime has violated this principle through numerous decrees that punish all members of a given person's family, up to the fourth degree of kinship at times.

XVII. Violated the principle that each person shall be entitled to full equality regarding the examination of his case by an independent, fair court, in a just, open manner. All cases against political opponents before the special courts do not enjoy even a modicum of the features of fair courts. The special courts render ready-made judgments against political opponents, and their decisions are not subject to appeal or cassation.

XVIII. Violated the principle that each person has the right to freedom of thought, conscience, and religion. This right includes the freedom to change one's religion and creed and the freedom to express one's religion and creed through study, practice, and the establishment of places of worship. By contrast, the regime's slogan is that every Iraqi is a Ba'thist, and if he does not belong to the Ba'th Party, he shall have no freedom of thought and conscience.

IXX. Violated the principle that each person has the right to freedom of opinion and expression, including the adoption of views without interference. Each person should be entitled to freedom to participate in peaceful associations and groups, and no person should be compelled to join a particular association or party. Article 200 of the Iraqi Penal Code is a prime indicator of the violation of this right.

XX. Violated the principle that the death penalty may not be executed against juveniles. Article 79 of the Iraqi Criminal Procedure Code stipulates the following: "The death penalty shall not be executed against any person who was above 18 and below 20 years of age at the time of his commission of the crime. In this case, life imprisonment shall replace the death penalty." This article was amended by Decree No. 86 of 1994 to the following: "...The court shall impose the death penalty on a person who, at the time of his commission of the crime, has reached the age of 18 but not the age of 20." Moreover, the regime has executed death penalty judgments against children below the age of 15. All international amnesty organizations and human rights organizations confirm this fact.

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Recommended Solutions For Reforming the Penal Code

It would not be difficult to repeal all of these amendments to the original laws. All provisions in violation of the provisions of international law regarding human rights can be inventoried. They can all be repealed under special legislation immediately upon the regime change. The real question is: What guarantee is there that no authority will violate the precepts of the law? A constitution and extremely precise laws can be formulated to protect human rights and society. However, how can we ensure the sound enforcement of these laws?

The principles contained in international charters and covenants and the Universal Declaration of Human Rights are stipulated in Iraq's current Constitution and Penal Code. Thus, the important thing is not so much the laws that protect human rights, but rather the mechanism for enforcing these laws. A mechanism can be formulated for the precise enforcement of the constitution and laws so as to prevent any violation of human rights. In order to strengthen democracy and ensure the separation of the authorities in the state, such a mechanism would:

1. Establish the supervision of the constitutionality of laws by a supreme constitutional court or the regular courts. This principle would be regarded as a basic principle that cannot be encroached upon in any way. In other words, the judicial authority would be given the right to nullify any law that violates the constitution.
2. Under the constitution, grant the judicial authority absolute supervision of the enforcement of all laws without exception. For example, the judiciary would decide any dispute arising from the application of the Citizenship Law.
3. Activate the role of public prosecutors in Iraq and granting public prosecutors broad authorities to inspect prisons and security and police stations to ascertain protection of detained persons. Public prosecutors should also be authorized to impose disciplinary punishments on all employees in the aforesaid institutions if any deficiency is found in their performance of their duties. The public prosecutors should be entitled to refer any such employees to the competent courts if a specific crime is committed.
4. Subject all members of investigative authorities (police, security, intelligence, or any other department or organization) to the authority of the examining magistrate regarding the performance of their duties. The examining magistrate should be given all disciplinary authorities to impose any punishment on any person conducting an investigation if that person is negligent in the performance of his duty. The magistrate should also be authorized to refer any such person to the competent courts when a crime is committed.

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Annex B (Penal)

Iraqi Penal Code No. 111 of 1969

To promote a humanitarian penal policy to thereby achieve security, we must place the legislative, executive, and judicial authorities within their purviews. We deem it appropriate to repeal all legislation designed to protect the regime and all amendments to the Penal Code. Based on a review of the Penal Code, we deem it appropriate to:

1. Repeal Decree No. 61 of July 17, 1988, which considers the crime of absence from military service a breach of honor.
2. Review the punishments established for the publication crimes covered by Articles 80-84 with a view toward providing greater freedom of expression, eliminating the restrictions contained in these articles, and formulating these articles in a civilized manner consistent with the nature of the time.
3. Repeal Decree No. 8 of January 5, 1983. This decree prohibits the release on bail—in the investigation and trial phases—of any person detained on charges relating to crimes under the Regulation of Commerce Law.
4. Repeal Decree No. 997 of July 30, 1978, which repeals rehabilitation. Legislation on rehabilitation should be promulgated.
5. Repeal all decrees of the Revolutionary Command Council [RCC] concerning the stiffening of punishments for foreign and domestic state security crimes, and reinstate the punishments stipulated originally when the Penal Code was first issued. Many decrees have been issued establishing the death penalty, e.g., Decree No. 458 of December 13, 1983, Decree No. 1370 of December 13, 1983, Decree 313 of March 13, 1984, and Decree No. 77 of August 23, 1984.
6. Repeal the first paragraph of Article 200 (which contains paragraphs a, b, c, and d) and retain only the second paragraph.
7. Reformulate the provisions on eviction in Articles 220-222 in a civilized manner consistent with the nature of the time.
8. Repeal RCC Decree No. 120 of January 29, 1986, and retain the punishment stipulated originally in Article 275.
9. Repeal Decree No. 1631 of October 30, 1980, which establishes a more stringent punishment—the death penalty—for theft under Article 440; and retain the punishment stipulated originally in the law, which is life or temporary imprisonment.

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10. Repeal Decree No. 59 of June 4, 1994, which concerns the amputation of a thief's hand from the wrist, and Decree 114 of August 28, 1994, which amends it by establishing the death penalty instead of hand amputation.

11. Repeal Decree No. 1133 of September 2, 1982, Decree No. 1631 of October 30, 1908, and Decree No. 3 of January 11, 1992 concerning the stiffening of punishments for theft under Articles 440-445; and retain the punishment established originally when the code was issued.

12. Repeal Law No. 1 of 1991 and Law No. 5 of 1993, which concern bad checks; and retain the original punishments stipulated in the code.

13. Repeal Decree 103 of August 1, 1994 (which concerns the crime of concealing stolen property) and retain the punishment stipulated originally in the code; and repeal Decree No. 157 of December 25, 1996, which prohibits the release an arrested person on bail.

Criminal Procedure Code No. 23 of 1971

[We recommend:]

1. Repeal of all amendments made to the law since it was issued, and retention of the original provisions concerning the legal guarantees established to protect a defendant in all stages of a criminal action, especially regarding confessions, searches, detention, and protective custody.

2. Affirmation of such basic principles as legality, interpretation of doubt in favor of the defendant, and the defendant's presumed innocence.



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Annex C (Penal)

Reasons Requiring the Legislating, Amending, and Repeal of the Penal Code

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The intent and purpose of the legislator is of major importance in the formulation of the general principles, provisions, and regulations of any law. Logic has a role in achieving the legislator's purpose. The underlying cause of all laws, especially the Penal Code consists of the regulation of legal relations, the anchoring of the foundations and requirements of life, the defense of society and its values, the protection of the rights and interests of members of society, and the achievement of social security.

The public interest is the objective, and the law is the agent of the public interest. The underlying cause and agent are inseparable in terms of conviction and drive. On this logical basis, the legislator must legislate a new law if an existing public interest so requires, amend a law to achieve a public interest, or repeal a law that conflicts with a public interest or no longer serves a public interest. Thus, the law is not an end in itself. Rather, it is a means of achieving and protecting a private/public or individual/societal interest. The law's role is to determine legitimate goals, permit means conducive to achieving these goals, and proscribe that which is illegal or conducive to illegality.

The Penal Code is a fortiori supposed to realize the private and public interests of the individual, group, and society. The Penal Code determines precisely and realistically what is considered an interest and what is considered a cause of corruption. It enjoins the achievement of the interest and proscribes the source of corruption and the pursuit thereof.

The Penal Code mirrors the civilizational and cultural values prevailing in society at a given time. These values are reflected more clearly in the Penal Code than in other laws, because the Penal Code embodies the general policy which the political authority desires to implement. Because of the procedures which it contains, the Penal Code is the most effective means of protecting social and economic interests and maintaining moral and humanitarian values. These procedures are characterized by coercion to curb the evil in man. In order for this code to form a contemporary mirror, its premise and components must be based on a humanistic legal approach in the contemporary sense. It should therefore include contemporary penal ideas, theories, and views and should seek to comply with the good principles included in international treaties and agreements, consistent with the values, traditions, and reality of society.

Legal evolution of this sort is essential in order for the Penal Code to adapt to changes in life, living conditions, and cultural and human progress. Priority should be given to appealing amendments that conflict with the concept, logic, and intent of the Penal Code. Any action to repeal should not come at the expense of the rights of individuals, who have suffered injustice, oppression, and harm due to these oppressive or unjust

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amendments or decrees. Nor should it come at the expense of the desire to achieve the goal of contemporary penal policy, namely cohesion, brotherhood, and integration among the members of a unified society, whose all share a sense of responsibility for each other. Society can advance only if it is unified and its members cooperate. This cannot be achieved without brotherhood, altruism, and love. Reconciliation among members of society is the best act of charity. *The Journal of Judicial Provisions*, Article 1531, defines reconciliation as "a contract concluded willingly and affirmatively to eliminate conflict through tolerance." Reconciliation ends rivalry. It is a contract that eliminates a dispute between adversaries. The proponents of the Malik School of Islamic jurisprudence defined reconciliation as "a contract that eliminates a dispute prophylactically before it occurs, or by compromise after it occurs."

Reconciliation is important in removing the causes of grudges, rivalries, and hatred and in diminishing the venom of enmity and hatred among members of society. It helps achieve love and friendship in society through the sense of confidence and security engendered by blood money¹ in victims and perpetrators. Therefore, we believe that the new program or amendment pertaining to the Penal Code should stipulate regulations for reconciliation. The application of these regulations should be expanded commensurate with the conditions and goals for which these regulations are legislated in this important, dangerous stage in the history of our country and society. The effect of reconciliation should extend beyond the time a judgment becomes final. The acceptance of reconciliation should not be limited to the fact-finding, investigation, or trial stage. A committee should be formed of members characterized by probity, sincerity, and the ability to conciliate to perform this difficult function. Reconciliation should be harnessed to achieve the objectives of a modern, preventive policy. Such a policy is the best method for nipping crime in the bud. As we stated above, reconciliation is important when grudges, hatred, rivalry, anger, and differences of opinion, orientation, and conviction arise. Reconciliation is also important, because it can extinguish the fire of discord, eliminate the reasons for rivalries, and instill calm in people. Based on the preceding, reconciliation helps us raise a good generation to serve as the foundation for our society to thereby achieve the goals sought in the reform and amendment of the Penal Code.

¹ [Haqq al-dima']

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Annex D (Penal)

First, I would like to salute you for this code, which all of us have eagerly awaited. However, based on what I heard on the day I spent in the transitional justice committee, I do not understand why we are proposing laws. We should start instead with changes in the structure of Iraq's legal system, starting with changes in the content and the form of the authorities established by the constitution. How can we define a judicial authority before we form a legislative and executive authority in the transactional period? During the transitional period, Iraq's new administration will be tasked with repealing emergency laws and the abusive organizations and entities which are linked to these laws and which do not provide for the recognized needs of justice. We cannot legislate laws and transform the judiciary into an authority by the mere stroke of pen. We have an ensemble of laws and decrees that are difficult to inventory and treat precisely in our current circumstances. In addition to the preceding, I ask that you examine the following questions regarding this entire notion:

1. How can we disseminate culture based on legal legitimacy when we begin with substantive amendments to the Legal Regulation Law which are made by a temporary Iraqi administration?
2. What are the reasons for hastening to distance the Minister of Justice and the directors in this ministry from participating in the administration of justice during the transitional period? If the envisioned change includes the replacement of the minister and whomever is with him who is not suited for this or that position [sic]. What harm is there in the centralization of the administration of justice until the state and its institutions are stabilized?
3. What about the provisions in a number of laws remaining in effect that link many Justice Ministry functions and authorities with the Legal Regulation Law and clash with that law in more than one place, including, for example, the law concerning the Judicial Institute or public prosecutor's jurisdiction, etc. and several places in the proposed draft?
4. Who said that the judiciary's independence in managing its affairs during the transitional period will achieve the sought after justice according to constitutional and international standards? The majority of the persons who are admitted to and graduate from the Judicial Institute and who are appointed to judicial positions are related to, or favorites of, the ruling regime based on region, sect, or party. Rarely are they qualified, conscientious, veteran [judges]. The latter have either resigned to protect their honor or have been dismissed because they cannot consent to the general falsehood that pervades the justice environment in Iraq. The judges among us are more cognizant than anyone of the image of the Iraqi judge. Therefore, we ask, who will ensure that the judges currently serving will harmonize and conform to the new political situation? We say that we will use graduates. This is proper. However, the issue requires time and detailed instructions that treat this subject from all angles. This might complicate judicial activity and the judges' normal practice at a time when we need every minute of the judges' time

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to decide the mounds of legal actions that exist or will exist once the anticipated change occurs.

5. As you know, the Court of Cassation has not escaped the destruction of Iraq's judiciary. From whence will come the judges needed to form a constitutional court or constitutional courts during the transitional period, bearing in mind the importance attached to these courts under paragraph 2 of Article 36 bis in the proposed draft?

6. The idea of substantively amending the judicial authority in the transitional period was suggested without consulting Iraq jurists in Iraq who are in charge of the judiciary or legal activity, when, according to some, the draft contains details concerning the training, practice, etc. of judges. I do not think that anyone intended this.

Recommendations

1. We should as much as possible encourage the transitional authority to issue universal, durable laws or make substantive amendments to laws, especially the Legal Regulation Law. The latter is especially sensitive, given that all of the judicial circuits in Iraq, including in liberated areas in Kurdistan, have become accustomed to enforcing it as far as we know.² If each committee recommends laws [and] amendments that deal with its purviews, it will mean that we will have transformed the country's temporary administration into a revolutionary legislative authority that controls all issues, big and small. I do not think that anyone wants that.

2. We should promote compliance with the current Judicial Regulation Law, Public Prosecution Law, and even the Ministry of Justice Law. The behavior of several senior and minor officials and corrupt security officers who manage and influence key nodes in the ministry should not detract from these laws. I believe that existing laws will be adequate until the state stabilizes and a legislative authority emerges to decide what is best.

3. We should establish the principle of the Iraqi judiciary's general jurisdiction in all laws, regulatory decrees, instructions, and regulations, and we should nullify anything to the contrary. This principle will be welcomed by, and will stabilize, the judicial circuits, the public at large, and state institutions.

4. We should provide all the material, human, and security resources needed by the courts to fully play their role. This means providing the courts with what they need and guaranteeing the compensation of Iraqi judges. (We have been told that a third-grade judge receives 1 million dinars per month and a car exempt from customs duties. This package can be upgraded based on the circumstances and new orientations.) We must also uphold the legal immunity granted under the laws; the various state institutions must respect this immunity.

² [This sentence is the tentative rendering of a somewhat confused passage in the original.]

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Finally, I reiterate my appreciation for this pioneering law. My hope is that it will be put forth in the normal course with laws on the separation of authorities at the end of the transitional period when circumstances are appropriate. Doing things in this way will yield a greater, more universal benefit. We should also examine all Iraqi laws in effect to remove any contradiction with the proposed amended law if need be. Thank you.



Rotterdam, October 23, 2002

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Annex E (Penal)

Iraqi Penal Code No. 111 of 1969

The philosophy of penal legislation is to protect the citizen and society from the risks of crimes. Accordingly, the Penal Code is a key piece of legislation touching on the rights of citizens.

The dictator has opposed this important legislation and other legislation. He has legislated laws that enable him to stifle freedoms, execute his opponents, and deepen factionalism, racism, and dissension among the Iraqi people. A council called the Revolutionary Command Council has issued this legislation. This council comprises mere myrmidons or mercenaries who obey the tyrant, lack the freedom to debate, and are at a low academic, moral, and social level.

In order to promote a humanitarian penal policy that secures the main objective of social security, all authorities (legislative, executive, and judicial) must be within their purviews. During the transitional period, we will have to repeal any legislation enacted during the tyrant's rule. This includes: legislation that protects the tyrant and his myrmidons; any sectarian, racist legislation that is conducive to causing dissension among the people of the nation; and all privileges and immunities which the tyrant has granted to himself without any moral compunction.

After briefly reviewing Penal Code No. 111 of 1969, we see a need to:

* Review Articles 81, 82, 83, and 84 of the Iraqi Penal Code concerning liability for publication crimes. We must ensure constitutional support for action regarding these articles, because we want a democratic Iraq, where freedom of expression and freedom to express one's view are sacrosanct (within the limits established by the constitution and special laws).

* Review Article 95 and 96 of the Iraqi Penal Code concerning supplementary and complementary punishments, and Article 100, so that punishment will not be revenge, but rather rehabilitation. Supplementary punishments must be placed within the narrowest scope to provide an opportunity to examine one's self and behavior and build a new life. The concept in Article 108 should also be developed. Article 108 concerns police monitoring of the rectitude of a convict's behavior after he leaves prison. Article 108 also contemplates the enrollment of convicts in advanced rehabilitation programs instead of subjecting them to police monitoring.

* Expand the stay of execution provision in Article 144 of the Penal Code. The expansion is not intended to exploit this concept, but rather to provide a greater opportunity for good behavior on the part of the perpetrator and to establish a financial guarantee that would be deposited with a fund established for this purpose. The guarantee would be returned upon the end of the sentence period, provided the offender did not commit any violation during the period that would require the application of the

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first judgment, in which case, the guarantee would not be returned. Regarding the general amnesty, we recommend that the parliamentary assembly, not the president of the republic, issue it personally, pursuant to Article 153 of the Iraqi Penal Code.

* Repeal Article 200 of the Iraqi Penal Code and decrees amending this article, because there is no need in the Iraq of the future to surround the person of the president with a halo of sanctity. Articles 208 and 209 of the Iraqi Penal Code should also be repealed.

* Reformulate Articles 220 and 221 of the Iraqi Penal Code based on constitutional foundations regarding eviction. We believe that organized, permitted eviction by the local authorities is a legitimate, civilized means of expression of opinion which will be imposed by the constitution of the future state of Iraq.

* Repeal Article 225(f)¹ and (f)²³ of the Penal Code, which concern the insulting of the person of the president of the state, his proxy, the RCC, the Arab Socialist Ba'ath Party, the national assembly, or the government.

* Curb the crimes mentioned in Articles 307, 315, and 322 of the Iraqi Penal Code, which concern bribery, the exploitation of power, embezzlement, and the exceeding of the boundaries of one's position.

* Restore Article 372 to the Penal Code, which concerns crimes that infringe on religious sentiment. RCC Decree No. 2 of 1995 repealed the article.

Criminal Pleadings Law

As jurists, you obviously know that the Criminal Pleadings Law consists of formal regulations and that the absence of formal conditions mars criminal procedures or actions. Accordingly, in this regard, I would like to recommend that the formal procedure be objective and productive. It should not be useless. Nor should it waste time and result in the loss of rights. We must also take into account the abridgement of procedures which are not essential and which in fact represent only useless, inherited, unavailing red tape. Finally, we must have in view legal guarantees to protect defendants in the indictment and investigation stages, including:

1. The principle of the legality of criminal procedures.
2. Presumption of innocence.
3. Interpretation of doubt in the defendant's favor.
4. The defendant's confession, and the requirements that must be met in order for a confession to be valid.

³ [Translator's note: "(f)" is an exact transliteration of the letter fa'. It may refer to f or q, depending on the numbering system used in the original Penal Code.]

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5. Searches, and the substantive and formal conditions for searches.

6. The army and the reserve army.



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Washington, D.C., America, October 30, 2002

Annex F (Penal)

Initial Conceptualizations of the Reform of Iraqi Penal Legislation

By

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In the context of the Iraqi legislator's determination of the reasons requiring the issuance of Iraqi Penal Code No. 111 of 1969, it was emphasized that "sound legislative policy necessitates the development of laws and regulations in every state in order to keep pace with the conditions of our society as it constantly evolves in response to economic changes, cultural advancements, the development of human concepts, and changes in social relations. The development, amendment, and repeal of laws and regulations from time to time enable the legal system to adapt to society's evolving needs and new requirements of life and to close gaps that may arise between society's conditions and its legal system if laws remain frozen and are not updated."

The Penal Code occupies an important position in the legal system of any country. One of the basic functions of the Penal Code is to protect the interests of the state, citizens, and society. In the same framework, the Penal Code protects social relations regulated by other branches of the law, such as constitutional, civil, administrative, etc. law. It also maintains the close link between the branches of the law. The reform of Iraq's penal legislation is as important as the reform of the legal system in effect in Iraq in general.

The circumstances in which Iraqi penal legislation is being applied are exceptional. The elimination of these circumstances must take into account the new social developments in which penal legislation will be applied. It is thus important to review the penal legislation in effect with a view toward rendering it consistent with these developments. A long time has passed since the general Penal Code was issued in 1969. The Penal Code should thus be reviewed to ensure that it harmonizes with the evolution of criminal law on the levels of theory and investigative-judicial application.

The issuance of a large number of amendments to the Penal Code in effect in Iraq (regardless of the purpose and content of these amendments) points to a shortcoming in the code's fulfillment of its functions. Moreover, most of these amendment to a large degree violate the legislative foundations of the Penal Code, the most salient being the protection of the interests of society and citizens. In addition, many special penal laws—e.g., the Military Penal Code and mixed penal laws (i.e., laws subordinate to other branches of the law, such as the Traffic Law for example)—contain criminal law provisions. The branches of Iraqi law thus overlap. This situation cancels out one of the functions of the 1969 Penal Code and creates competition for the Penal Code in its purview concerning the protection of the interests of the state, society, and citizens. The penal legislation in effect in Iraq includes:

1. Penal Code No. 111 of 1969.
2. Special penal laws.

3. Mixed penal laws.

Accordingly, the reform of Iraqi penal legislation requires, a priori, the complete reform of the aforesaid system of laws, i.e., the examination of all penal legislation in effect, without reforming one aspect at the expense of another. This will assuredly guarantee the exclusion of any possible contradiction, duplication, or the like among penal provisions. Based on this important foundation, it is recommended that the process of reforming the penal system in effect comprise the following two stages:

I. The creation of uniform penal legislation in the form of a single penal code that includes all penal provisions. This implies the repeal of all special penal laws and the reformulation of all penal provisions contained in them, and the incorporation of these provisions in the Penal Code. It will also involve the examination of mixed penal laws and the incorporation of the penal provisions contained in them in the Penal Code after these provisions have been reformulated if necessary.

The main goal at this stage is to eliminate the current overlap in the functions of the branches of the law. The Penal Code alone must perform the function of protecting the interests of the state, society, and citizens. Consequently, it alone must define the scope of the acts to which it applies, i.e., those acts that are to be considered crimes in view of the danger which they pose. It alone must stipulate the criminal liability and punishment measures which the judiciary can impose on criminals who commit these acts.

The combining of all penal provisions in a single legal code will yield many benefits. Most importantly, it will facilitate the work of the investigative and judicial agencies. It will also banish the notion—which has perhaps become current among citizens—that the violation of the special and mixed penal laws will not result in violators being held criminally liable. This process will also eliminate any conflict or duplication among penal provisions and the chances for conflicts in judicial application.

II. The review of penal provisions in the Penal Code after the first, aforesaid stage is completed, with particular importance being attached to:

1. The Penal Code.
2. The general section of the Penal Code.
3. Penal provisions concerning the application of the Penal Code.
4. Penal provisions concerning crime.
5. Penal provisions concerning punishment.
6. The special section of the Penal Code.

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7. The description of the crimes in the special section of the Penal Code.

8. Criminal liability and punishment measures stipulated for crimes in the special section of the Penal Code.

Main Recommendations Regarding the Reform of the 1969 Penal Code:

1. Many jurists propose that we repeal all amendments to the Penal Code once the current regime is toppled. We believe that the Penal Code should be amended as required by social developments. The code contains amendments that stipulate that amendments to the code shall be an inseparable part of the Penal Code in effect. All amendments should not be viewed uniformly as requiring deletion and repeal. Accordingly, the examination of the "amendments" must be in the framework of the second stage of the reform of Iraqi penal legislation, i.e., in the framework of the examination of the "uniform" Penal Code. The "amendments" should not be separated out as laws independent of the Penal Code (which contains them).

2. The Penal Code (General Section):

* The general section of the Penal Code of 1969 contains many deficiencies of a legislative nature. For example, it does not define the concept of the Penal Code, the code's functions and underlying principles, the concept or characteristics of crime, the concept of punishment, the method for individualizing punishment, the lapsing of a charge or sentence due to the statute of limitations, etc.

* Many legal concepts used in the Iraqi Penal Code (General Section) need to be reviewed from a theoretical standpoint, e.g., causal link, types of accessories, multiple crimes of various types, causes of acquiescence, error and its forms, etc.

* The 1969 Penal Code sets the criminal liability age at seven (Article 64). We believe that this provision is in serious need of review. When examining it, we must base ourselves on the legislative experience of the penal codes of other countries, which set the criminal liability age at 14 or 16.

* The Penal Code contains many legal procedural and explanatory provisions, including, for example, the provisions contained in Articles 66-80. These articles define the criminal liability age (according to the criminal liability and penal measures in the Penal Code) and "rehabilitation" measures for anyone below this age. Explanatory (general) and procedural details should best be left to the Juveniles Law and Criminal Procedure Code.

3. The special section (Chapter 2) of the Penal Code, like the general section of the Penal Code, also needs to be reviewed. The review should examine the division of the section into chapters and the completeness of the provisions in the section, with a view toward developing the section consistent with contemporary penal code theory and the applications of the investigative and judicial agencies. The most important

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recommendations concerning reform of the special section of the Penal Code can be enumerated as follows:

* The repeal or reformulation of penal articles which concern infractions and which seriously endanger the social interests protected by the 1969 Penal Code. The justification for repealing such articles is that, according to the code itself, these articles concern infractions and nothing more. Moreover, these articles, as indicated by their wording, generally concern minor administrative infractions that can be regulated under a special administrative law under the heading of "administrative infractions" for example.

* The sequencing of the chapters in the special section of the 1969 Penal Code should be based on a specific criterion. This criterion could be the importance of the social interests protected. Thus, crimes against the most important social interests should be included in the first chapters of the special section, followed by crimes that harm less important social interests. This criterion will serve as an important guideline [in the sequencing] of all of the chapters. Observance of this rule will result in the inclusion of the gravest crimes in the initial chapters of the special section, followed by the less grave crimes, and so on.

* It is important to devote special concern to the wording of provisions on criminalization (the description of acts that are considered crimes). Articles 156-169 of the 1969 Penal Code for example describe a single crime, "treason," but in multiple forms (it is important to point out here that most of these forms pertain to a specific time, namely "war time," a time which we hope will be the exception, not the rule). It should also be noted that the Penal Code devotes many articles to different crimes concerning public service. These articles are scattered throughout the different chapters of the special section of the Penal Code. They should be included in their own special chapter and should be reformulated taking into account the remark regarding the reduction in the number of penal articles devoted to them.

* The next stage in the development of Iraqi penal legislation requires the repeal of "extraordinary" provisions, concerning, for example, the "Persian" enemy and political organizations (the ruling Ba'th Party, the Da'wah Party and the like).

* The special section of the Penal Code lacks chapters on crimes against peace, humanity, and human rights (e.g., war crimes and genocide) and crimes that violate international agreements (acts of terrorism, crimes against civil aviation safety, etc.).

* The special section of the 1969 Penal Code should include a chapter on military crimes.

* Attention must be given to the protection of human rights concerning women, children, ethnic and sectarian affiliation, and freedom of religious and political beliefs. All penal provisions that violate these rights, as embodied in the relevant international covenants, should be repealed.

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4. The criminal liability and punitive measures stipulated for crimes in the special section of the 1969 Penal Code should be reviewed based on the following recommendations:

- * Elimination of the severity (unjustified from a legislative standpoint) of the punitive measures contained in most articles of the special section of the code.
- * Repeal of corporal and inhumane punishment wherever it is mentioned in the law.
- * Restriction of the death penalty to extremely serious crimes. The death penalty should not be stipulated in the articles of the special section of the code in an unbounded manner, but rather, in addition to other penal measures. Emphasis should be placed on restricting the use of the death penalty in judicial applications to only rare cases. The death penalty should be regarded as an exceptional penal measure whose abolishment should be entertained in the future.
- * It is important to examine other "measures" of a social, rehabilitative nature as a means for bearing criminal responsibility, such as censure, civil damages, performance of beneficial social work, refrainment from sentencing, and the expansion of the scope for imposing fines and staying the execution of penal measures.
- * Reduction of the duration of prison sentences (reduction of the maximum prison sentence, or refrainment from making such punishment absolute by setting maximum and minimum limits on prison terms, etc.).
- * Expansion of the scope of crimes to which conditional release applies; and the raising of the maximum limit for prison sentences with respect to stay of execution.
- * The criminal liability and penal measures included in the articles of the special section of the Penal Code should be optional. This will permit judicial agencies to select the appropriate measure based on the seriousness and nature of the crime committed and the personality of the perpetrator.
- * The criminal liability and penal measures that will be stipulated in the Penal Code must aim primarily to rehabilitate and reeducate the perpetrator, not to seek retribution against him or punish him.

5. The penal provisions generally contained in the Penal Code are in urgent need of a clear, succinct, legislative formulation that avoids unwarranted details. It will also be important to formulate an official explanatory and clarifying note that defines the contents of these provisions, the terms used in them, and the method by which the investigative and judicial agencies apply these provisions.

6. All of the penal articles in the 1969 Penal Code lack headings or designations. Perhaps the Iraqi legislator will remedy this shortcoming when he reviews the code.

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In conclusion, there are many gaps in the 1969 Iraqi Penal Code. This paper cannot mention them all, even as headings. Therefore, a committee should be formed in the future comprising specialists in penal law and persons working in the field of investigative and judicial application. This committee can provide integrated conceptions of this important code, identify its shortcomings and the method for eliminating them, and develop the code's provisions based on developments in penal code theory and key international covenants while striving to incorporate the ethnic, sectarian, and political characteristics of Iraqi society.

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Appendix W (No. 28A-C) (Nationality)

The Iraqi Citizenship Law

By

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The Citizenship Law in Iraq has caused problems and disasters for Iraqis. Successive governments have used it as a political means to intimidate Iraqi citizens and to pressure several governments in the region. The defect is not so much in the law itself as in the method by which it was legislated and the nature of the authority that it underpins. The more the legislative process has grown distant from democratic practices, the more mired it has become in the denial of rights and freedoms and the persecution of citizens.

Two main laws have regulated Iraqi citizenship:

- I. Citizenship Law No. 42 of 1963 [read 1924] and amendments thereto.
- II. Citizenship Law No. 43 of 1963 and amendments thereto (this law repealed and replaced Law 42).

Several shortcomings marred the 1924 Citizenship Law, the main one being that the law gave free rein to the executive authority to make decisions under the law in the absence of judicial supervision. In 1933, the law was for the first time amended to entitle the council of ministers to denaturalize any Iraqi who did not belong to a family that normally resided in Iraq before WWI if that Iraqi committed or attempted to commit an act considered to pose a danger to the safety and security of the state. However, this provision cannot be compared to the provisions of the 1963 Citizenship Law, which entrenched human rights violations. The most salient human rights violations contained in the 1963 Law include the following:

- I. There are no clear-cut and established criteria for granting Iraqi citizenship. Even multiple birth [i.e., descent from a relatively long line of Iraqi-born ancestors]⁴ does not suffice to receive Iraqi citizenship except by decision of the interior minister without any judicial oversight. This is stated in Article 6 of the 1963 Citizenship Law.
- II. Under the Citizenship Law of 1963, Iraqi citizenship through naturalization is temporary, and the Minister of Interior may terminate or annul such citizenship under pretext, which he can fabricate, without any judicial supervision. Article 19 of the aforesaid law permits the Minister of Interior to denaturalize any foreigner who acquired Iraqi citizenship if that foreigner commits or attempts to commit any action considered to pose a danger to the safety and security of the state. This provision is so vague as to accommodate any interpretation suitable to the government. Thus citizenship may be denied to any person opposed to the ruling regime's policy. Anyone can be charged with

⁴ [The bracketed text is based on a partial English version of this document that can be found at <http://www.iraq.net/erica/news-e/archives/00000932.htm>]

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this offense for any reason, and denaturalization decisions are not subject to any judicial oversight.

III. Under Article 20 of the 1963 Citizenship Law and Revolutionary Command Council [RCC] Decree No. 666 of 1980, original Iraqi citizenship can be withdrawn in the following cases:

* If an Iraqi of foreign origin is proven to be disloyal to the homeland, people, and supreme national and social aims of the revolution, he shall be expelled, i.e., made stateless! This is an extremely consequential decree, because persons whose original citizenship is based on their descent from a relatively long line of Iraqi-born ancestors and who thus lack other citizenship could be denied their citizenship and deported outside of Iraq.

* Any Iraq who has been employed by a foreign organization or government which the Iraqi government deems hostile.

* Any Iraqi who customarily resides abroad.

IV. Under Decree No. 8284 of April 10, 1980, the Baghdad regime invented the concept of "family reunification beyond the boarder," which is the opposite of the concept of "family reunification" in effect in the European countries. Under this decree, Iraqi families are denaturalized and expelled from the country because one of their members had been denaturalized for some reason.

V. Decree No. 180 of 1980 regards a number of Iraqi tribes that have lived in Iraq for hundreds of years (e.g., the Sura Mri, Karkash, Faylis, Zargush, Arguaziyah, Malk Shah, and Kuban) as aliens in order to subject them to espionage provisions in the law [i.e., accuse them of spying] and thus subject them to pressure and extortion.

VI. The RCC and presidency have issued dozens of decrees that have been published in the *Iraqi Official Gazette* to change the primary Iraqi citizenship of citizens to secondary or naturalized citizenship in order to subject them to denaturalization and expulsion decrees.

VII. RCC Decree No. 413 of 1975 prohibited the courts from hearing cases concerning the application of the Iraqi Citizenship Law, including cases still pending.

Clearly, all of the aforesaid practices under laws and decrees issued by the Baghdad regime clearly conflict with the most basic human rights principles of international law.

Article 15 of the Universal Declaration of Human Rights stipulates the following:

1. Everyone has the right to a nationality.

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2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Proposed Solutions for Reforming the Iraqi Citizenship Law

I. Repeal of all unjust provisions in the Iraqi Citizenship Law concerning denaturalization for political reasons, and the reformulation of these articles according to civilized foundations and concepts consistent with international covenants and charters and the Universal Declaration of Human Rights.

II. Granting of deportees and émigrés the right to return to the homeland and to claim their citizenship rights, their moveable and immoveable property, and compensation for all damages that they incurred as a result of the regime's practices.

III. Settlement of the status of Iraqi deportees and émigrés who acquired foreign citizenship after being forcibly expelled. This should be done according to reasonable criteria to ensure their return to Iraq and contribution to its reconstruction.

IV. Granting of full powers to the judiciary to supervise all applications of the Iraqi Citizenship Law.

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Annex B (Citizenship)

Iraqi Citizenship Law

By



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Before examining Iraqi Citizenship Law, we should first mention that it is a basic right of any individual to be recognized before the law. This right is embodied in the individual's possession of citizenship. This right may not be taken away, as underscored by the Universal Declaration of Human Rights of 1948, Article 6, wherein "everyone has the right to recognition everywhere as a person before the law." All countries of the world have adopted and applied this principle. Therefore, the right to possess citizenship may not be denied, nor may one be stripped, under Article 15 of said declaration, of his citizenship after he acquires it based on the ruling authorities' political wishes.

In Iraq's case, since the Iraqi state was established in 1921, two main citizenship laws have been promulgated, Law 42 of 1924, to which several amendments were added, and Law 43 of 1963, which repealed and replaced the previous law. Amendments were made to Law 43. A comparison of these two laws shows that, despite the time difference of 39 years, the first law was more humanitarian and merciful toward Iraq's public. The main defect of 1924 law was the amendment issued in 1933. It entitled the council of ministers to denaturalize any Iraqi who did not belong to a family that normally resided in Iraq before WWI if that Iraqi committed or attempted to commit an act considered to pose a danger to the safety and security of the state. The 1933 amendment suffered from two defects:

- I. It is a legacy of WWI, namely the principle of the continuity and permanence of residency.
- II. It dangerously incorporated the description of one who "committed or attempted to commit an act considered to pose a danger to the safety and security of the state."

These defects opened wide the door to political caprice. They allow the government, which controls the application of the law, to interpret this article broadly to unjustly apply the law, depending on the struggles in which it is involved.

Another important shortcoming in Law 24 appears in Article 3. Article 3 stipulates the granting of Iraqi citizenship automatically and with immediate effect exclusively to anyone possessing Ottoman citizenship. However, it denied this right to anyone possessing Persian citizenship, even though (as the legislator and those holding the reins of power know) there is a large, broad segment of Iraqis, most of them Arabs, who possess Persian citizenship, having acquired it for numerous reasons, including, and most importantly, their desire not to do hard, long service in the Ottoman Army, or for sectarian, kinship, or commercial considerations that tied them to Iran more than Turkey at that time. As a result of this distinction between Ottoman and Iranian citizenship (a

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third [of the holders] of which are Iraqis), we see that Iraq and its people have been afflicted by many woes, even long after the important appearance nationalism and socialism in the life of Iraqis.

Therefore, our objective as jurists is to ensure that the legislation enacted affirms citizens' basic rights. We must also avoid legislation that is unjust and that oppresses blameless citizens or groups in the homeland.

This principle is key, not only regarding the Army Law, but any law or draft law. All such laws must avoid discrimination based on religion, ethnicity, or sectarian affiliation. Otherwise, the legislator will again sow the seeds of disunity, injustice, bias and calamities.

We reiterate that the 1924 law is fairer and more just than the 1963 law. The 1963 law, in more than one article (particularly Articles 19-20 and the annex to RCC Decree 666 of 1980), sets back basic human rights. For example, the law adds reasons for denaturalization rather than restricting itself to disloyalty to the homeland, people and the national and social aims of the revolution.

These articles and annexes can be applied to any Iraqi citizen with whom the government is dissatisfied for any political or sectarian reason, or even if his ideas or philosophy differ from government's national and social goals, which are surrounded by many intellectual differences and many different philosophical and legal schools. This permits the authorities to denaturalize citizens and even dispossess them of their property and deport them.

The legislator also exceeded the proper bounds by formulating the law to cover any Iraqi who usually resides abroad.

If the government so wishes, the court can interpret "usually" broadly.

The 1963 law removed from the judiciary the responsibility to monitor the decisions of the executive authority (Minister of Interior) in many denaturalization and deportation proceedings.

This change invalidated a basic constitutional law principle, namely the judiciary's general jurisdiction. This principle has existed throughout a succession of Iraqi constitutions. It has been adopted by most if not all constitutions. The Arab, Islamic world, to which in Iraq are oriented, has for more than 1000 years recognized the value and importance of this principle for achieving peace and social security, as evidenced in Islamic judicial practices since the advent of Islam. The 1963 law and its annexes are further marred in that they regard as non-Iraqi all the members of deeply-rooted Iraqi tribes (e.g., the Faylis, Karkash, Zargush, and others), even though we constitute a broad segment of society.

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Article 20 of the 1963 law violates the individual's basic right to citizenship that defines his national identity. This violates all international laws or customary laws, which affirm that no citizen may be deprived of citizenship, as such deprivation would create an international problem and personal tragedies and suffering, which has indeed happened to thousands of Iraqis who have been denied all their rights, divested of all documents proving their Iraqi identity, and deported.

The Iraqi law contains a strange novelty that contradicts all citizenship laws in effect in the world. Instead of seeking family reunification in the homeland, the regime issued a decree amending the Citizenship law that requires the expulsion of the members of any family that has several members or relatives abroad. The decree calls this "unification of the family beyond the borders."

Given this disarray in the Citizenship Law and the annexes, amendments, and additions thereto, we recommend the following:

- * The repeal of the 1963 law and the reinstatement of the 1924 law in a reformulated version that does not contain any stipulation that denies citizenship, as does the 1933 amendment and the amendment to the Penal Code with respect to anyone who commits a crime. The Citizenship Law should also avoid any provision that discriminates based on religion, sect, ethnicity, etc. in the granting of citizenship to Iraqis.

- * Repeal of denaturalization decrees. Hundreds of thousands of Iraqis have been denaturalized and deported. They should be given an opportunity to return to Iraq, recover their property, and receive compensation for the damages which they incurred as a result of being deported.

- * Any persons who were deported or who emigrated due to exceptional circumstances in Iraq should be permitted [to return] to enable them serve their country.

- * Adoption of the principle of the judiciary's general jurisdiction, i.e., the full, unlimited right of the judicial authority to oversee the executive authority in all that pertains to the enforcement of the Citizenship Law.

- * When the legislator legislates a new citizenship law, and he is treating patriotic and national considerations in his formulation of the articles of the law, he should formulate the law according to civilized principals and concepts that comply with and are consistent with international laws and covenants and the International Declaration of Human Rights.

The preceding includes several observations and recommendations regarding the Iraqi Citizenship Law, now and in the past, and our vision of what it should be in the future.

I believe that it will be essential to better formulate the Citizenship Law and then other laws. This [requires the] help of judges, attorneys, university professors, etc. in Iraq, who have experience with the applications—both correct and incorrect—of the Citizenship

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Law and amendments and additions thereto. The views of jurists in the Iraqi Diaspora will also be indispensable in this regard.

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Annex C (Citizenship)**Treatment of the Citizenship Problem in the Transitional Stage, and Principles for the Formulation of a New Law**By

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Iraq suffers from a chronic citizenship problem. This problem requires a serious, fundamental, legal remedy that flows from the government's responsibility to regulate citizenship. It assumed its chronic nature due to the measures and arbitrary decrees instituted by successive governments, particularly Saddam's dictatorial, chauvinistic government, which exacerbated the problem, transforming it into a tragedy that has affected hundreds of thousands of Iraqis. Any remedy must take into account the social dimension. This dimension, which is no less important than the legal dimension, is rooted in the Persian-Ottoman conflict, which extended over a number of centuries and profoundly affected Iraqi society.

The social dimension of the problem manifests in sectarianism. In no case may we regard sectarianism as lacking roots in Iraqi society. Nor should we diminish the magnitude of sectarianism or give the erroneous impression that it is a recent phenomenon and purely the result of government practices, although successive governments have inflamed and exploited sectarian differences to destroy and marginalize segments of society and to divert the various sects from participating in the administration of the country. Some however claim that "the sectarian or ethnic factor is not central to the structure of Iraqi society, and while sectarianism cannot be denied or minimized, domestic peace and national, religious, and sectarian tolerance have been the hallmarks of Iraqi society since the Iraqi state was established in 1921."⁵ How can we understand this claim (which does not help in finding a practical remedy to the problem) when, for almost 400 years Iraq, was subject to Ottoman occupation, which was well known for its sectarian practices? The claim of sectarian tolerance is invalid! On the contrary, sectarianism has had a major effect on all Iraqi governments since 1921 save for during 1958-1963.

Therefore, a problem of this type cannot be solved by purely legal measures. To be sure, legal measures are extremely important; the law has a distinguished role to play in establishing and restoring rights, especially as we are discussing the transitional stage and the application of the fundamentals of justice as a prelude to stabilizing society. Our emphasis on the need to study the facts of history stems from the importance of understanding the woes that have afflicted Iraqi society on all levels. Our intent here is to eliminate the effects of discord, internecine strife, and fragmentation and to firmly embed the foundations of true citizenship based on the principles of tolerance, coexistence, and shared responsibility.

⁵ [Footnote number without footnote—translator]

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It would be a mistake to ignore reality, i.e., the political ruptures, the absence of a general patriotic will, the absence of democracy, the chaos prevailing in legislation, the ugly violations of humanitarian principles, and how all this relates to the role of the ruler and ruled in terms of exercising and being subject to influence. Therefore, we need logical principles that respect the historical facts, view the country's needs, constituents, and national characteristics, and are consistent with international covenants that regulate citizenship and the acquisition thereof, international human rights charters in general, which clearly stipulate the right of an individual to have citizenship, and the decisions of the international judiciary in this regard.

By adopting these principles in our treatment of the problem of Iraqi citizenship, we reject all the extraordinary, arbitrary measures that engendered this problem and perpetuated it for close to 80 years.

Following are key aspects of this problem requiring an exceptional remedial effort:

1. The problem of deportees and their rights.
2. The problem of émigrés who have been denaturalized.
3. The foundations that must be adopted in legislating a new citizenship law.

This citizenship problem is a chronic one. It is the product of extraordinary, arbitrary measures that violate rules regulating citizenship and rules recognized in different countries of the world. Foremost among these rules is that a person shall enjoy citizenship. This right is regulated and provided under national and international law. Therefore, we see no justification in adopting extraordinary measures to remedy this extraordinary problem. An exception does not remedy an exception. Rather, the problem is best remedied by returning to the foundation. The resolution of this problem requires exceptional efforts. However, we maintain that fixing the problem by means of exceptional measures will only perpetuate, not solve, the problem.

The return of the deportees, the restoration of their rights, the investigation of the fate of those who have been detained since their youth, the compensation and rehabilitation of these detainees, the repeal of decrees to denaturalize émigrés, and the repudiation of the requirements and principles of the Citizenship Law in effect are normal, essential—not extraordinary—measures. They comprise the core of the process of acting in accordance with the rule of law. This is what Iraq needs in the different fields of legislation.

The Problem of the Deportees and Their Rights

The deportation process no doubt violated all humanitarian, ethical, religious, social, and legal precepts. It is also a real tragedy and the product of deliberate action. The agent of this action is known. It is the ruling clique. This clique does not respect the rules that regulate society. It does not recognize historical facts or the country's sovereignty hence the rights of citizens. The families affected by the arbitrary deportation measures have a

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long history in the country going back at least 80 years, i.e., their residency precedes the issuance of the first Iraqi citizenship law, Law 42 of 1924. They, their parents, and their grandparents were born in Iraq. Thus, the principle of multiple birth [i.e., descent from a relatively long line of Iraqi-born ancestors] applies to them.

The abuse of the fate of a country and people are among the characteristics of the regime and its policy, which is hostile, chauvinistic, and sectarian to the point of falsifying facts and fabricating pretexts to conduct a large-scale deportation campaign. The regime issued Decree 666 of April 7, 1980. The first paragraph of this decree stipulates "the denaturalization of any Iraqi of foreign origin if his disloyalty to the homeland, people and supreme national and social objectives of the revolution is demonstrated. The second paragraph of the decree orders the expulsion of any person covered under the first paragraph, without an investigation or the need to prove the charge of disloyalty, which the regime defines as loyalty to the government and its president and no other.

Many of these families at one time possessed documents proving that they are Iraqis (e.g., census records, land registry deeds, ownership documents, military service records, civil status identification cards, and citizenship certificates). However, these documents were taken from them as part of the deportation process based on Interior Ministry Cable 2884 of April 10, 1980. This cable deals with errors and clarifies instructions regarding the deportation process. Point 2 of the cable states that "if part of a family that has obtained a citizenship certificate is covered by the regulations, the other part shall also be included. The principle applied is 'family unification abroad,' and any citizenship documents shall be taken away."

The first step to remedy this problem is to repeal all deportation decrees due to their illegality. These decrees are based on falsehood. They regard deportees as foreigners who later obtained Iraqi citizenship. The Fayli Kurds constitute a large percentage of the deportees. They are Iraqis based on their status as residents of the Ottoman state. Ottoman sovereignty became Iraqi sovereignty after the establishment of national rule in the 1920s. The country's sovereignty does not concern land, space, and water. It concerns the sovereignty of the people first and foremost. The people are the source of sovereignty. Of this there can be no doubt whatsoever. This sovereignty must be respected. Accordingly, the deportees should be legally regarded as Iraqis based on the following documents and principles:

1. Land registry deeds, based on the fact that Iraqi "laws" do not permit ownership by non-Iraqis except in limited cases.
2. Census records issued according to the 1934 census, which was the first population census in Iraq.
3. Military service records. National service should be regarded as sufficient proof of the acquisitions of citizenship.

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4. Personal status identity cards, inasmuch as they are issued based on Iraqi "law" and granted based on the Vital Statistics Register.
5. Status as a multiple birth [i.e., descent from a relatively long line of Iraqi-born ancestors] if the documents mentioned above are lacking. Whoever is born in Iraq to a father born in Iraq shall be legally considered Iraqi and shall not require the Interior Minister's approval in order to be granted citizenship. This principle should be effective without the setting of a time limit for its application.
6. Certificate proving the right to citizenship combined with tangible evidence (the regime took away the documents of many deportees, and many old documents and deeds were destroyed during the March 1991 uprising).
7. The repeal of all divorce decisions based on "citizenship" as the cause for the divorce. Spouses of Iraqis should be granted the right to acquire citizenship. We should adopt the principle of family unification inside Iraq and the granting of Iraqi citizenship to all members of a single family.

These principles will help solve the problem of the deportees and guarantee their permanent right to citizenship. They are based on the honoring of documents that were in effect under different regimes that governed the country—documents which the authorities issued but most unfortunately refuse to recognize. A damages committee should be formed to handle the other rights of deportees, particularly regarding moveable and immoveable property.

In this context, we should mention the detention of family members in the 14-28 age bracket. This detention accompanied an inhumane deportation operation. The fate of these young people remains unknown, despite the recent issuance of a laughable "amnesty" decree. The cause of these detainees is of great importance on all levels. It must be handled according to human logic on a national basis. This can be done by rehabilitating these detainees, granting them and their families the right to citizenship, compensating them as much as possible for the period of arbitrary detention to which they were subjected, and providing training opportunities for them.

The Problem of Émigrés Who Were Denaturalized

Since this regime came to power and revealed its dictatorial, chauvinistic, sectarian nature and its criminal policy and wars of aggression, many Iraqis have emigrated. More than four million Iraqis now reside in various countries of the world. Over the past three decades, the regime has continued its criminal policy, and the Iraqi people have failed to obtain salvation and establish a democratic regime. Many Iraqis have thus been compelled to acquire citizenship in the countries where they have sought refuge or settled to earn a living, enjoy citizenship rights, and secure their children's future. As a result of becoming naturalized citizens in these countries, they legally forfeited their Iraqi citizenship under Article 13 of Iraqi Citizenship Law No. 42 of October 9, 1924. This article stipulates that "any Iraqi who acquires foreign citizenship voluntarily shall forfeit

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his Iraqi citizenship." Article 11(1) of Law No. 43 of June 19, 1963, which is currently in effect, stipulates that "any Iraqi who acquires foreign citizenship voluntarily in a foreign country shall forfeit his Iraqi citizenship." Stipulations of this type can be found in many countries that do not accept dual citizenship. Many Iraqis were thus compelled by political circumstances to acquire foreign citizenship.

The Iraqi nationality problem has its roots in the Ottoman period. The struggle between Persia and the Ottoman state over the territory of Iraq assumed numerous tragic forms characterized by repulsive sectarianism, which affected the naturalization of many Iraqis. Islamic law governed social and commercial intercourse. People therefore did not perceive a need for citizenship in their daily dealings. Harsh difficulties, persecution, and sectarian discrimination also created a real desire to be rid of the Ottoman government's decrees and to escape military service in the Ottoman army. At the same time however, there was a desire to enjoy the privileges which the Ottoman state granted under bilateral, internationally ratified treaties to foreign subjects residing in the territories of the Ottoman empire.

The combination of the forceful disregard of historical facts and legislative chaos has transformed the citizenship issue into a chronic problem. To avoid a repetition of these problems, which continue to reemerge, we must study the problem profoundly and devise a fundamental solution.

A fundamental remedy is possible only if legislation stems from the national public will. Therefore, the solution to the problem of Iraqis who have forfeited their citizenship on the grounds of their acquisition of foreign nationality requires the repeal of the denaturalization process after those wishing to return to the homeland do so and become Iraqis legally. In other words, we must guarantee the right [of citizenship] for Iraqis and their children without requiring any government agency's approval. This would contrast with the 1963 law now in effect, which stipulates the Interior Minister's approval in the sense of political approval.

This solution should also include Iraqis who were denaturalized by decrees for other than the above-mentioned reasons, i.e., decrees driven by political motives.

The Foundations that Must be Adopted in the Legislating of the New Citizenship Law

We believe that Iraq urgently needs new citizenship legislation based on recognized legal principles that take into account the Iraqi experience and "laws" that are in effect or have been repealed. This citizenship can be called "reestablishment citizenship." This term reflects the nature and depth of the problem, which goes back to citizenship at the time of the state's establishment. Everyone agrees that Iraq's citizenship problem stems from the political motives behind the treatment of this problem. Such motives are apparent in the first citizenship legislation (the 1924 law and amendments thereto). Sectarian or chauvinistic motives have also contributed to the problem, as did the legislative chaos of the past 40 years since the 1924 law was replaced by the 1963 law, which was the

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product of the same motives. Therefore, we must recognize the true meaning of citizenship as a political bond between the individual and the state derived from the authority of the state, which legislates the law. This authority is, as is well known, political. Therefore, citizenship assumes this nature and no other. Consequently, the measures taken by successive governments in this regard are rejected, because they use a political criterion as a foundation for granting or stripping citizenship. This violates *national and international law, regulations, and legal principles*. This also applies to the criteria of sectarianism and nationalism. We must adhere to the right to citizenship regardless of one's ethnicity, religion, sect, color, and political orientation. We must adopt the blood tie in the sense that a child of any Iraqi man is an Iraqi, regardless of whether he is Arab, Kurdish, Turcoman, Assyrian, or Chaldean. Based on the principle of the equality of Iraqis before the law, the same applies to the children of an Iraqi woman who has not acquired foreign citizenship. As long as multiple ethnic groups and sects characterize the country, we must respect this reality in all legal legislation, especially the Citizenship Law.

The principle of province, i.e., birth in a province, when granting citizenship, should be based on descent from a relatively long line of Iraqi-born ancestors, not merely the birth of an individual in the province. Iraqi society possesses sufficient human resources. It is unlike other countries which need such resources and are therefore compelled to formulate rules and requirements to facilitate naturalization for this and no other reason. *A lenient law on granting permanent or temporary residence to foreigners can be legislated.*

These principles that we have mentioned steer clear of a key issue in the new citizenship legislation, namely the individual's discretionary authority in his capacity as citizenship director or interior minister or as a member of a ministerial or parliamentary committee responsible for deciding on the granting of citizenship to a non-Iraqi spouse or to an individual who has performed important services for the homeland.

The new legislation must also avoid the denaturalization of any Iraq who legally acquired Iraqi citizenship for any reason. Regarding any Iraqi who commits a crime, the penal laws in effect should apply to him based on the nature of the act that he committed. There should be no deportation or denaturalization. Citizenship can be withdrawn in only one case: from a foreigner who acquired Iraqi citizenship based on incorrect data and then only based on a judicial decision. By foreigner, we mean a non-Iraqi in possession of a defined nationality before his acquisition of Iraqi citizenship. In this way, he will not become completely stateless, because his original citizenship can be restored. Denaturalization will thus not deprive of the opportunity to obtain his rights or guarantees of the protection of those rights.

It is also necessary to adopt a single document of proof of the individual's citizenship, be it an identity card, a civil status card, or another document. The important thing is that a single document serve as the means for determining the citizen's rights and duties and distinguishing him from permanent or temporary residents.

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Annex A (Nationality)**The Iraqi Citizenship Law**By

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The Citizenship Law in Iraq has caused problems and disasters for Iraqis. Successive governments have used it as a political means to intimidate Iraqi citizens and to pressure several governments in the region. The defect is not so much in the law itself as in the method by which it was legislated and the nature of the authority that it underpins. The more the legislative process has grown distant from democratic practices, the more mired it has become in the denial of rights and freedoms and the persecution of citizens.

Two main laws have regulated Iraqi citizenship:

- I. Citizenship Law No. 42 of 1963 [read 1924] and amendments thereto.
- II. Citizenship Law No. 43 of 1963 and amendments thereto (this law repealed and replaced Law 42).

Several shortcomings marred the 1924 Citizenship Law, the main one being that the law gave free rein to the executive authority to make decisions under the law in the absence of judicial supervision. In 1933, the law was for the first time amended to entitle the council of ministers to denaturalize any Iraqi who did not belong to a family that normally resided in Iraq before WWI if that Iraqi committed or attempted to commit an act considered to pose a danger to the safety and security of the state. However, this provision cannot be compared to the provisions of the 1963 Citizenship Law, which entrenched human rights violations. The most salient human rights violations contained in the 1963 Law include the following:

- I. There are no clear-cut and established criteria for granting Iraqi citizenship. Even multiple birth [i.e., descent from a relatively long line of Iraqi-born ancestors]⁶ does not suffice to receive Iraqi citizenship except by decision of the interior minister without any judicial oversight. This is stated in Article 6 of the 1963 Citizenship Law.
- II. Under the Citizenship Law of 1963, Iraqi citizenship through naturalization is temporary, and the Minister of Interior may terminate or annul such citizenship under pretext, which he can fabricate, without any judicial supervision. Article 19 of the aforesaid law permits the Minister of Interior to denaturalize any foreigner who acquired Iraqi citizenship if that foreigner commits or attempts to commit any action considered to pose a danger to the safety and security of the state. This provision is so vague as to accommodate any interpretation suitable to the government. Thus citizenship may be

⁶ [The bracketed text is based on a partial English version of this document that can be found at <http://www.iraq.net/erica/news-e/archives/00000932.htm>]

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denied to any person opposed to the ruling regime's policy. Anyone can be charged with this offense for any reason, and denaturalization decisions are not subject to any judicial oversight.

III. Under Article 20 of the 1963 Citizenship Law and Revolutionary Command Council [RCC] Decree No. 666 of 1980, original Iraqi citizenship can be withdrawn in the following cases:

* If an Iraqi of foreign origin is proven to be disloyal to the homeland, people, and supreme national and social aims of the revolution, he shall be expelled, i.e., made stateless! This is an extremely consequential decree, because persons whose original citizenship is based on their descent from a relatively long line of Iraqi-born ancestors and who thus lack other citizenship could be denied their citizenship and deported outside of Iraq.

* Any Iraqi who has been employed by a foreign organization or government which the Iraqi government deems hostile.

* Any Iraqi who customarily resides abroad.

IV. Under Decree No. 8284 of April 10, 1980, the Baghdad regime invented the concept of "family reunification beyond the boarder," which is the opposite of the concept of "family reunification" in effect in the European countries. Under this decree, Iraqi families are denaturalized and expelled from the country because one of their members had been denaturalized for some reason.

V. Decree No. 180 of 1980 regards a number of Iraqi tribes that have lived in Iraq for hundreds of years (e.g., the Sura Mri, Karkash, Faylis, Zargush, Arguaziyah, Malk Shah, and Kuban) as aliens in order to subject them to espionage provisions in the law [i.e., accuse them of spying] and thus subject them to pressure and extortion.

VI. The RCC and presidency have issued dozens of decrees that have been published in the *Iraqi Official Gazette* to change the primary Iraqi citizenship of citizens to secondary or naturalized citizenship in order to subject them to denaturalization and expulsion decrees.

VII. RCC Decree No. 413 of 1975 prohibited the courts from hearing cases concerning the application of the Iraqi Citizenship Law, including cases still pending.

Clearly, all of the aforesaid practices under laws and decrees issued by the Baghdad regime clearly conflict with the most basic human rights principles of international law.

Article 15 of the Universal Declaration of Human Rights stipulates the following:

1. Everyone has the right to a nationality.

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2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Proposed Solutions for Reforming the Iraqi Citizenship Law

I. Repeal of all unjust provisions in the Iraqi Citizenship Law concerning denaturalization for political reasons, and the reformulation of these articles according to civilized foundations and concepts consistent with international covenants and charters and the Universal Declaration of Human Rights.

II. Granting of deportees and émigrés the right to return to the homeland and to claim their citizenship rights, their moveable and immoveable property, and compensation for all damages that they incurred as a result of the regime's practices.

III. Settlement of the status of Iraqi deportees and émigrés who acquired foreign citizenship after being forcibly expelled. This should be done according to reasonable criteria to ensure their return to Iraq and contribution to its reconstruction.

IV. Granting of full powers to the judiciary to supervise all applications of the Iraqi Citizenship Law.

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Annex B (Citizenship)

Iraqi Citizenship Law

By

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Before examining Iraqi Citizenship Law, we should first mention that it is a basic right of any individual to be recognized before the law. This right is embodied in the individual's possession of citizenship. This right may not be taken away, as underscored by the Universal Declaration of Human Rights of 1948, Article 6, wherein "everyone has the right to recognition everywhere as a person before the law." All countries of the world have adopted and applied this principle. Therefore, the right to possess citizenship may not be denied, nor may one be stripped, under Article 15 of said declaration, of his citizenship after he acquires it based on the ruling authorities' political wishes.

In Iraq's case, since the Iraqi state was established in 1921, two main citizenship laws have been promulgated, Law 42 of 1924, to which several amendments were added, and Law 43 of 1963, which repealed and replaced the previous law. Amendments were made to Law 43. A comparison of these two laws shows that, despite the time difference of 39 years, the first law was more humanitarian and merciful toward Iraq's public. The main defect of 1924 law was the amendment issued in 1933. It entitled the council of ministers to denaturalize any Iraqi who did not belong to a family that normally resided in Iraq before WWI if that Iraqi committed or attempted to commit an act considered to pose a danger to the safety and security of the state. The 1933 amendment suffered from two defects:

- I. It is a legacy of WWI, namely the principle of the continuity and permanence of residency.
- II. It dangerously incorporated the description of one who "committed or attempted to commit an act considered to pose a danger to the safety and security of the state."

These defects opened wide the door to political caprice. They allow the government, which controls the application of the law, to interpret this article broadly to unjustly apply the law, depending on the struggles in which it is involved.

Another important shortcoming in Law 24 appears in Article 3. Article 3 stipulates the granting of Iraqi citizenship automatically and with immediate effect exclusively to anyone possessing Ottoman citizenship. However, it denied this right to anyone possessing Persian citizenship, even though (as the legislator and those holding the reins of power know) there is a large, broad segment of Iraqis, most of them Arabs, who possess Persian citizenship, having acquired it for numerous reasons, including, and most importantly, their desire not to do hard, long service in the Ottoman Army, or for sectarian, kinship, or commercial considerations that tied them to Iran more than Turkey at that time. As a result of this distinction between Ottoman and Iranian citizenship (a

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third [of the holders] of which are Iraqis), we see that Iraq and its people have been afflicted by many woes, even long after the important appearance nationalism and socialism in the life of Iraqis.

Therefore, our objective as jurists is to ensure that the legislation enacted affirms citizens' basic rights. We must also avoid legislation that is unjust and that oppresses blameless citizens or groups in the homeland.

This principle is key, not only regarding the Army Law, but any law or draft law. All such laws must avoid discrimination based on religion, ethnicity, or sectarian affiliation. Otherwise, the legislator will again sow the seeds of disunity, injustice, bias and calamities.

We reiterate that the 1924 law is fairer and more just than the 1963 law. The 1963 law, in more than one article (particularly Articles 19-20 and the annex to RCC Decree 666 of 1980), sets back basic human rights. For example, the law adds reasons for denaturalization rather than restricting itself to disloyalty to the homeland, people and the national and social aims of the revolution.

These articles and annexes can be applied to any Iraqi citizen with whom the government is dissatisfied for any political or sectarian reason, or even if his ideas or philosophy differ from government's national and social goals, which are surrounded by many intellectual differences and many different philosophical and legal schools. This permits the authorities to denaturalize citizens and even dispossess them of their property and deport them.

The legislator also exceeded the proper bounds by formulating the law to cover any Iraqi who usually resides aboard.

If the government so wishes, the court can interpret "usually" broadly.

The 1963 law removed from the judiciary the responsibility to monitor the decisions of the executive authority (*Minister of Interior*) in many denaturalization and deportation proceedings.

This change invalidated a basic constitutional law principle, namely the judiciary's general jurisdiction. This principle has existed throughout a succession of Iraqi constitutions. It has been adopted by most if not all constitutions. The Arab, Islamic world, to which in Iraq are oriented, has for more than 1000 years recognized the value and importance of this principle for achieving peace and social security, as evidenced in Islamic judicial practices since the advent of Islam. The 1963 law and its annexes are further marred in that they regard as non-Iraqi all the members of deeply-rooted Iraqi tribes (e.g., the Faylis, Karkash, Zargush, and others), even though we constitute a broad segment of society.

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Article 20 of the 1963 law violates the individual's basic right to citizenship that defines his national identity. This violates all international laws or customary laws, which affirm that no citizen may be deprived of citizenship, as such deprivation would create an international problem and personal tragedies and suffering, which has indeed happened to thousands of Iraqis who have been denied all their rights, divested of all documents proving their Iraqi identity, and deported.

The Iraqi law contains a strange novelty that contradicts all citizenship laws in effect in the world. Instead of seeking family reunification in the homeland, the regime issued a decree amending the Citizenship law that requires the expulsion of the members of any family that has several members or relatives abroad. The decree calls this "unification of the family beyond the borders."

Given this disarray in the Citizenship Law and the annexes, amendments, and additions thereto, we recommend the following:

* The repeal of the 1963 law and the reinstatement of the 1924 law in a reformulated version that does not contain any stipulation that denies citizenship, as does the 1933 amendment and the amendment to the Penal Code with respect to anyone who commits a crime. The Citizenship Law should also avoid any provision that discriminates based on religion, sect, ethnicity, etc. in the granting of citizenship to Iraqis.

* Repeal of denaturalization decrees. Hundreds of thousands of Iraqis have been denaturalized and deported. They should be given an opportunity to return to Iraq, recover their property, and receive compensation for the damages which they incurred as a result of being deported.

* Any persons who were deported or who emigrated due to exceptional circumstances in Iraq should be permitted [to return] to enable them serve their country.

* Adoption of the principle of the judiciary's general jurisdiction, i.e., the full, unlimited right of the judicial authority to oversee the executive authority in all that pertains to the enforcement of the Citizenship Law.

* When the legislator legislates a new citizenship law, and he is treating patriotic and national considerations in his formulation of the articles of the law, he should formulate the law according to civilized principals and concepts that comply with and are consistent with international laws and covenants and the International Declaration of Human Rights.

The preceding includes several observations and recommendations regarding the Iraqi Citizenship Law, now and in the past, and our vision of what it should be in the future.

I believe that it will be essential to better formulate the Citizenship Law and then other laws. This [requires the] help of judges, attorneys, university professors, etc. in Iraq, who have experience with the applications—both correct and incorrect—of the Citizenship

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Law and amendments and additions thereto. The views of jurists in the Iraqi Diaspora will also be indispensable in this regard.

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Annex C (Citizenship)

Treatment of the Citizenship Problem in the Transitional Stage, and Principles for
the Formulation of a New LawB 

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Iraq suffers from a chronic citizenship problem. This problem requires a serious, fundamental, legal remedy that flows from the government's responsibility to regulate citizenship. It assumed its chronic nature due to the measures and arbitrary decrees instituted by successive governments, particularly Saddam's dictatorial, chauvinistic government, which exacerbated the problem, transforming it into a tragedy that has affected hundreds of thousands of Iraqis. Any remedy must take into account the social dimension. This dimension, which is no less important than the legal dimension, is rooted in the Persian-Ottoman conflict, which extended over a number of centuries and profoundly affected Iraqi society.

The social dimension of the problem manifests in sectarianism. In no case may we regard sectarianism as lacking roots in Iraqi society. Nor should we diminish the magnitude of sectarianism or give the erroneous impression that it is a recent phenomenon and purely the result of government practices, although successive governments have inflamed and exploited sectarian differences to destroy and marginalize segments of society and to divert the various sects from participating in the administration of the country. Some however claim that "the sectarian or ethnic factor is not central to the structure of Iraqi society, and while sectarianism cannot be denied or minimized, domestic peace and national, religious, and sectarian tolerance have been the hallmarks of Iraqi society since the Iraqi state was established in 1921."⁷ How can we understand this claim (which does not help in finding a practical remedy to the problem) when, for almost 400 years Iraq, was subject to Ottoman occupation, which was well known for its sectarian practices? The claim of sectarian tolerance is invalid! On the contrary, sectarianism has had a major effect on all Iraqi governments since 1921 save for during 1958-1963.

Therefore, a problem of this type cannot be solved by purely legal measures. To be sure, legal measures are extremely important; the law has a distinguished role to play in establishing and restoring rights, especially as we are discussing the transitional stage and the application of the fundamentals of justice as a prelude to stabilizing society. Our emphasis on the need to study the facts of history stems from the importance of understanding the woes that have afflicted Iraqi society on all levels. Our intent here is to eliminate the effects of discord, internecine strife, and fragmentation and to firmly embed the foundations of true citizenship based on the principles of tolerance, coexistence, and shared responsibility.

⁷ [Footnote number without footnote—translator]

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It would be a mistake to ignore reality, i.e., the political ruptures, the absence of a general patriotic will, the absence of democracy, the chaos prevailing in legislation, the ugly violations of humanitarian principles, and how all this relates to the role of the ruler and ruled in terms of exercising and being subject to influence. Therefore, we need logical principles that respect the historical facts, view the country's needs, constituents, and national characteristics, and are consistent with international covenants that regulate citizenship and the acquisition thereof, international human rights charters in general, which clearly stipulate the right of an individual to have citizenship, and the decisions of the international judiciary in this regard.

By adopting these principles in our treatment of the problem of Iraqi citizenship, we reject all the extraordinary, arbitrary measures that engendered this problem and perpetuated it for close to 80 years.

Following are key aspects of this problem requiring an exceptional remedial effort:

1. The problem of deportees and their rights.
2. The problem of émigrés who have been denaturalized.
3. The foundations that must be adopted in legislating a new citizenship law.

This citizenship problem is a chronic one. It is the product of extraordinary, arbitrary measures that violate rules regulating citizenship and rules recognized in different countries of the world. Foremost among these rules is that a person shall enjoy citizenship. This right is regulated and provided under national and international law. Therefore, we see no justification in adopting extraordinary measures to remedy this extraordinary problem. An exception does not remedy an exception. Rather, the problem is best remedied by returning to the foundation. The resolution of this problem requires exceptional efforts. However, we maintain that fixing the problem by means of exceptional measures will only perpetuate, not solve, the problem.

The return of the deportees, the restoration of their rights, the investigation of the fate of those who have been detained since their youth, the compensation and rehabilitation of these detainees, the repeal of decrees to denaturalize émigrés, and the repudiation of the requirements and principles of the Citizenship Law in effect are normal, essential—not extraordinary—measures. They comprise the core of the process of acting in accordance with the rule of law. This is what Iraq needs in the different fields of legislation.

The Problem of the Deportees and Their Rights

The deportation process no doubt violated all humanitarian, ethical, religious, social, and legal precepts. It is also a real tragedy and the product of deliberate action. The agent of this action is known. It is the ruling clique. This clique does not respect the rules that regulate society. It does not recognize historical facts or the country's sovereignty hence the rights of citizens. The families affected by the arbitrary deportation measures have a

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long history in the country going back at least 80 years, i.e., their residency precedes the issuance of the first Iraqi citizenship law, Law 42 of 1924. They, their parents, and their grandparents were born in Iraq. Thus, the principle of multiple birth [i.e., descent from a relatively long line of Iraqi-born ancestors] applies to them.

The abuse of the fate of a country and people are among the characteristics of the regime and its policy, which is hostile, chauvinistic, and sectarian to the point of falsifying facts and fabricating pretexts to conduct a large-scale deportation campaign. The regime issued Decree 666 of April 7, 1980. The first paragraph of this decree stipulates "the denaturalization of any Iraqi of foreign origin if his disloyalty to the homeland, people and supreme national and social objectives of the revolution is demonstrated. The second paragraph of the decree orders the expulsion of any person covered under the first paragraph, without an investigation or the need to prove the charge of disloyalty, which the regime defines as loyalty to the government and its president and no other.

Many of these families at one time possessed documents proving that they are Iraqis (e.g., census records, land registry deeds, ownership documents, military service records, civil status identification cards, and citizenship certificates). However, these documents were taken from them as part of the deportation process based on Interior Ministry Cable 2884 of April 10, 1980. This cable deals with errors and clarifies instructions regarding the deportation process. Point 2 of the cable states that "if part of a family that has obtained a citizenship certificate is covered by the regulations, the other part shall also be included. The principle applied is 'family unification abroad,' and any citizenship documents shall be taken away."

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1. Land registry deeds, based on the fact that Iraqi "laws" do not permit ownership by non-Iraqis except in limited cases.
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6. Certificate proving the right to citizenship combined with tangible evidence (the regime took away the documents of many deportees, and many old documents and deeds were destroyed during the March 1991 uprising).

7. The repeal of all divorce decisions based on "citizenship" as the cause for the divorce. Spouses of Iraqis should be granted the right to acquire citizenship. We should adopt the principle of family unification inside Iraq and the granting of Iraqi citizenship to all members of a single family.

These principles will help solve the problem of the deportees and guarantee their permanent right to citizenship. They are based on the honoring of documents that were in effect under different regimes that governed the country—documents which the authorities issued but most unfortunately refuse to recognize. A damages committee should be formed to handle the other rights of deportees, particularly regarding moveable and immoveable property.

In this context, we should mention the detention of family members in the 14-28 age bracket. This detention accompanied an inhumane deportation operation. The fate of these young people remains unknown, despite the recent issuance of a laughable "amnesty" decree. The cause of these detainees is of great importance on all levels. It must be handled according to human logic on a national basis. This can be done by rehabilitating these detainees, granting them and their families the right to citizenship, compensating them as much as possible for the period of arbitrary detention to which they were subjected, and providing training opportunities for them.

The Problem of Émigrés Who Were Denaturalized

Since this regime came to power and revealed its dictatorial, chauvinistic, sectarian nature and its criminal policy and wars of aggression, many Iraqis have emigrated. More than four million Iraqis now reside in various countries of the world. Over the past three decades, the regime has continued its criminal policy, and the Iraqi people have failed to obtain salvation and establish a democratic regime. Many Iraqis have thus been compelled to acquire citizenship in the countries where they have sought refuge or settled to earn a living, enjoy citizenship rights, and secure their children's future. As a result of becoming naturalized citizens in these countries, they legally forfeited their Iraqi citizenship under Article 13 of Iraqi Citizenship Law No. 42 of October 9, 1924. This article stipulates that "any Iraqi who acquires foreign citizenship voluntarily shall forfeit

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his Iraqi citizenship." Article 11(1) of Law No. 43 of June 19, 1963, which is currently in effect, stipulates that "any Iraqi who acquires foreign citizenship voluntarily in a foreign country shall forfeit his Iraqi citizenship." Stipulations of this type can be found in many countries that do not accept dual citizenship. Many Iraqis were thus compelled by political circumstances to acquire foreign citizenship.

The Iraqi nationality problem has its roots in the Ottoman period. The struggle between Persia and the Ottoman state over the territory of Iraq assumed numerous tragic forms characterized by repulsive sectarianism, which affected the naturalization of many Iraqis. Islamic law governed social and commercial intercourse. People therefore did not perceive a need for citizenship in their daily dealings. Harsh difficulties, persecution, and sectarian discrimination also created a real desire to be rid of the Ottoman government's decrees and to escape military service in the Ottoman army. At the same time however, there was a desire to enjoy the privileges which the Ottoman state granted under bilateral, internationally ratified treaties to foreign subjects residing in the territories of the Ottoman empire.

The combination of the forceful disregard of historical facts and legislative chaos has transformed the citizenship issue into a chronic problem. To avoid a repetition of these problems, which continue to reemerge, we must study the problem profoundly and devise a fundamental solution.

A fundamental remedy is possible only if legislation stems from the national public will. Therefore, the solution to the problem of Iraqis who have forfeited their citizenship on the grounds of their acquisition of foreign nationality requires the repeal of the denaturalization process after those wishing to return to the homeland do so and become Iraqis legally. In other words, we must guarantee the right [of citizenship] for Iraqis and their children without requiring any government agency's approval. This would contrast with the 1963 law now in effect, which stipulates the Interior Minister's approval in the sense of political approval.

This solution should also include Iraqis who were denaturalized by decrees for other than the above-mentioned reasons, i.e., decrees driven by political motives.

The Foundations that Must be Adopted in the Legislating of the New Citizenship Law

We believe that Iraq urgently needs new citizenship legislation based on recognized legal principles that take into account the Iraqi experience and "laws" that are in effect or have been repealed. This citizenship can be called "reestablishment citizenship." This term reflects the nature and depth of the problem, which goes back to citizenship at the time of the state's establishment. Everyone agrees that Iraq's citizenship problem stems from the political motives behind the treatment of this problem. Such motives are apparent in the first citizenship legislation (the 1924 law and amendments thereto). Sectarian or chauvinistic motives have also contributed to the problem, as did the legislative chaos of the past 40 years since the 1924 law was replaced by the 1963 law, which was the

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product of the same motives. Therefore, we must recognize the true meaning of citizenship as a political bond between the individual and the state derived from the authority of the state, which legislates the law. This authority is, as is well known, political. Therefore, citizenship assumes this nature and no other. Consequently, the measures taken by successive governments in this regard are rejected, because they use a political criterion as a foundation for granting or stripping citizenship. This violates national and international law, regulations, and legal principles. This also applies to the criteria of sectarianism and nationalism. We must adhere to the right to citizenship regardless of one's ethnicity, religion, sect, color, and political orientation. We must adopt the blood tie in the sense that a child of any Iraqi man is an Iraqi, regardless of whether he is Arab, Kurdish, Turcoman, Assyrian, or Chaldean. Based on the principle of the equality of Iraqis before the law, the same applies to the children of an Iraqi woman who has not acquired foreign citizenship. As long as multiple ethnic groups and sects characterize the country, we must respect this reality in all legal legislation, especially the Citizenship Law.

The principle of province, i.e., birth in a province, when granting citizenship, should be based on descent from a relatively long line of Iraqi-born ancestors, not merely the birth of an individual in the province. Iraqi society possesses sufficient human resources. It is unlike other countries which need such resources and are therefore compelled to formulate rules and requirements to facilitate naturalization for this and no other reason. A lenient law on granting permanent or temporary residence to foreigners can be legislated.

These principles that we have mentioned steer clear of a key issue in the new citizenship legislation, namely the individual's discretionary authority in his capacity as citizenship director or interior minister or as a member of a ministerial or parliamentary committee responsible for deciding on the granting of citizenship to a non-Iraqi spouse or to an individual who has performed important services for the homeland.

The new legislation must also avoid the denaturalization of any Iraq who legally acquired Iraqi citizenship for any reason. Regarding any Iraqi who commits a crime, the penal laws in effect should apply to him based on the nature of the act that he committed. There should be no deportation or denaturalization. Citizenship can be withdrawn in only one case: from a foreigner who acquired Iraqi citizenship based on incorrect data and then only based on a judicial decision. By foreigner, we mean a non-Iraqi in possession of a defined nationality before his acquisition of Iraqi citizenship. In this way, he will not become completely stateless, because his original citizenship can be restored. Denaturalization will thus not deprive of the opportunity to obtain his rights or guarantees of the protection of those rights.

It is also necessary to adopt a single document of proof of the individual's citizenship, be it an identity card, a civil status card, or another document. The important thing is that a single document serve as the means for determining the citizen's rights and duties and distinguishing him from permanent or temporary residents.

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Appendix X (No. 30A)

Administrative Law in Iraq

General Introduction

Every human society requires rules that regulate it and establish principles that govern the state's relation with its citizens and relations among citizens. Accordingly, legal regulations will differ depending on the differences in relations among the political, economic, and social branches.

Since Roman times, legal rules have been divided into two groups:

1. Private law. It treats relations and regulates private interests among individuals. It includes civil law, commercial law, labor law, private international law, etc.
2. Public law. In public law, the state appears as the sovereign. Public law regulates affairs of state and the state's relations with its citizens domestically and with other countries and foreign international organizations.

Public law consists of two branches:

1. Domestic public law. It regulates public authorities, government administrations, and employee affairs. It includes constitutional law, administrative law, the penal code, etc.
2. External public law. It regulates relations between countries in a time of war and peace. It is called international public law.

Our main concern here is administrative law. Its importance is evident in the direct, constant contact and cohesion that exist between the public administration and its agencies on the one hand and citizens on the other in all areas, including employment, food, drink, health, security, sleep, etc. The administration must pursue the public welfare of citizens, satisfy their material and psychological needs, and protect their security and safety.

Administrative law has evolved toward the establishment of rules that regulate the activities of the authorities and their agencies in order to secure human rights and basic freedoms. Administrative law also ensures the legality of the administration's actions, so that the administration serves the citizen and society, not the converse.

Iraq is bereft of the concept of legality and legitimacy. The government is not based on any legality. Saddam and his agencies do not submit to the rule of law. On the contrary, Saddam is above the law and thus lacks legitimacy. He is a dictator with absolute authority. His power is unlimited. His instruments are agencies of oppression outside the law.

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Thus, we unfortunately cannot speak of administrative law in Iraq. It would be more correct to say that Iraq is a country of lawlessness, or a state of legal chaos, because the head of state is above the law and the entire legal system is subordinate to the will and person of the dictator.

Iraqis remember well Saddam's conversation with farmers that appeared on television. He was asked, what is the law? He responded, "The law is what we write and repeal. I, Saddam, tell you: Go and make it so!"

Thus, any legal specialist would face a difficult, complicated mission in treating administrative law in Iraq after Saddam's regime is removed.

However, we can provide a conceptualization and several recommendations regarding the administrative law in the transitional stage under a permanent constitution after elucidating the administrative corruption prevailing under Saddam's regime and the reasons thereof. We will thus treat this subject along two lines:

- I. Administrative law under Saddam's regime.
- II. Administrative law in the transitional stage.

I. Administrative Law Under Saddam's Regime:

It is well known that the school of individual freedom (liberalism) underpins the genesis of administrative law, which is young compared to the other branches of law. This philosophy of liberalism advocates limiting the government's functions to countering foreign aggression, protecting domestic security, and solving disputes among individuals. Although the government's functions have expanded to numerous areas, its essential function is to protect human rights and promote the public interest. Accordingly, administrative law is based on:

1. The separation between the authorities, which subjects the administration to the law and protects the legitimacy of its actions.
2. The restriction of the administrative authority's infringement on public rights and freedoms.
3. The state as a means of serving society, not the converse.

Iraq is among the oldest countries that have known successful administrative organization. The roots of administrative law extend into prehistory, to the era of Sargon the Akkadian during 2371-2230. Sargon united the cities into a single state, appointed judges whose rulings were binding, and nullified inheritance of the position of city governor. In the period of the third dynasty of Ur, an extensive, hierarchical administrative system was established.

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In the Islamic state, the administrative system was decentralized based on a system of provinces characterized by administrative, financial, and judicial independence.

A "Council of the Unjustly Treated" was introduced. It heard cases involving:

1. The abuse of power by governors and rulers against subjects.
2. Tax collectors' exploitation of their influence to seize property.
3. The conditions and management of the affairs of the scribes of various administrations.
4. The return of wealth seized by rulers, governors, and powerful and influential people.

In the period of the monarchy, a decentralized administrative system was applied. The citizens elected village councils, although the chairman of the council was appointed by the general administration. Under the republican system, a law on the administration of the provinces was promulgated in 1959. It stipulated the formation of provincial councils through the appointment of individuals ex officio.

A country with such a history and broad legacy in the development and regulation of administrative activity should be among the ranks of the most administratively advanced countries. Unfortunately, this is not so. After the 1968 coup and the Ba'th Party's seizure of power, a temporary constitution was issued in 1975. It concentrated power in the hands of the president of the republic and chairman of the Revolutionary Command Council [RCC]. The people were brushed aside. The president legislated, appointed, dismissed, executed the death penalty, seized property, denaturalized, etc. The constitution empowered the president to:

1. Appoint vice-presidents.
2. Appoint ministers.
3. Appoint judges and senior state, civil, military, and diplomatic officials; confer ranks; issue pardons, etc.

The president further concentrated power by establishing and forming special oppressive agencies not subject to any legal regulation. These agencies received their orders directly from him. In this way, the president ruled over all with steel, fire, and an iron fist.

Law No. 140 of 1977 harnessed the judiciary to serve only the party. This law states the "[judiciary] shall conform with the revolution's plan to create specialized judicial agencies that assimilate revolutionary legislation, decrees, etc." In another article, the law states, "The state's agencies shall change according to the principles and aims of the party." Governorates Law No. 159 of 1969 concentrated authority and oversight, completely eroding the citizen's role in oversight.

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Precepts underpinning administrative law have thus been absent under dictatorial, authoritarian, oppressive rule, especially under Saddam's regime. Administrative law is non-existent in Iraq, and the government is rife with corruption, as noted in the following points:

1. The government and its agencies are tyrannical in their dealings with citizens and violate citizens' rights and basic freedoms.
2. The staffing of public positions is based on no criteria whatsoever, e.g., aptitude, academic achievement, and experience, which have been replaced by patronage and kinship to the dictator. A number of key ministries and public utilities and departments have been handed over to semi-illiterate ministers and officials.
3. The independence of the judiciary and judges has been eliminated completely. The judiciary and judges are now a part of oppressive agencies and a tool for carrying out the orders of party officials in the cases presented before them.
4. Influence and position are exploited maximally to extort, exploit, and threaten in the absence of legal and political guarantees.
5. As result of all of the above, people have become corrupt. Means of subsistence and living standards have declined. Bribery has become widespread in all agencies at all levels, including among judges.
6. Administrative activity has been politicized. Administrative agencies have become completely merged with the party. The party is the state, and the state is the party. A party member has been appointed in each office and enterprise with the title "Department Security Officer."

All of the preceding has been legislated in decrees issued by the RCC, which is chaired by the president of the republic. It is also legislated in Law No. 142 of 1977 ("the Leading Party Law"), which states, "Henceforth and until further notice, the ministries and all departments, enterprises, organizations, and agencies of the state shall adopt the Political Report of the 8th Regional Congress of the Arab Socialist Ba'ath Party, which leads the government and the state, as a program and guide for action in the exercise of their authorities."

This points to perversity. The party is not subject to the law. Rather, the law and all decrees, instructions, and directives must conform with and moreover be subject to the party. The notion of administration and administrative law does not exist. The party directs everything according to decisions and mood of individuals in the absence of supervision or accountability.

7. The regime went further when it granted authorities and judicial jurisdiction to party organizations. Decree No. 74 of June 23, 1994, issued by Saddam Husayn, "grants the

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popular leadership of the Ba'th Party in the region the authority to detain for one to three years and, in the event of a repetition, up to five years." This means that party organizations have their own prisons at their headquarters or in unknown locations of which citizens have no knowledge. Whoever is detained disappears for good. His family has no right to visit him or to even inquire about his location.

8. The Iraqi President went so far as to grant judicial authorities to administrative officials and party organizations. There are dozens of decrees in this regard, all of them signed by Saddam (see Decrees 1154, 1138, 848, 307, 130, 320 in the *Official Gazette*). All of these matters have been undertaken without any form of administrative, judicial, or political oversight. Rather, they are carried out as absolute orders using suppression and persecution.

II. The Administration in the Transitional Stage

The public administration policy concerning governance in the transitional stage can generally be divided into three main areas based on legislation that stipulates the course, authorities, purviews, and responsibilities of each area.

The three public administration authorities are:

1. The legislative authority.
2. The executive authority.
3. The judicial authority.

Here, we are concerned with the executive authority, which is responsible for general administration. It includes:

- a. The centralized executive authority, i.e., the government, which comprises the council of ministers and prime minister.
- b. The decentralized executive authority, which comprises the local governments and local agencies subordinate to them, distributed according to defined local regions and districts.
- c. Public-sector authorities, including semi-official enterprises and utilities established under special regulations.

The central government is the supreme administrative authority. It is responsible for exercising primary control, supervising the prescription of policies and strategies, monitoring implementation, and coordinating to achieve the best practices for managing the country's general affairs. The public administration submits regulations and directives when the local administrations must be made to conform to the prescribed path.

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Administrative activity in the transitional stage can be divided into:

1. Factors of administration in the transitional stage.
2. Nature of administrative activity in the transitional stage.

1. Factors of Administration in the Transitional Stage

- a. Iraq possesses abundant human resources outside the country. They represent a large elite of people with qualifications and specialties in different scientific, political, and administrative fields. They and other high-caliber people inside Iraq can be exploited with the assistance and support of friendly countries seeking with Iraqis to change the regime.
- b. Availability of advanced, current, technological means to facilitate the creation of a new administration. These means include communication assets that facilitate cooperation and coordination between the center and periphery.
- c. The notion of volunteer work in all fields is alive among Iraqis.
- d. The length and harshness of the Iraqi crisis and the yoke of oppression and persecution have made Iraqis eager and willing to work together earnestly. Iraqis are willing to accept each other, democracy, and dialogue instead of conflict and quarreling.
- e. Iraq possesses minimum financing, and the economy is expected to quickly recover. Iraq can resort to international loans initially. Debt payment and the payment of damages can be deferred or rescheduled.

2. Nature of Administrative Activity in the Transitional Stage:

Administrative activity in the transitional stage should take into account:

- The use of local councils in administration.
- The need to strengthen the administration's institutional role.

Use of Local Councils in Administration

The experience of civilized, advanced nations demonstrates that local councils are the best, most successful means for delivering services and developing regions. Local councils bear these responsibilities under the supervision of the citizens themselves. The central government has enormous political, military, financial, and foreign affairs capabilities. However, it is unable to effectively provide public services in all parts of the country. Local councils provide these services, benefiting not only citizens, but also the central government. The local councils assume major responsibilities, which are mainly the responsibilities of the central government, for administering their jurisdictions. This

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frees up the central government to perform its other functions while it continues to guide, supervise, direct, and finance local administrations.

The local councils will be responsible for providing education, housing, social welfare, transportation, health, municipal, and other services.

The local government will help spread and deepen democracy. It will expand participation in public activity to reduce the gap between the ruler and ruled and facilitate the supervision of public activity, call to account negligent parties, and firmly establish the presence of the centralized and decentralized authorities.

The burdens of public administration will be spread out. The central government will be relieved of many burdens in different fields of citizens' daily activity. Through the local councils, administrative activity will be divided, pursuant to a law, in a balanced manner between the center and the periphery to achieve the goal of a democratic state administration. This is the first step on the road to building a democratic state and training citizens to play a part in decision-making and administration.

The local councils do not merely provide administrative services. They are also political organizations, inasmuch as local citizens establish them only through elections. They are therefore accountable to their electorates.

The local councils will be entitled to independently channel their activities and develop their jurisdictions economically and socially by imposing taxes or acquiring or managing activities that do not enjoy the status of a legal person.

The preceding points to the need to resort to local councils or decentralized government in the transitional stage, regardless of the form of government adopted, to facilitate and promote administrative activity regarding the delivery of services to citizens and the full control of conditions. Accordingly, the best method of administration in the transitional period is immediate entry into an experiment in decentralization and the formation of local councils to assume administrative functions. This can be achieved by:

1. Forming local administration councils at the level of the village, subdistrict, district, and governorate. Capable people representing the various currents that wish to build a democratic state organization should serve on these councils.
2. Using cadres with experience and good, local reputations.
3. Spreading and encouraging the idea of volunteer work.
4. Remedying errors and excesses through transparency, citizen participation, and the encouragement of general freedom of expression through associations, professional unions, and cultural clubs.

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By fulfilling the above-mentioned requirements of local administration, we can gradually promote a democratic sensibility and a sense of responsibility among the public toward achieving effective administrative activity within a given local area.

Strengthening the Institutional Role of the Administration

This is achieved by:

1. Reviewing administrative laws and decrees issued under Saddam's regime. These laws were promulgated consistent with Leading Party Law No. 142 of 1974 and Law No. 35 of 1977 on the Reform of the Legal System. They politicized administrative activity in the dictator's interest. They violate the principle of the separation of the authorities. They also grant privileges at the expense of the public interest.

2. Dissolving party agencies subordinate to the ruling party and the security agencies that have been merged with state offices and organizations. These party agencies have a role in nullifying the administrative apparatus in favor of the regime's desires at the expense of the public interest. We should seek the assistance of people with experience and qualifications, particularly in the public services sector, to ensure the smooth operation of public facilities that provide services to individuals.

3. Preparing intensive training courses and studies conducive to creating administrative, institutional awareness among persons working in the public administration sector; and preparing public servants to deal with new technologies in administrative activity.

4. Promoting the supervision of administrative activities by:

a. Supporting popular oversight as represented by public opinion and by guaranteeing freedom of expression to enable such oversight to play a role in guiding and raising awareness.

b. Promoting parliament's oversight role through interpellation and investigation of ministers or department chiefs to ensure plurality and freedom of expression. We should take into account the use of an ombudsman or a general state controller to strengthen parliament's role in supervising the administration's activities.

c. Strengthening internal supervision in the administration by forming committees in state enterprises and bureaus to examine complaints within the legally prescribed period for doing so. These committees should comprise people with expertise and qualifications in administrative activity.



Annex B (Administrative)

Reform of The Law, Judiciary, and Administration

By



B6

The term "reform" is used in dealing with situations of corruption. Unjust laws, a corrupt judiciary, and a backward administration may mean that the entire state is rife with corruption. Such a situation requires fundamental, comprehensive reform. The most salient legal measures needed for this purpose include the following:

I. Reform of the Law

1. Reform of the legal system begins with the preparation of a permanent, democratic constitution by a legal committee representing the political spectrum active in society. The constitution should include the following key provisions:

a. The state's form and trilateral [executive, legislative, and judiciary] sovereignty cannot be waived. The constitution should also contain provisions on language, religion, society, the economy, education, and other basic components of the state and the promotion of society.

b. The relative separation of the three authorities and cooperation and mutual oversight among them; the formation of a legislative authority through direct, democratic elections; and the need for the judicial authority to undertake electoral redistricting, so that members of parliament truly and honestly represent the people.

c. The principle of the rule of law in the sense that everyone, both ruler and ruled, are subject to the law; the prohibition of provisions that exempt persons and decisions or that conflict with the jurisdiction of the judicial authority, including sovereign acts, the immunizing of administrative decrees from judicial oversight by means of legal provisions; and respect for the principle of legality, which means that every government action must have a foundation in the law or fulfill the needs of a public interest.

d. The independence of the judicial authority; affirmation of its freedom, fairness, and neutrality; and the life-long appointment of judges, who should not be subject to dismissal.

e. Establishment of a court to supervise the constitutionality of laws and regulations.

f. Declaration of the broadest rights and freedoms for citizens and all institutions of civil society, and the freedom to form parties, associations, and clubs.

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g. The right of 10,000 citizens to submit a draft law to the parliament for discussion and approval.

h. Only parliament shall be empowered to declare emergencies and to nullify the constitution, laws, and regulations.

i. Election of the president of the state through direct, individual nomination by any citizen.

j. Prohibition of arbitrary arrests and all forms of torture, which should be considered crimes not subject to the statute of limitations or any general amnesty.

k. The enjoining of all parties and individuals to promote a culture of tolerance, dialogue, political plurality, and the rotation of power.

2. Arbitrary laws, unjust decrees, and any stipulation that infringes on the honor of citizens, diminishes the freedoms or rights of citizens, or grants exceptional privileges should be repealed. Laws should be legislated based on the principle of full equality among citizens. Councils and organizations that are based on total control in the interest of the ruler or a specific group should be eliminated.

II. Reform of the Judiciary

1. Legislation of a law that affirms the judiciary's independence is needed. This law should:

a. Establish a high judiciary council. Judges selected by their colleagues would manage the affairs of the council. Each member should have at least 20 years of judicial service. The council would be authorized to appoint, transfer, discipline, dismiss, and pension off judges and handle any matter concerning this neutral authority to ensure that judges will carry out their duties honorably and fairly.

b. Regard the judiciary as an authority with full, general jurisdiction in all conflicts and decisions.

c. Ensure judges' adherence to the law and their professional conscience. The law should also stipulate punishments for anyone who interferes in the affairs of, attempts to mediate with, or impedes the functions of judges.

d. Apportion judicial functions to the various courts and judiciaries (i.e., to the constitutional, administrative, and regular judiciaries and courts); and the establishment of a court to settle jurisdictional disputes that arise.

e. Establish substantial employment benefits for judges to fortify their professional behavior; and provide for the dismissal of judges who accept bribes or who are incompetent.

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III. Reform of the Administration

1. A high council for administrative development should be established. This council would be subordinate to the council of ministers. It would be concerned with:

a. Preparing a sustainable administrative development plan based on political, economic, social, and cultural development plans.

b. Formulating draft civil service, military service, and security service laws; establishing the principle whereby appointment committees would hire personnel based on their qualifications, aptitude, and suitability for the position. The council should stipulate that any person holding a position shall be responsible for that position and shall serve the people equally in exchange for a fair wage.

c. Formulating a draft job classification law. This law would define the functions, qualifications, and salary pertaining to each position based on the value and importance of the position.

2. Preparation of a general work ethics code for all state workers that specifies the duties and obligations of a public servant within or outside his organization and violations punishable by dismissal from his position.

3. Preparation of the organizational structure of the state's administrative apparatus. This should take into account the institutions, systems, and workers actually needed. Excess capacity should be trimmed and negligent workers dismissed. Financial or in-kind benefits should be granted to workers who engage in industrial or agricultural production activities according to the general need and food security.

4. Administrative and financial corruption crimes should be regarded as crimes of treason and espionage. The death penalty should be imposed for the crimes of bribery, embezzlement, money laundering, graft, sabotage of public utilities, and the wastage of public funds.

5. Power should be linked with responsibility through reward and punishment and the establishment of a system of effective incentives.

6. Maximum attention should be paid to persons occupying leadership and supervisory positions in the administration. These persons should—through their conduct, loyalty, and reputation—set a good example for subordinates.

Annex C (Administrative)

Administrative Law in Iraq

By

B6

Extreme corruption is rife in the Iraqi state administration in the form of bribery, nepotism, illegal self-enrichment, and graft, which can be attributed to the following reasons:

I. Politicization of Administrative Activity:

The Ba'th regime in Iraq has enforced the program of the Arab Socialist Ba'th Party as a guide for action by all administrative agencies under Leading Party Law No. 142 of 1974. Law No. 35 of 1977 on the Reform of the Legal System sanctioned this policy, transforming the administration's function into political and party activity to meet the needs of the ruling Ba'th Party. All administrative organizations have been transformed into party organizations under the control of the security officer and the party functionary in the Population Statistics Agency, who monitor the movements of all employees in that agency. Administrative activity has thus moved away from its normal path of serving the public interest, becoming instead a tool for serving the party and its leader.

II. The Economic Factor:

Civil servants' living conditions have deteriorated very noticeably due to the regime's misadventures in external and internal wars, smuggling, plunder of state funds by party and state officials, and wasteful spending in areas having nothing to do with the improvement of the economic situation of citizens and state organizations. Bribery has infected the judicial agencies in charge of administering justice. A student can only pass by paying a bribe. People cannot take care of their business at government offices without giving a bribe. The police do not record a complaint without a bribe. A soldier cannot enjoy his leave without a bribe. A judge does not rule without a bribe. In short, we are living in a state of bribers and the bribed.

III. Supervision of the Administration's Activities:

The supervision of administrative activities has many manifestations, which can be summarized as follows:

1. Popular supervision exercised by opposition parties, NGOs, associations, unions and the media, to which people can turn to air their grievances.
2. Parliamentary supervision which the people's elected representatives exercise by discharging their parliamentary duties.

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3. Administrative supervision, i.e., self-supervision by administrative agencies through inspection and supervisory bodies subject to the administrative hierarchy.

4. Legal supervision exercised by the regular judiciary or by the specialized (administrative) judiciary, depending on the state's legal system.

In a democratic country, the judiciary has total power to scrutinize the actions of administrative agencies. Grievances regarding any illegal practices can be presented to the regular or administrative judiciary.

Under the Baghdad regime, the forms of supervision mentioned above are conspicuously ineffective or absent. Under the Leading Party Law mentioned above, the Ba'th Party has total control over all forms of popular, parliamentary or administrative oversight. There are no opposition parties, opposition media, associations, or unions beyond Ba'th Party control. The Iraqi National Assembly has no power to enact binding resolutions. Moreover, its members must be loyal to the regime if not high-ranking officials in the Ba'th Party.

What administrative control there is can only be exercised through a Ba'th Party functionary or the security officer in each government agency.

Judicial oversight is nominal and ineffective. Judicial agencies, like other government agencies, are completely subservient to the policy of the ruling Ba'th Party. If that is not enough, they are restricted under Article 7 of State Advisory Council Law No. 106 of 1989 (Amended). This article bans the administrative judiciary from hearing any appeals related to "acts of sovereignty" as represented by RCC decisions and decrees, republican decrees, presidential decrees, administrative decrees issued to execute the president's instructions, and all administrative decisions that should be contestable under procedures prescribed by the law.

As a result of these restrictions on the authorities of the Iraqi administrative judiciary, the latter can only examine very limited administrative decisions. In other words, the majority of decisions in Iraq are beyond the judiciary's control.

Proposals to Reform Administrative Law

1. Repeal of all laws and decrees upholding party ideology as a guide for all administrative departments; the elimination of all manifestations of party control over state institutions.

2. Elaboration of the role of public oversight through a free media, freedoms, the permitting of opposition activity, and the establishment of free, independent associations and unions. A parliament elected by the people will have a crucial oversight role to play. Administrative agencies should not be subject to the control of any party. This will ensure that inspection agencies will have an effective role in scrutinizing the activities of these agencies.

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The judiciary should be completely free to hear appeals against all administrative decisions irrespective of their source, be it the presidency or the smallest administrative unit.

3. Review all civil service laws pertaining to workers in state establishments, updating of salaries, and the introduction of generous rewards and incentives to root out administrative corruption.

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Annex D (Administrative)

The Administrative System in Iraq and the Future

Historical Summary of Iraq's Former Administrative Divisions

A study of Iraqi history shows that Mesopotamia has been ruled by many nations, each of which had its own administration that governed the country. After the Islamic conquest of Iraq, the Muslims retained the Persians' form of government and the administrative divisions of Iraq that existed then. During Abbasid rule, the kingdom of Iraq and the Arabian Peninsula were divided into administrative districts called "Kurahs" and then "Tasasij" [phonetic], which correspond to today's subdistricts. Each Kurah had a kasba (center) and cities. Each city had villages linked to it administratively. After the conquest of Holako [the Tartar], Iraq and the Arabian Peninsula became subject to turbulence and disorder that lasted until 941 AH (1534 CE), when Sultan Sulayman al-Qanuni occupied Baghdad and overwhelmed the Safavid army. Sultan Sulayman divided Iraq into 17 Sanjaks (provinces). He distributed six Sanjaks to his commanders. Baghdad became a large province. Subordinate to it were the counties of Baghdad, Mosul, and Basrah. A governor appointed by the sultan ruled the province of Baghdad. In the early 18th century, the district of Mosul was detached from Baghdad and became subject for a time to the province of Diyarbakr. Then, Shahrzur with its center in Kirkuk seceded. These two districts were independent for a time and then came back under Baghdad's rule.

Administrative Divisions During the Time of Medhat Pasha

The state of Iraq, which comprised the county of Baghdad and the county of Basra, was divided into provinces. Each province was divided into districts and the districts into subdistricts. A provincial governor ruled the Sanjak (province). The district was governed by an administrative officer called a qa'immaqam [district president], and the subdistrict was administered by a director. Sanjak is a Turkish word meaning "flag or banner." In 1879, Mosul became the center of the state, after having been a province. Kirkuk and Sulaymaniyah were subordinated to it. In 1880, the state of Baghdad was divided into seven Sanjaks: Baghdad, Hillah, Karbala, al-Amarah, al-Muntafiq, Basrah, and Najd. In 1884, the Sanjak of Basrah was changed to a state. In 1900, the state of Basrah became independent from the state of Baghdad and was divided into four Sanjaks: Basrah, al-Amarah, al-Muntafiq, and Najd. Before WWI, Iraq was divided into three states, the state of Baghdad, the state of Basrah, and the state of Mosul, as follows:

1. The state of Baghdad, to which were subordinate the provinces of Baghdad, al-Diwaniyah and Karbala.
2. The state of Mosul, to which were subordinate Mosul, Shahrzur, and al-Sulaymaniyah.
3. The state of Basrah, to which were subordinate Basrah, al-Amarah, and al-Muntafiq.

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Iraq's Administrative Divisions During the Period of the Monarchy

During the period of the monarchy, Iraq comprised 14 provinces. Each province consisted of a center, several districts, a number of subdistricts, and numerous villages. A governor governed the province. A district president governed the district, and a director governed the subdistrict. Each village had a mayor who was responsible for managing the affairs of the village. He was directly subordinate to the director of the subdistrict. Baghdad served as the higher authority of the provinces and the seat of the ministries, the former National Assembly, and the directorates-general. There were 14 provinces, 66 districts, 174 subdistricts, and 9918 villages. The first law on the administration of the provinces was issued in 1927. Most of the articles of the law were derived from the Ottoman States Law. Law No. 16 of 1945 on the Administration of the Provinces was then legislated. It was amended a number of times. For the first time, it provided for the formation in each province of two councils, an administration council and a general province council. The administrative council handled tenders and the like. It met once annually to discuss achievements and formulate a plan for the next year. The other council had no role and did not fulfill its purpose.

Administrative Divisions During the Republican Era

In the republican era, the administrative divisions remained as they were previously. The Law on the Administration of the Provinces was amended in 1959 to establish local administrations in all provinces. These administrations had independent councils and their own budgets and thus provide a model for decentralized administration. The law, which was intended to raise the level of the provinces, was implemented only nominally.

Administrative Divisions After 1968

When the Ba'th Party assumed power in 1968, it legislated Governorates Law No. 159 of 1969. This law stipulated the formation of local and municipal councils. It granted broad authorities to governors and the chiefs of administrative units. However, this law was implemented only nominally. It changed the designation "province" to "governorate," and it created four [sic?] new governorates, the governorate of al-Muthanna in 1970, the governorate of Dabuk in 1975, and the governorate of al-Najaf in 1979. It also changed the names of several governorates to historical names, e.g.: Ninawa, with its center in Mosul; al-Ta'min, with its center in Kirkuk; al-Qadisiyah, with its center in al-Diwaniyah, Dhi Qar, with its center in al-Nasiriyah; Babil, with its center in al-Hillah, Wasit, with its center in al-Kut; and al-Anbar, with its center in al-Ramadi. This period was characterized by the following:

1. The strong consolidation of centralized government. De-centralization was virtually non-existent. The administrative unit chiefs did not express their opinions and were concerned only with implementation. The formal local councils played no role.
2. Rural-urban migration grew dramatically and led to improper and haphazard urban planning. In 1957, the urban population jumped from 31 percent to 65 percent of the

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total population while the rural population dropped from 65 percent to 35 percent of the total population. This trend has caused a notable decline in agriculture.

3. Saddam's regime has attempted to change the demographic nature of the population. The Kurdish population was forced to migrate in 1976 to central and southern areas. Several Arab tribes were forced to migrate to the areas of Kirkuk and the north. However, these attempts failed because they were incompatible with the geographical reality of the population.

Future Concept of the Administrative System in Iraq

The administrative divisions in effect in Iraq at different times under successive regimes were designed to facilitate:

1. Collection of taxes and funds.
2. Hegemony and centralized control over all residents of the concerned administrative divisions and the entrenchment of tribalism.
3. Under Saddam's regime, decentralized government became virtually non-existent. This role was primarily played by oppressive agencies represented by security and intelligence agencies and the party's branches in the various provinces.

During the periods surveyed, there were no ethnic, sectarian, or ideological conflicts within the populations of these divisions. However, the various ruling regimes have encouraged sectarian fanaticism. Before dealing with the structure of the local councils and decentralized administration, we must understand the following points:

1. Some believe that the Iraqi people will be served by applying federalism to Iraq's provinces or areas. Moving in this direction—after the Ottoman division of the country into provinces or cantons based on religion or sect—will fragment Iraq's unity, fragment its people into warring factions, and create a chronic crisis from which it will be difficult to emerge.
2. Iraq is socially and geographically a single country and a single people despite its mosaic of Arab, Kurdish, and other minority populations. The majority of the Iraqi people desire the establishment of a modern state that adopts democracy as a comprehensive framework for all future legislation. This includes a decentralized administrative system for all administrative divisions, starting with the smallest administrative unit, which is the subdistrict. We must also harmonize this decentralized administration with an effective, non-autocratic centralized government. The decentralized system envisaged will not prevent our Kurdish brothers from enjoying real, broad, self-rule and from being entitled to participate equally in the central government within a democratic Iraq. Other minorities would also be entitled to enjoy cultural and administrative rights. Regarding a federation for the Kurds, we believe that this matter

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should be left to the referendum that will be held on the proposed, permanent constitution.

3. The available remedy for undoing the chains of backwardness and despotism and move toward democracy requires us to realize that democracy is a gradual, long-term process. It cannot be achieved overnight or upon the mere promulgation of laws and regulations. Rather, it involves the development of the cultural, political, and social awareness of citizens according to precepts that are gradually phased in. Decentralized administration is a civilized model for democratization. During the transitional period, we must open citizens' minds to this orientation by first holding free, democratic elections in the unions, popular organizations, and professional associations for example. We can also begin by holding local elections for the cities' municipal councils to elect municipal managers by secret ballot.

4. Iraq's population distribution has changed. The population of the cities has grown due to the growth of rural-urban migration. These changes require the holding of an accurate, fair, general population census to serve as the basis for holding elections to elect the governorates' local councils or the next parliament.

The Organizational Structure of the Local Councils:

At the beginning of the transitional stage, it will be difficult to form local, elected councils in the governorates and administrative units. These councils may comprise a chairman (the governor, administrative unit chief, district president, or subdistrict director) and the heads of the branch offices of the central government representing the ministries. In addition, representatives of the population can also be elected to the councils, including representatives of the lawyers, physicians, engineers unions, farm workers, the chamber of commerce, the tribes in the governorate, the clerics, and each district in the governorate. This local council would be authorized to:

- a. Ensure the enforcement of laws and regulations.
- b. Spread justice, maintain security and public order, and protect public facilities.
- c. Issue any decisions needed to apply national and local legislative decrees.
- d. Prepare a draft general plan for the administrative unit and detailed plans regarding agriculture, education, health, social affairs, roads, and municipal services.
- e. Implement the administrative unit's budget according to the law and general accounting system of the state, and prepare general budget estimates.
- f. Command the local law enforcement agencies, including the security, traffic, and citizenship police. These formations would be under the command of the administrative unit chief from all standpoints, except for cadre affairs.

Relationship of the Local Councils With the Central Government

The powers of the councils specified above will be their purviews. Apart from that, the central government and the directors of central government offices in the governorates will have authorities that will be subject to the ministries to which they are subordinate. They will engage in their activity within the limits of their authorities. The councils may submit the necessary reports regarding central government offices to their respective ministries. Some ministerial authorities may be transferred to the chairmen of the local councils in the governorates. The governors, district presidents, subdistrict directors, and chiefs of central government offices should preferably be residents of the governorates themselves. The judicial authority will be independent based on the principle of the separation of authorities.

After the transition period, the local councils will be formed according to decentralized administrative regulations that will specify the method for conducting democratic elections to elect governors and administrative unit heads through a secret vote. The number of local council members elected will be based on the size of the administrative unit's population.

The preceding is our initial though not final concept. Iraq can benefit from the experiences of the advanced countries in this area and apply them consistent with the reality of Iraqi society. God grants success.



Attorney and Former Administrator

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Annex A (Civil)

Views and Recommendations Regarding the Civil Code, Ownership Law, and Several Other Laws

The Legal Reform Committee in the Justice Transition Working Group met during September 26-30, 2002 in Italy. It commissioned me to review the Civil Code and ownership. The following is my review:

I. The Civil Code:

The Civil Code was issued in 1951. As far as I know this code has not been amended or repealed in a way that violates human rights (I reached this conclusion after a telephone conversation with [REDACTED])

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[REDACTED] I therefore believe that this law should be retained in its current form at present.

It should be noted that the Iraqi Civil Code differs from several Western codes in two respects:

1. Unlike Western laws, the code does not treat personal status issues. These issues are treated under a special law called the Personal Status Law, which is derived from Islamic law and which covers matters relating to engagement, marriage, divorce, wills, and estates.
2. The Civil Code treats ownership matters as well. There will thus be no future law on ownership.

II. Ownership:

Saddam's regime has committed many arbitrary, criminal acts against Iraqis involving the expropriation, seizure, damaging, or destruction of real estate and movable property. It has done so for a long time and has consequently damaged hundreds of thousands of citizens, especially in the Anfal operations [in 1990 and 1991], the expulsion of the Fayli Kurds from Iraq, destruction of the marsh areas, and the seizure of oppositionists' property. This situation requires, in our opinion, the issuance of a "Law on the Compensation of Victims of the Regime and the Restoration of Rights." This law should provide for the following:

1. The granting of fair compensation to persons whose movable and immovable property or that of their families was seized. This compensation should include the return of the property and monetary damages to offset losses or damage.
2. The new government should restore the rights of victims who are damaged as a result of the violations committed by government employees and others who acted in an official or semi-official capacity in violation of human rights and international covenants on civil,

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political, economic, social, and cultural rights. The law should establish the right of victims to obtain damages from the state if state employees or the state are responsible for causing damage.

3. If it is not possible to obtain full damages from the perpetrators of the crimes of torture and assault, the state must provide financial compensation to:

a. Victims whose homes or moveable property were destroyed, or who sustained serious bodily injury, or suffered poor physical or mental health.

b. The families of deceased persons or persons who sustained physical or mental disabilities as a result of being injured.

4. Establishment of a national fund to compensate persons whose property was seized and who were unable to recover it partially or fully, and for persons injured by former government personnel.

5. The provision of the necessary material, psychological, medical, and social assistance by government and private organizations.

6. Employees of the police, judiciary, social services, and other relevant public employees must be trained to enhance their awareness of the needs of victims and to provide all necessary facilities to them.

7. The law should define "victims of the regime" as "persons who incurred individual or social harm—including physical or mental harm, psychological suffering, economic loss, or deprivation of basic human rights—due to acts or circumstances of negligence that have hitherto not constituted a violation of the national criminal laws but constitute violations according to recognized international standards concerning respect for human rights."

8. Simplification of access of the previous regime's victims to the judiciary to demand compensation and recover rights; elimination of restrictions that impede the fair compensation of victims for the harm or actual damage inflicted on them; and an explanation of the channels through which these restrictions can be overcome.

9. Creation of an independent organization that would be responsible for providing services to victims of the regime, including victims in Iraq and victims returning from abroad. This organization would also provide suitable training to employees who provide services to victims in order to develop these employees' skills and understanding to enable them to help victims overcome the effects of the crimes committed against them. The organization would also provide effective information to keep victims apprised of their rights and opportunities available to them to recover their rights and demand that justice be done to criminals or others.

III. The Commercial Law:

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Laws required for economic openness:

Economic openness to the world, especially the West, requires the repeal and amendment of a number of laws that impede such openness and economic freedom. These laws include:

- A law on the investment of Arab funds.
- Trade and payment agreements.
- A law on imports, exports, and currency..
- A law on commercial agencies and the representation of foreign companies.
- Laws restricting foreign currency transactions and the transfer of foreign currency into and out of the country.

Also needed is the promulgation of legislation that gives concrete form to economic openness, such as:

1. A law on the issuance of regulations applicable to the investment of foreign funds.
2. A law entitling Iraqis to represent foreign companies and to engage in commercial representation in Iraq.
3. A law that facilitates import/export operations and permits individuals and private companies to import from abroad.
4. A law establishing the right of citizens to bring into and take out from the country foreign currency as they wish without restrictions.
5. Ratification of bilateral international agreements between Iraq and capital-exporting countries, especially the United States, to encourage investment and the mutual protection of investments.

IV. General Recommendations:

In addition to the above, there are legal provisions contained in various Iraqi laws that must be repealed or replaced by other provisions, including the following:

1. A large number of Iraqi laws contain provisions prohibiting the courts from hearing certain cases or actions. Any such provision must be repealed, as it conflicts with a person's right to litigate and with the judiciary's independence. The following provision should be incorporated: "The judicial authority shall have jurisdiction over all matters of

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a judicial nature. It alone shall be authorized to decide whether any matter brought before it for a decision falls within its purview.”

Every individual should be given the right to be tried before a regular court or judicial body that applies established legal procedures. It should be prohibited to establish judicial bodies that do not apply established legal procedures according to the basic rules of judicial procedures, lest the regular courts or judicial bodies be denied the judicial jurisdiction that they enjoy.

2. Repeal of Penal Code provisions that regard "defense of honor" as a mitigating factor in such crimes involving murder. This contradicts the principles of Shari'ah [Muslim jurisprudence], human rights, and women's rights.

3. Issuance of a law that repeals all laws and decrees that restrict or impose control over the right to publish, compose, and issue newspapers and magazines and the right to bring into and take out from Iraq books and publications.

4. Issuance of a law to repeal the country's current slogan and replace it with a slogan that expresses peace and the symbols of all ethnic and sectarian groups in Iraq.

5. Issuance of a law that regards as null any provision in any Iraqi law in effect that violates human rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Political Rights ratified by Iraq in Law No. 193 of 1970. Iraq joined these covenants on January 25, 1971. Ratification was published in the *Iraqi Official Gazette*, issue 1937 of October 7, 1970 and republished in the *Iraqi Official Gazette*, issue 3387 of January 6, 1992.

6. Incorporation of a provision that regards as null any provision in any law in effect or new law that violates or conflicts with Islamic law. Such a provision will achieve two important objectives:

I. It will prove to the world, especially the neighboring countries and the Iraqi people, that the new system of government, which is friendly to the United States, respects the sentiments, culture, and religion of the overwhelming majority of the Iraqi population. This will refute the claim that the United States is fighting Muslims and Islam in its declared war on terrorism.

II. It will deny an opportunity to persons to establish political-religious parties with the objective of demanding instatement of Islamic law in Iraq. This will lead to harmony among the political parties and forces and prevent them from clashing with each other as long as they do not differ with each other on matters of creed. This will avoid a repetition of the regrettable incidents that occurred in Egypt, Algeria, and Syria between the authorities and the Islamic groups.

7. It is necessary to incorporate a provision in the Penal Code that includes rules prohibiting the arbitrary use of power and acts that constitute a dangerous abuse of

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political or economic power. The provision should also promote policies and mechanisms that prevent such acts, and it should state ways and means for demanding justice for victims of such acts.



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Annex A (Transitional Laws)

Elimination of the Ba'th Party's Privileges

Before Saddam Husayn came to power in Iraq, membership in the Ba'th party did not ensure a life of luxury. One did not receive privileges for belonging to or obtaining a rank in the party. Nor was one granted qualifications at the expense of other Ba'th Party members. This situation continued until Saddam Husayn took power in Iraq. Ba'thists, especially those who held the rank of "member," began to receive special privileges and status which they would not have received otherwise given their social status (most of them were from among the unemployed or had low academic qualifications). Of course, such privileges were not granted in the absence of a quid pro quo, as this would not be consistent with Saddam's "beneficence" as some are wont to call it. Saddam's intent in this was to tie these members to him and his regime by transforming them into mercenaries who sat around waiting for his gifts. At the same time, they decided the fates of others, especially those who rejected Saddam's rule and regime. The privileges obtained by Ba'th Party members can be divided into two types: privileges granted under the law and benefits.

Privileges Granted Under the Law

1. A party member's testimony is considered binding in Iraqi courts upon the issuance of judgments in all legal cases. Moreover, Saddam Husayn's decree in this regard makes any party member's testimony equal to the determination of a state official with jurisdiction regarding all cases submitted before the Iraqi courts. This makes a mockery of the judiciary from which people seek decisions.

2. Upon the outbreak of the Iraq-Iran War in 1980, the government had an urgent need for party cadres to oppress the Iraqi people, especially after public resentment grew as more and more Iraqis were killed in this murderous war and as the social and economic situation deteriorated during the war. The regime made use of party members, granting them authorities that exceeded those of other security agencies, even the intelligence agencies. Among these authorities, which were stipulated in RCC decrees, are the following:

1. Execution of military personnel who desert from military service. Special execution committees were formed in all administrative regions at the level of the governorate, district, and subdistrict. Party organizations chaired these committees, which carried out collective executions publicly. Moreover, party members forced citizens to observe these repugnant criminal acts to instill fear in them. Many of the cream of Iraqi youth were executed in front of their relatives in this despicable manner.

2. Arrest and detention operations. The role of the regular courts was completely nullified. Party organizations were assigned to conduct detentions and arrests.

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They detained people on the most trivial grounds in barracks of the People's Army for long periods in the absence of arrest warrants issued by the concerned courts.

3. Inspection of citizens' homes and the legal prosecution of citizens. The Ba'athists violated the sanctity of peoples' homes based on mere suspicion or personal and retaliatory motives. They did so without referring to the competent courts to obtain legal warrants to search homes or commercial establishments.

In 1982, Iraq's RCC issued republican decrees and edicts granting members of party organizations military ranks to command what were then called the popular volunteer units. Military companies and brigades were formed under the command of these party members, who understood nothing about military matters. As a result, many civilians died after being pushed into the battlefield, especially in the battles of Al-Shush and Dezful in 1982. These party members deserted the battlefield, leaving behind the bodies of thousands of innocent persons.

Benefits

Following is a list of benefits granted to Ba'athists. It is by no means exhaustive.

I. Party members have seized large areas of agricultural land under the pretext of the reclamation of uncultivated land. They have been granted soft loans, which have enriched many of them at the expense of regular citizens. The loans and the funds granted to party members have been used to build residential homes, fish ponds, and poultry farms. As a result, these mercenaries have emerged as a large land-owning class that controls the fates and interests of other people. Their enrichment and degree of control surpasses that of the feudal estates that existed before the advent of republican rule in Iraq.

II. Party members and comrades have been granted special permission to use government buildings and the homes of Iraqis expelled to Iran. Party members have also been granted the right to acquire, at low prices, government housing after it has been rented for 10 years. Party comrades are also enabled to acquire residences and agricultural land whose original owners have been forcefully evicted from their holdings and their cities in order to Arabize cities and villages, especially the cities of Kirkuk and Khanaqin and other Iraqi cities inhabited by a Kurdish majority.

III. Party members have been granted medals for bravery under republican decrees on a par with military personnel active in the different sectors of the army. These medals—which continue to yield financial benefits, land plots, and cars to medal recipients—are granted during official holidays. And there is no shortage of such medals or official holidays in the Iraq of Saddam Husayn.

Regardless of the Manner in Which These Privileges Were Granted, We Recommend the Following:

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1. Repeal of all provisions in the Iraqi laws that award special rights and privileges to the members and mercenaries of the Ba'th Party under Saddam Husayn's oppressive regime. This should preferably occur immediately after the fall of the regime by decree of the transitional government. The method for implementing this decree should be referred to the judicial and executive authorities and the concerned courts in order to establish justice and to restore the status quo that existed before the privileges were granted.

2. All RCC decrees concerning these privileges should be regarded as null after the regime falls. The regular courts should be directed to accept actions filed by parties damaged as a result of these decrees, especially regarding personal property that has been sold if there is evidence that Ba'th Party members usurped the property from regular citizens under unjust decrees.

3. The dissolution of the Ba'th Party necessarily requires the elimination of all privileges enjoyed by its members and leaders. Therefore, we believe that the Ba'th Party should not be permitted to engage in political activity in Iraq after Saddam Husayn departs, and after his assets and funds are seized and deposited in the state treasury. We hold this opinion in view of the high crimes committed by the Ba'th Party against Iraqis and the calamities bequeathed by this party—calamities that are unacceptable in the political arena of the future Iraq.



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Annex B (Transitional Laws)

In the Name of God, the most Merciful, the most Compassionate

Salutations,

Your contribution regarding this important subject was conveyed to us and we are grateful for your efforts. We congratulate you regarding everything contained in your paper. However, the Ba'th Party is not an ideological party so feared that we should propose its dissolution and prohibition from engaging in activity in the future Iraq once the [regime] change occurs. It would not be an exaggeration to compare the Ba'th Party to a police organization mobilized from the enslaved masses that are impatiently and eagerly waiting for the change. It is thus like any other national force that hopes for change and will fall immediately upon hearing "God is great." No one would so much as dare in the coming decades to say, "I am a Ba'thist" in a family environment, let alone in public. What I want to say is that if we prohibit the Ba'th Party from engaging in activity under a law issued by a provisional authority, we may give the impression that this party is the victim of an American, imperialist, etc. change as some are currently claiming. In addition, we will shoulder the animosity of former Ba'thist militants domestically or abroad, both silent and active, in key Iraqi opposition associations. Therefore, my view is that we should dissolve the Ba'th Party but we should not ban it for a while at least during the transitional period. We should leave this matter to the people's opinion in this period and to the institution represented by the "legislative assembly" after the end of the transitional period. In my opinion, even a decision to dissolve the Ba'th Party should be an emergency decision taken by the new government to incorporate or conceal Ba'th Party elements among the forces of the people and overlook the enormous quantity of their movable and immovable military and civil assets. This would entail determining just who would be covered by such a decision and establishing a proper, legal procedure [for implementing the decision]. In this way, we will avoid chaos that would add to the confusion. Such chaos could result in innumerable victims and—God forbid—thwart the purpose of regime change, if we know that everyone is lying in wait for privilege holders, who are backed by their tribes, families, and sects. Moreover, if we terminate all holders of job benefits, we would be actually dismissing 50 percent or more of the workforce in key state facilities, including judges, army officers registered in the army roster, and managers in professional, service, and production enterprises who have specialties essential to the continued provision of services to the public. I do not wish to elaborate further. I leave the matter to your assessment and insight.

The second subject concerns the legal procedures and methods for canceling or recovering movable and immovable in-kind privileges.

In this regard, we recommend, in addition to your recommendations, the following:

1. We should leave the subject of the withdrawal of job privileges granted for competence and professionalism to the civil service laws, the State Employee Discipline Law, and the regulations and instructions that govern the activity and success of each

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state institution. We may find that the retention of one or another former Ba'thist in his position will be an opportunity for him to correct his attitude and plunge into his work to prove his competence far from his party past. In this way, we will not lose him and his accumulated experience; we will let his job performance speak for him.

2. We do not differ with you regarding the elimination and withdrawal of in-kind privileges after they are repealed or removed from all state laws and regulatory decrees, and after damaged parties are given an opportunity to file their claims and complaints with the courts based on the law. However, this might become complicated and difficult if the damaged party is a state institution or public funds. Therefore, I recommend the formation of a specialized committee in each ministry, the Central Bank of Iraq, the Fiscal Control Bureau, and any other important institution that conceivably granted privileges or gifts to Ba'th Party members, medal holders, and "friends of the president." These committees would inventory such privileges and gifts and then rescind or withdraw them or conduct settlements in conformity with the law. Judges or representatives of the public prosecutor's office would chair these specialized committees. Their decisions would be subject to approval or appeal before the appeal courts or court of cassation. The competent minister, independent enterprise chief, or aforesaid courts would approve settlements. Otherwise, the State Advisory Council would decide the matter.

Matters of General Note

1. A distinction should be made between recipients of privileges. Some entitlements were granted in the context of employment, especially to personnel who were legally granted decorations or capacities (Order of the Mother of All Battles, Order of the Friends of the President) to raise their standard of living. These can remain in their agencies and the entitlements which they received should be distinguished from the grants and gifts given to Ba'thists who rose to high positions because of their party rank. Distinguishing between these two types of privileges should be the job of the committees.

2. The committees and courts must note the rights acquired before the regime change. The legal precept states that if there is no damage, there are no reparations [darar]. The Iraqi Civil Code treats this in clear, precise provisions.

3. Persons and institutions should be required within a certain time period (let it be two years from the start of the regime change) to take measures to rescind or withdraw job privileges or in-kind privileges in order to stabilize and solidify rights and obligations. In addition, any action taken by privilege holders regarding their estates or real-estate belonging to them should be null if it is decided to rescind or withdraw them, and no claim of acquired rights is heard during this period. In any case, notice may be served of measures taken by the courts and committees in order to inform first and to achieve transparency second.

With esteem and commendation,

[Redacted Signature]

October 30 2002, Rotterdam

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Appendix Y (No. 32)

Report of the Institutional Reform Committee

Justice is the goal of every Iraqi aspiring to change the current political regime in Iraq. This regime has violated the concepts, requirements, and institutions of justice. The country has become a giant prison for a people made helpless by oppression, ill-treatment, torture, and murder, both as individuals and as groups.

All opposition factions in Iraq seek political change because of the absence of justice and the prevalence of oppression, tyranny, torture, and violation of the dignity of man. They suffer from imprisonment, torture, and death without a fair trial despite the laws that safeguard the constitution and that conform to and are consistent with the Universal Declaration of Human Rights, in text as well as in application.

Iraq has a special character because of its ethnic makeup and diverse religions and cultures, encouraging factors for a successful transitional justice project, using the experience gained in South Africa, Kosovo, Bosnia, East Timor, Sierra Leone, and elsewhere, including that of the Iraqi Kurds in Kurdistan.

For this reason, liberal-minded Iraqi jurists seek legal reform in accordance with a permanent constitution, in conformity with the Universal Declaration of Human Rights. Such reform would give the judicial authority independence from the legislative and executive authorities and oversight of application and implementation of the law in a manner consistent with the constitution and the Universal Declaration of Human Rights. It would give the judiciary powers over all natural persons and corporate entities, public and private, as well as oversight on the legislative and executive authorities and the ability to prevent them from violating the law. The protection of human rights and liberties is the goal of the laws and regulations enacted. Therefore, they must derive their legitimacy from the people.

The Working Group on Transitional Justice in Iraq met in Washington in July 2002 and in Siracusa, Italy, in September 2002. Detailed discussions covered Iraq's body of legislation, the judicial system and institutions, and the reforms needed to bring them into line with the constitution and the Universal Declaration of Human Rights. The working group was divided into several committees, including responsibility, amnesty, and reconciliation; legislative reform; institutional reform; and public relations, education, legal publications, legislation. It included Iraqi and Arab legal experts capable of assisting this project.

The Committee on Institutional Reform was divided into working groups reporting to the committee coordinator, and a representative was appointed for each working group to send a summary of the group's activities to the coordinator. The latter will send the summary and a detailed report to the Secretariat of the Working Group for Transitional Justice.

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The Committee on Institutional Reform carried out the following tasks:

1. Preparation of a plan to train jurists and lawyers to apply the law in a democratic society under the rule of law
2. Analysis of groups which could hinder democratic change and the rule of law in Iraq
3. Reform of the police force and the domestic security force
4. Reform of the courts and the judicial system
5. Reform of the Public Prosecutor's office, defense services, the military penal code, and the military justice system
6. Reform of the prison system
7. Elimination of Ba'th Party privileges
8. Legal education
9. Standing Committee for the Reform of Laws and the Legal System
10. Training public prosecutors and lawyers

We will provide a summary of every report submitted on the above subjects, including proposals.

1. Preparation of a plan to train jurists and lawyers to apply the law in a democratic society in Iraq; legal education, training of public prosecutors and lawyers; Standing Committee for the Reform of Laws and the Legal System; and reform of the Public Prosecutor's office and defense services in civilian courts.

[REDACTED] prepared an exhaustive analysis of: ways to develop the work of the judiciary and the judicial system; the need to end the shortage in qualified cadres that assist judges; the role of the Judicial Academy and the need to develop it; and a discussion of the Law Regulating the Judiciary and training lawyers and jurists, as follows:

First: The constitution

The constitution is important because it is the basic law and the foundation on which all powers in Iraq rest. All laws are based on the constitutional pyramid from which is derived their legitimacy. The way in which the regime dealt with the state's

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fundamental system and legislating the provisional constitution for exceptional and emergency circumstances gave the political authority control over the state since it was the only authority. It had legislative, executive, and judicial functions, thereby obliterating the concept of separation of powers and the importance of the judicial authority. The latter was considered merely a judicial function subordinate to the executive authority and lost its independence. Therefore, the committee recommended that the separation of powers is necessary. The committee members believe that the judiciary must be independent of the executive authority so that it can regain its role and prestige and perform its duties with a free hand in order to make a positive contribution to building a civil society. The constitutional framework of authority should be given greater security and strength for the sake of justice and to guarantee individual rights and freedoms. This requires the adoption of the principle of separation of the three authorities (legislative, judicial, and executive) as stipulated in the constitution. Furthermore, the constitution incorporates guarantees for individual freedoms and rights and is the basic guarantor for building a civil society and establishing a state of laws.

Second: Developing the judiciary

The committee recommended that attention be given to the following:

1. Establishing academies for judicial studies where cadres would be trained through academic and applied courses in law.
2. Attention should be paid to the judicial police that should be separated from the regular police force. The judicial police play an important role in the pursuit of justice. It regulates court matters, brings defendants to the site of detention, summons witnesses, helps to guard and impose discipline in the courts, and serves notice. The judicial police should be accountable to the judges of the courts where they are assigned.
3. Supporting the judiciary with judicial cadres to fill the shortage in the courts.

Iraq no longer has the rich judicial expertise it used to have. The role of the judiciary has been marginalized and the members of the judicial authority have been adversely affected for various reasons and under various pretexts. Waiting for years under the new authority to develop the abilities and expertise that come with judicial experience will be difficult. Therefore, judges and members of the public prosecutor's office must be selected as in the past from lawyers, jurists, and those with judicial and legal expertise. The courts and legal departments should select those that are committed and that understand the law. They should be experienced and possess scientific honesty. They should enjoy ethics and good character required by law and justice. They should also be physically, mentally, and psychologically healthy. The following criteria should be kept in mind in the selection process:

- a. Legal service and experience
- b. The importance of the pleadings and briefs submitted in lawsuits.

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- c. Grasp of legal applications
 - d. Following up on contests and appeals.
 - e. Good record and reputation, good behavior, and community acceptance
 - f. Nomination by appellate and criminal courts in the governorates of legally qualified lawyers and jurists for positions in the judiciary
4. Need to develop the Judicial Academy and the role it would play

The Judicial Academy has, with the support of various judges, helped form the nucleus of an Iraq judiciary that could restore the prestige of the judiciary by trying to correct the negative aspects associated with the Judicial Academy and its theoretical and applied training methods. The prerequisite experience for those at the Academy should be extended by three years because the current requirement is not sufficient as far as legal experience, character building, and practical experience are concerned. A distinction must be made between persons working in the legal field and those in administrative positions, such as subdistrict administrative officers, etc. The experience and abilities of retired judges must be utilized, reinstating those who choose under special contracts, while taking into account their state of health.

5. The Law Regulating the Judicial System

The committee recommended that attention be given to the means of and prerequisites for promoting judges. Second category judges should be promoted to the office of the deputy chief of the appellate court, the office of the chief of the criminal court, membership in the office of judicial oversight, or the office of the chief of judicial departments. First category judges should be promoted to membership in the court of cassation or the office of the chief of the appellate court. This requires 20 years of uninterrupted judicial service.

The committee also recommended the establishment of a specialized court for practical training. Qualified judges with training experience would teach and pass on their experience in this court. This specialized court would be attached to the Judicial Academy to train and qualify students to join the judicial system.

The committee suggested that the study and training period at the Judicial Academy should be for three years, including one full year of practical training in various court categories. Students should be taught how to control court sessions, the work of the judicial assistant, the judicial investigator, the notary public, the executor, and lastly, the judiciary and the public prosecutor's office.

The committee advised opening a branch for the Judicial Academy in Kurdistan to develop the judiciary and its cadres.

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The committee recommended that an academic ranking be given to the certificate awarded by the Judicial Academy corresponding to the length of time the student spends in theoretical and applied studies at the Academy, provided that this diploma is evaluated by the Ministry of Education and Scientific Research. The committee also recommended a pay raise to the committee members of the Public Prosecution office to ensure to them a dignified standard of living. This will also fortify them against deviating from proper judicial conduct and anything that may raise suspicions.

The committee also recommended that the experience and expertise of the judiciary in other Arab countries and in Europe be utilized to place the judges in the distinguished position warranted by the importance of the work which they perform and enabling them to achieve right and justice among the citizens. Iraqi judicial expertise can also be strengthened by educational visits and exchange programs with other Arab countries and with European countries, as well as by attendance at specialized sessions dealing with various branches of the law. Computer programming and planning should be introduced into the Iraqi judicial system and red tape procedures that paralyze the judicial system should be eliminated. Methods that simplify judicial action and litigation proceedings should also be introduced. Court fees should be made commensurate with the value of the lawsuits so long as these fees are not so exorbitant as to burden the litigants. The principle of payment of material damages to the injured party based on any decision or judgment of the court should be established, whether the injury is physical or mental.

Third: Training of lawyers and jurists

The committee recommended that a law institute be established where law school graduates could attend academic and applied courses to prepare them to practice law, thereby strengthening the role of lawyers in the judiciary. The lawyer represents the informed judiciary to which the civil authority must pay sufficient attention. A beginning lawyer could be trained for two years with a lawyer who has at least ten years' experience, with the approval and supervision of the Bar Association.

The committee also recommended that certain authority be given to lawyers to notarize and endorse certain transactions and contracts, giving a legal character to such endorsements, and giving the lawyer the authority to notarize his client's power of attorney himself, which would give him and his acts credibility and importance. This would help reduce red tape and reinforce judicial activity. The Laws on the Legal Profession and on the Retirement of Lawyers should be reviewed to raise the material status and morale of lawyers.

The committee also recommended that preparatory courses for jurists be offered at the Judicial Academy to prepare them to write draft laws, regulations, and motions and to plead a case in court.

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The committee also recommended that academic institutions for legal consultants be established to prepare studies and research for the parties concerned to help crystallize, debate, and study ideas and then legislate them into law if they are important for the society. Finally, the committee recommended that condensed, rapid programs be developed for judicial and legal cadres outside Iraq or Kurdistan to help with the effective building of efficient judicial and legal systems in Iraq.

2. Analysis of groups that could sabotage democratic change and the rule of law in Iraq

[REDACTED] as prepared an analysis in the event certain groups sabotage the process of democratic change and the rule of law in Iraq, explaining how to deal with the negative aspects which could accompany the fall of the current regime and the absence of authority and its institutions. This could give rise to chaos and anarchy which could disrupt the forces of change (the new authority) and its leadership, preoccupying them with peripheral issues, as occurred during the 1991 uprising, with its looting and destruction of several institutions, public buildings, and government departments. Five types of groups are expected to appear after the regime change:

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a. Groups intent on looting. This can be prevented by imposing a night or day curfew, or both, in regions or cities where acts of looting are expected to occur. The armed forces could be dispersed in certain sensitive regions. All news media could be used--TV, radio, and print--to issue notices and broadcast special official orders to counteract such destructive actions.

b. Tribal groups may resort to protecting their own, regardless of oppression or the extent of their ties to the regime, in accordance with tribal tradition and customs. They may resist the new authority because some are detained and imprisoned, with the ensuing revenge-driven chaos. The new government would have to spread the spirit of justice, evenhandedness, and the rule of law to reassure all, especially the tribes. They would have to be prompted to cooperate with the new authority and hand over all those being sought, whether from their tribe or those who sought their protection. It would be made clear to them that harboring such people is considered a crime and will be punished.

c. Groups that turn to revenge for various reasons, particularly in the absence of authority or under a weak authority and institutions. After the fall of the regime, such acts could be directed at leaders or supporters of the regime itself. They have no link with the new authority and could make it difficult for the authority to carry out its role in criminal investigations and the pursuit of leaders and supporters of the regime who are being sought. Acts of revenge and killing could make it impossible to obtain important, useful information that could help stabilize the new government. Strict orders must be issued to prevent acts of revenge and the perpetrators must be held accountable if such acts occur. There should also be an awareness campaign to educate the people about the negative social consequences of revenge, as well as the fact that it goes against the teachings of Islam and civilized conduct.

d. Senior government officials and military commanders who benefit because of position and proximity of relationship with the regime. Because they will lose their privileges, this group will unite and grow under a democratic regime that protects human rights. They will try to accomplish one of the following two goals:

1) Confuse the new regime and make it difficult for the regime to achieve its goal of reaching the people. This group will also try to polarize the people against the policies of the new authority and democratic change. All the privileges enjoyed by these groups must be eliminated and the leaders must be handed over to the courts concerned for seizing and appropriating the people's wealth and public property.

2) Return to the ranks of the people with sincerity and feelings of guilt for what they had perpetrated against the people. Their privileges should be withdrawn and they should be allowed to return to their normal lives if they do not commit any further crimes against the people.

e. Ideological opposition that emerges after any political change. Belief in democracy requires freedom of opinion for all Iraqis to interact in building Iraq on a firm foundation of justice and freedom of thought.

3. Reform of the police force and the domestic security apparatus

 prepared an analysis of divisions of the security force under the current regime as follows:

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a. The domestic security force, consisting of:

The General Directorates for Police, Security, Traffic, and Citizenship, and the Border Police Directorate.

b. The special security apparatus, consisting of:

1) General Intelligence 2) Special Security 3) Fedayeen Saddam 4) the Special Republican Guard

They propose eliminating the repressive security apparatus created to protect the regime and its symbols and to terrorize the citizens, which played no role in protecting society.

As for the internal security forces that existed before the Ba'th took power and that were formed when the Iraqi state was established, these should be reorganized and purged of party elements from the division level up. They should be referred to fact-finding commissions to confess and apologize.

They also propose that:

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- a. The nucleus of the domestic security force should be composed of young, qualified, and honest graduates living abroad. These should be trained and taught law enforcement for several weeks and assigned to the Governorate Police Directorate on the day the regime falls.
- b. Retired officers and internal security force deputies should be used, especially those who refused to join the Ba'th Party or left the corps voluntarily.
- c. Members of the domestic security force who are in Iraqi Kurdistan for the transition should be used for temporary duty in Baghdad and the other governorates.
- d. A comprehensive awareness campaign should be launched immediately on the nature of the new regime and the duties of the police in maintaining the security of the community.
- e. The salaries and allowances paid to the internal security forces should be reviewed immediately after the fall of the current regime in order to insure that they are in keeping with the current cost of living and the magnitude of the tasks assigned to them.
- f. The arming of the internal security forces should be reviewed and surplus and obsolete weapons that do not meet the standards of police duties should be discarded.
- g. Members of the internal security forces should be prohibited from membership in any political party or organization.

4. Court and Judiciary System Reforms

[REDACTED] prepared a comprehensive analysis of the judicial system and courts in Iraq. He argued that they would become independent from the legislative and executive authorities following the abrogation of all stipulations in the Law Regulating the Judiciary No. 160 of 1979 and the Ministry of Justice Law No. 101 of 1977. He called for the abrogation of all other laws and regulations that give the Minister of Justice the right to head, supervise, and be a member of the Judicial Council or to intervene in its affairs or to any of the administrators or directors in the Ministry of Justice the right to belong to the Judicial Council which oversees the activities and affairs of the judicial authority in Iraq. The Judicial Council should consist of the head of the court of cassation and his deputies; the heads of the civil status and of the administrative and criminal cases in the court of cassation; and the head of the supreme constitutional court and his deputies. It also consists of the head of the state consultative council and his deputies, the head of the supreme labor court, the head of the Public Prosecutor's office, the head of the legal inspection organization, the head of the legal records bureau, and the heads of the appellate courts. The chairman of the Judicial Council should be elected by a body called the "General Extraordinary Body". This body will consist of the head of the court of cassation, the head of the supreme constitutional court, the head of the state consultative council, the head of the legal

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inspection organization, the head of the legal records bureau, and the head of the public prosecutor's office.

The supreme constitutional court, with its seat in the governorate of Baghdad, consists of a chairman, two deputy chairmen, and an adequate number of members. Its sessions are chaired by the chairman or his deputy or the most senior member. Its judgments and interpretations are issued by at least seven members. It is tasked with judicial oversight on the constitutionality of laws, regulations, rules, and decrees and their compliance with the constitution and with human rights and freedoms as stipulated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It must interpret laws, regulations, rules, and decrees in accordance with the constitution. Changes were made to the law regulating the judiciary, "The Law on the Judicial Authority," to bring it into line with the principles and provisions establishing the independence of the judicial authority and preventing any member of the executive authority from interfering in its affairs. The judicial authority has responsibility for all natural and moral persons, public and private, and for observing and protecting human rights and freedoms. Protecting these is the goal of laws and regulations, provided that these authorities derive their legitimacy from the people.

5. Reform of the public prosecutor's office, defense services, military penal code, and the military judicial system

[REDACTED] carried out the work of this committee. The committee arrived at the conclusion that the military code has two basic characteristics: military immunity and harshness of the military penal code.

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Military immunity is seen in the Law on Military Summons of 1960. It treats military personnel and members of the security organs as a special class separate from other individuals. It grants them total immunity from appearing before civilian courts regarding offenses related to individual rights, which gives them immunity from criminal liability. Article 2 of the Law on Military Summons stipulates that authorities other than military authorities or courts may not cite, summon, or order the arrest of any member of the military except through the Minister of Defense or whomever he authorizes. The Minister of Defense or whomever he authorizes may delay compliance for reasonable cause and the minister may refuse under the following circumstances:

- a. If the offense of which the member of the military is accused arises from performance of his military duties
- b. If the offense is a misdemeanor
- c. If the minister approves the trial of a member of the military, the defendant may choose a proxy

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The exceptions in Article 2 above demonstrate that military personnel have the right to appear before a court by proxy. However, under Article 145 of the Law on Criminal Court Procedures, a defendant may not appear by proxy before a criminal court.

Article 4 of the Law on Military Citation stipulates that a member of the military may be arrested only if there is a witness to the offense. The defendant must be handed over immediately to the nearest military authority.

Examples of the second characteristic--harshness of the military code--include, but are not limited to:

- Giving absolute power to the courts. With no minimum sentence stipulated, punishment ranges from imprisonment to death.
- The special section of the military penal code includes the death penalty. The penal law on deserters from military service and the penal code also stipulate the death penalty.
- The military penal code permits multiple punishments for the same offense, in violation of general principles and the Universal Declaration of Human Rights.
- Many permissible acts are criminalized in violation of the Universal Declaration of Human Rights and the general penal principle that "there is no offense and no punishment without stipulation."
- The jurisdiction of the civil courts is reduced, and the jurisdiction of the military courts is expanded.
- Article 19 of the Law on the Practices of Military Courts stipulated the jurisdiction of the military courts as follows:
 - a. All offenses stipulated in the penal code, including the special military penal code, such as the law on weapons and the law on drugs, so long as the personal right of an individual does not follow upon the offense
 - b. Any offense committed by a member of the military against another member, whether duty-related or not
 - c. All offenses occurring in a region where a state of emergency has been declared or in which military activities are taking place
 - d. The jurisdiction of civil courts in offenses committed by military personnel against civilians is restricted to the approval of the military authorities. This authority is the legal department of the Ministry of Defense or one of the security organs.

The committee recommends that the military penal code, the authority of the military judiciary, and military immunity be reviewed, as follows:

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- Review all military penal legislation, eliminate the immunity enjoyed by the military for offenses committed not in the course of duty or in military barracks
- Reduce and confine the jurisdiction of the military courts to military offenses only. These should be clearly defined. The military courts should not be allowed to enforce the non-military penal code.
- [The military] should not be given any jurisdiction or powers outside the military barracks or the assigned duties, in accordance with the constitution and the laws in force
- The committee also prepared a draft law abrogating the Law on Summons for Military Personnel No.106 of 1960, including all amendments and appendices, and extending the law on summons for civilians to all those covered by this law.

6. Prison Reform

prepared a report on prisons in Iraq, describing the positive and negative aspects of the Law on Prisons No. 151 of 1969, as amended, and the necessity of replacing the latter with provisions in keeping with the prisoner's human, educational, and occupational character. The prisoner's special character and dignity must be preserved while he is in prison as stipulated by the provisions of the law.

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- a. Positive aspects of the law on prisons
 - 1) The goal of the law is to reform prisoners and to rehabilitate them on the behavioral, educational, and professional levels. The prison system should be attached to the Ministry of Labor and Social Affairs rather than to the military establishment or the police.
 - 2) A committee of specialists should be formed to study, diagnose, and categorize the prisoner's condition and status. Programs should be designed to treat and rehabilitate prisoners on the behavioral, educational, and vocational levels.
 - 3) Creation of a directorate for health affairs to oversee the physical, mental, and psychological health of prisoners and detainees and to provide the necessary preventive medication and treatment
 - 4) Extending the status of civilian employees to all employees of the prison department; applying the civil service and organization law and the law on discipline of state employees, as well as the regulations and instructions issued with regard to these laws

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5) Establishing a center to be called the reception and diagnosis center that will classify prisoners into two main categories: a) first time offenders, b) repeat offenders. A special file should be prepared for each prisoner containing a comprehensive social study of his individual status, reports about his physical and mental health, and a study of the reasons that may have made him return to crime. Treatment programs should be designed that should take into consideration the reform and rehabilitation of the prisoner.

6) Establishing a statistics section attached to the committee of experts to evaluate prisoner interaction programs, using the results to develop therapies in prisons.

7) Entrenching the notion that work is a part of carrying out punishment, not a part of the punishment itself. Therefore, work should not be used as a tool for disciplinary punishment. Work is honorable. It rehabilitates a prisoner and trains him for an occupation to earn a living outside the prison and helps him re-assimilate in society and be a good citizen. .

However, this civilized and humane trend legislated in the law on prisons was not followed in practice and in the treatment of prisoners although the promulgation of the law was timed to coincide with the establishment of the Abu Ghurayb Prison. This prison was constructed and technically designed to meet all the requirements needed to implement rehabilitation programs with respect to treatment, education, and job training. A large number of prisoners were placed there, and various locations opened secretly in Baghdad governorate and others to place detainees and prisoners without treating them as stipulated in the law on prisons. Prisoners were tortured, injured, and their dignity destroyed by acts infringing upon their honor or the honor of their wives and relatives in order to force them to confess to crimes attributed to them. Opposition members and political figures were put in special prisons belonging to the security organs. Political figures were tortured in different ways to physically liquidate them. This in fact happened when the regime released the prisoners but the fate of a large number of prisoners remained unknown. After their families demonstrated, the Minister of Information said that the remaining prisoners had died, forgetting that their bodies had not been handed over to their families. This proves that the regime did not enforce the law on prisons, but rather applied its repressive, tyrannical, police, and liquidation methods in dealing with prisoners.

b. Negative aspects of the law on prisons that should be eliminated

1) Solitary confinement as a punitive measure should be eliminated, including depriving the prisoner of his special diet as a result of the confinement.

2) Section Seven of the law on prisons, dealing with political prisoners and detainees, should be rescinded because it violates the democratic trend of the new regime. Under no circumstances should free expression of opinion and

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opposition be considered as crimes punishable by law. Therefore, there should be no political prisoners and consequently this section should be rescinded.

c. We also propose adding the following:

1) No penalty of a disciplinary nature stipulated in the law on prisoners should be imposed except following an investigation. The investigation should include confronting the prisoner with the act attributed to him, hearing his statements, and investigating his defense. There must be a substantiated ruling, and the investigation must be in writing.

2) A prisoner must be released on the date stipulated in the ruling against him or in the arrest or imprisonment order.

3) The defense counsel of the detainee or prisoner must be entitled to meet with him in prison and in private. A foreign detainee or prisoner must be granted the right to contact his consulate or the authority representing his country's interests.

4) Individuals from the public authority may contact a detainee or prisoner only with written permission from the public prosecutor.

5) When a female prisoner's pregnancy is visible, she must be given special treatment and special medical attention.

6) A mentally ill prisoner must be given special treatment. When his mental illness is diagnosed, he must be transferred to a mental asylum.

7) Release on medical grounds must be authorized if it is proven that the prisoner has an illness that threatens his life or the lives of others. The release should be issued by decision of the public prosecutor and a copy of the decision provided to the Ministry of Labor and Social Affairs.

8) If the prisoner is seriously ill, his family should be notified of his state of health.

9) A prisoner's body must be handed over to his family and a detailed report prepared. The report should state the day on which the prisoner became ill, the type of work he was doing that day, the type of food he was eating, and the date he was admitted to hospital. The report should also include the date notification was first given that he was ill, the type of illness, the last day he was examined by a doctor, and the date and time of death.

A draft amendment to the Law on Prisons No. 151 of 1969, as amended, was also prepared.

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7. Elimination of Ba'th Party Privileges

[redacted] prepared an analysis and study of ways to eliminate privileges of party members whose fate has become directly connected to that of the regime. These have turned into mercenaries waiting for the munificence and gifts of the regime. At the same time, they controlled the fate of others, especially those that opposed the rule of the party and the regime.

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These privileges can be divided into two types:

First: Legal privileges, including, but not limited to:

1. The testimony of a party member in a court of law was considered binding when a judgment was issued in all courts. This made a testimony by a party member equal in importance to the report prepared by an official civil servant regarding all cases brought before the court.

2. Party members were granted powers that at times exceeded that of the security and intelligence organs, such as:

a. Executing military deserters. Special committees were created in all governorates, districts, and subdistricts to carry out mass executions in public, forcing the citizens to witness these odious criminal acts in order to instill fear.

b. Arrests and detentions carried out by party organizations. Citizens were detained for long periods in the People's Army barracks for the most trivial matters without arrest warrants by the relevant courts. This prevented the courts and police from exercising their duties.

c. Home searches and persecution of citizens. Based merely on suspicion and for personal and vengeful motives, party members violated the sanctity of the home by conducting searches of homes and businesses without obtaining legal search warrants from the relevant courts.

d. Members of party organizations are awarded military ranks to command the so-called People's Volunteer Units. Military companies and brigades were formed commanded by unqualified party members leading to the death of many civilians that were dragged into the battlefields, especially in the battles of al-Shush and Dizful in 1982.

Second: Privileges and Profiteering, including, but not limited to:

1. Party members appropriated large tracts of farmland under the guise of uncultivated land reclamation projects. They were given loans and enriched themselves at the expense of ordinary citizens. These loans and funds granted to party members were

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used to build homes, fishing ponds, and poultry farms. A propertied class of party members emerged that controlled the fate and interests of the general public.

2. Party members and leaders were given permission to use government buildings and the homes of Iraqis who were forced to seek refuge in Iran. They were given the right to appropriate government houses after leasing them for ten years at very low rates. They also took possession of homes and farmland belonging to Kurds forced to emigrate and expelled by force from their homes, as in Kirkuk and in Khanakin and other governorates in Kurdistan.

3. Party members and leaders were given medals of bravery in presidential edicts that equated them with military personnel. These medals of bravery included financial privileges as well as plots of land, cars, and so on.

These privileges can be dealt with as follows:

1. All the legal texts stipulated in some laws that grant special rights and privileges to Ba'th Party members must be rescinded.
2. All decisions taken by the Revolutionary Command Council in this regard should be considered null and void. The ordinary courts should be allowed to hear lawsuits filed by those harmed by these decisions.
3. The Ba'th Party should be dissolved and that will subsequently lead to the cancellation of all the privileges granted to its members and leaders. The Party should not be allowed to carry out political activity in Iraq and its assets and funds should be confiscated and deposited in the state treasury.

A draft law was also prepared to dissolve the Ba'th party and rescind the privileges granted to its members.



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Appendix Z (No. 9)

by [REDACTED]
[REDACTED]

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Criminal Courts and the Formation of Investigation Courts and Bodies

Criminal courts are one of the measures to deal with the huge legacy of human rights violations. They form an important aspect of the reconciliation mechanism. Furthermore, criminal lawsuits against the perpetrators of crimes against humanity will provide the victims and their families reassurance and confidence in the new political system. Criminal courts are not to convict the defendants but to prosecute them in order to reach the truth. A defendant that appears before these courts or other courts is innocent until proven guilty. Therefore, trials constitute the most important element to uncover the truth. The revelation of the truth will spew out and contain the desire for vengeance and it will bring about reconciliation. The truth will either result in punishing the defendant after he is convicted of perpetrating a specific and serious crime against humanity or he is punished with non-criminal penalties or he is penalized by paying compensation commensurate with the gravity of his act as we have just stated.

As for the criminal courts and how they can be formed, the following questions can be asked. Is it in our interest to rely only on an international criminal tribunal to prosecute the leaders of the Iraqi regime? Should the criminal court be a national one? Should the criminal court be a mixture of the two? The formation of an international criminal tribunal to try the leaders of the Iraqi regime does not prevent the formation of national criminal courts alongside the international tribunal. This is especially true since firm decisions taken by the international criminal tribunal will be extremely restricted and confined only to some leaders of the regime. Therefore, whether an international tribunal is formed or is not formed, it is extremely necessary to form national criminal courts in order to expedite the prosecution of the largest number possible of cases.

We also need to clarify that the system to form a special national criminal court and the powers of such a court should include all the crimes that are investigated by the international tribunal in addition to the provisions of the Iraqi Penal Code. There are examples in the world that demonstrate this trend, in other words, the formation of national criminal courts alongside a special international criminal tribunal. In 1994, a special criminal court was formed in Rwanda to try the perpetrators of crimes against humanity from the members of the Hutu tribe that committed extremely savage crimes against the Tutsi tribe. These courts complemented the work of the international criminal tribunal that was formed in Tanzania. However, this court exercised its powers in accordance with the Rwandan national law. I agree with the majority opinion of Iraqi jurists that mixed criminal courts should be avoided because such courts would lead to sensitivities in the Iraqi judicial sector and the Iraqi society in general.

Iraq has a prominent and well-respected judicial heritage. However, the practices of the current regime have seriously affected the status of the judicial system in Iraq on various

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levels, especially on the levels of knowledge, independence, and integrity. Therefore, these courts will need judges, public prosecutors, and lawyers with practical experience in their profession. These should also be qualified to receive training in special international institutes to carry out their mission. The following points should be taken into consideration when special national criminal courts are formed in accordance with a special legislation:

First, the mechanism to be followed in establishing such a court, the qualifications of its members and staff, and the powers that are given to such a court.

Second, the court should be given the authority to investigate crimes that are stipulated in the bylaws of the international criminal tribunal and will determine the crimes that it should investigate in accordance with the Iraqi penal codes.

Third, investigation committees should be formed to investigate these crimes and the perpetrators of these crimes and to examine the qualifications and powers of their members.

Fourth, the tenure of these investigation committees and courts should be specified so that these committees and courts would not eventually turn into tools in the hands of the authorities to achieve political objectives as has happened in the past.

Fifth, anyone who resorts to revenge should be included in the crimes that will be investigated by the courts in order to limit the instinct for revenge.

Sixth, the right for defense should be insured in a way that would guarantee justice and the rights of all the parties.

Seventh, the trials must be public trials because this is one of the most important ways that consecrate fair and just trials and reassure the parties in a lawsuit as well as public opinion.

Eighth, there must be a litigation process higher than these courts in order to contest and appeal against the decisions that may be taken by the court in question.

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APPENDIX AA

Discussion paper for the Transitional Justice Working Group

POST CONFLICT JUSTICE MECHANISMS

by



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Given the unhappy experiences of the peoples of Iraq during the past 30 years of the Ba'athist regime of Saddam Hussein, the concept of justice in Iraq of necessity requires a central focus on justice for the peoples of Iraq by way of both constitutional and legal/administrative protection to prevent as well as to correct abuse of the rights of all citizens.

This paper seeks to set forth an outline of the constitutional and administrative protection which and within which an upgraded system of justice can correct and by example prevent abuse.

A. Constitutional Protection

To ensure the fullest and most effective protection of the rights of all Iraqi citizens, there will need to be a Constitution which provides for administrative arrangements that diversify rather than centralise the powers of those the people choose to govern them in ways which make for sound governance while limiting the human weaknesses that can be displayed by those who wield the powers given to them by the people

There is considerable truth in the view of an 18th century philosopher on democracy who wrote:

"It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights. Confidence is everywhere the parent of despotism. Free government is founded in jealousy and not in confidence...:

It is therefore recommended that the constitutional arrangements and divisions of powers include:

1. The rights of all Iraqi peoples must be firmly enshrined in a Constitution which the people directly involved in the justice system must swear to uphold, under pain of removal and prosecution if they fail.
2. That Constitution would, I suggest, serve this purpose best if it properly recognised the diversity of the peoples of Iraq in terms of their ethnicity, including but not limited to Arabs, Kurds, Turkmen, Assyrians, Armenians,

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Sabian Mandaeans and others - and their religions - Shia and Sunni Moslems, Yazidis and Christians of all the Middle East denominations.

This could best be done, I would suggest by shattering the centralised form of government which has prevailed to date in Iraq and embracing instead a decentralised and essentially secular Federal parliamentary system

This new federal system would result from creation of a new Iraq comprising a series of at least five basically autonomous states and within them an appropriate number of local government areas, with the states freely united together as a federation, and conferring limited powers on a federal parliamentary government.

3. So as to ensure a reduction in tensions between the various peoples of Iraq and ensure the proper representation in the governance of the new federal Republic of Iraq, thereby ensuring just participation in their governance, it is proposed that it be agreed that the new Iraq comprise, at least, the following new States with boundaries to be decided by common consent:
 - A central state which could include Baghdad, Mosul and Sallahalddin
 - A northern state embracing, say, Arbil, Suleimaniya and Dohuk
 - An eastern state comprising, say, Diyaleh and Kirkuk
 - A middle state comprising, say, Kerbala'a, Najaf, Kut and Anbar
 - A southern state comprising Basrah, Diywaniya ,Almuthna and Nassyriah

Federal Territory

It may, as a matter of practicality, be necessary for any elected or selected transitional commission to reconcile competing interests as to the territorial configuration of the new states and the question of the home for a new national seat of government. It may be necessary to select and excise a territory of some 100 sq kms to house of the federal Parliament, and the government ministries or departments and new federal agencies plus the people who will work in them and nominate this excised area as the Iraq Federal Territory.

Or two capitals may be selected - Baghdad during the spring and winter months and Sallahaddin for the summer months.

4. **A Federal Republic of Iraq**
Such a federal system should provide for freely-elected state parliaments whether of one or two houses or chambers and within each state there should be a series of freely-elected local government councils which will be responsible for their local territories. There will also need to be a freely-elected federal parliament of one or two houses/chambers limited to a four-year term
5. **The States**

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Each State should have a *Ra'aees el Mahdi* and a separate Chief executive of each state should be chosen by free elections –in which voting would be compulsory - for a term of four years, separately. The Chief executive should be selected by secret ballot from among the members of the State parliament also freely elected to represent their local constituents.

The chief executive officer could be known as the Premier. That office-holder would be elected by the state Parliament. The Premier would set up a Cabinet of Ministers drawn only from other Members of Parliament to ensure their full accountability. That government would have carriage of the administration of the affairs of the state.

Administrative powers would rest mainly with the Premier and his government, with the *Ra'aees el Mahli* given only selected powers to ensure the protection of the residents of the state.

These limited powers could include the running of a State Emergency Service to look after residents during natural disasters, including fire flood and famine, directing an Auditor-General reporting on the performance of the ministers and ministries of the government led by the Premier, with particular concern for fair dealing with and infringements of the defined human rights of the state's residents.

6. The Federal Government

The national head of the federal Republic of Iraq should be elected . He or she would be limited to serve a maximum of two (2) terms then must never be permitted to be elected again. It is suggested that each term must not exceed 4 years.

The Parliament should be elected at a national election. After the election, from within the ranks of the Parliament should be chosen a Prime Minister who would then select from among the elected Members of Parliament his own Cabinet of Ministers. He would be the Chief Executive Officer of the nation and with his Cabinet constitute the government for as long as they have parliamentary support by a vote of confidence of an absolute majority of the Parliament.

7. Certain explicitly-stated powers should be reserved to the Federal government. All other powers should reside, under the Constitution, with the states. (See the separate attachment for a listing of possible powers.)
8. The powers of the President would be limited to the following functions
 - Titular commander-in-chief of the Armed Forces.
 - Operational head of a National Emergency services agency coordinating the work of state emergency services

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- Directing a National Electoral Commission, charged with setting up voter registration for all State and federal elections and ensuring the conduct of free and fair elections under international scrutiny, if requested.
- Directing an Auditor-General's Office with the duty of reporting to the President on the performance of the Ministers and ministries of the government led by the Premier, with particular concern for fair dealing with and infringements of the human rights of the state's residents.
- Directing a National Human Rights Commission to ensure that the human, civil political and cultural rights of all citizens are protected and bring any official offenders to public notice and possible court action.
- Acting as the source of recommendations to the federal Parliament to ratify international treaties, conventions and bilateral agreements.
- Act as the final signatory to all and any all Court sentences involving the imposition of the death penalty and make decisions on any amnesties or pardons decided to be proper on his own or on the petition of other citizens of the federal Republic of Iraq.
- Directing a national Bureau of Census and Statistics to ensure that an independent national census of residents is conducted each five years and the results published as quickly as possible and studies conducted on other relevant statistics to guide the public and the departments and agencies of the federal and State governments.

The President must not otherwise interfere in appointments to or the work of the Federal government or any State government or local council.

9. It should be made expressly clear whether in the Constitution and certainly in the oath of office, that all elected Presidents, *Ra'ees el Mahlis*, chief executive officers, cabinet ministers in all of the states and local government councils and in the federal territory wherever it may be located, and also their families have no special status or privileges under the law. They enjoy the same rights as ordinary citizens but have to take on added responsibilities.
10. **The Constitution must also contain a Declaration of the Rights of Citizens** which should clearly and explicitly define the limits of how far either a state or the federal Government can go in law-making that affects citizens.

This could best be based, I would suggest, on the International Human Rights Treaties to which Iraq is already a signatory: the Universal Declaration of Human Rights, the UN International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

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An attached list details some of the specific human, civil, political and cultural rights which should be included in the Declaration.

B. AN APPROPRIATE JUSTICE SYSTEM

1. The constitutional arrangements would, of necessity, require parallel justice systems in each state and at the federal level.
2. The elements of the justice system to be considered for the protection of the rights of all citizens must, I would suggest, embrace law enforcement, an Office of the Public Prosecutor, a Government funded legal aid service, trial by appropriate tiers of courts and, finally, professional correctional services looking after prisoners sentenced only by a court.
3. At the law enforcement level, there would be a need for state and federal police services enforcing the laws of each state and federal laws in a fair and co-ordinate manner.
4. In addition only at the federal level there would be a need for a national security and intelligence organisation. But it should have no powers of arrest or detention without a legal authorization from the office of the general prosecutor.

5. All hearings before all courts and Tribunals must always be open to the public and the Press.

6. **An Iraq Legal Aid Service**
There should be a national Legal Aid service staffed by a combination of experienced and newly graduated lawyers to ensure that all defendants brought before all relevant courts, State and Federal, have legal representation. These lawyers are paid by a special budget allocated from the ministry of justice and the lawyers union.

7. **State Courts**
Each state should have at least four tiers of courts:
 - A network of local courts for handling minor infringements of the law and civil disputes as well as traditional Sharia'ate personal status cases. An appointed magistrate/judge, being a person with at least a law degree and experience and understanding of local conditions and behaviours, should preside in these courts which should be set up in each major town and city of the state.

 - An Administrative Appeals Tribunal to which aggrieved citizens can go where decisions by State bureaucrats can be challenged by way of a review of the fairness, natural justice and merits elements of the decisions.

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The Members of such tribunals should be either legal or non-legal professionals experienced in administrative procedures and able to refer to a Senior Judge, as the President of the Tribunal; on points of administrative law.

- A district court for handling criminal offences and civil claims. These courts should be presided over by an appointed Judge who has both a degree and at least five years experience as a lawyer practising in the courts.
- A State Cassation Court which is the final court of appeal for both criminal and civil matters

8. Federal Courts

There should be a national network of Federal Courts comprising

- Federal Magistrates dealing with criminal, security and civil federal law cases, at the first level
- An Administrative Appeals Tribunal to which aggrieved citizens can go to have decisions by Federal bureaucrats reviewed for the fairness and natural justice elements of the decisions.
- Federal Court judges of pre-eminent status dealing with more complicated legal aspects of criminal, security and civil federal law and appeals from decisions of the Federal Administrative Appeals Tribunal
- A Federal Court of Cassation comprising at any hearing of five (5) judges of the Federal Court

9. A High/Supreme Court

Separately, there should be a High/Supreme Court comprising five of the best legal/judicial minds in the country for ultimate appeals on disputes between the states and the federal government or aggrieved citizens on interpretations of the Constitution and on division of powers and on claimed infringements of the Declaration of the Rights of Citizens.

10. All presiding members of State and Federal and the High Court should be appointed by the respective government of the day, confirmed by the state or federal legislatures and provided with funds and skilled staff to set up appropriate registries and associated computer systems to ensure the upright, skilful and prompt functioning of the Courts

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11. All presiding Judges should be required to be respected by the administrators, the legislatures and citizens as completely independent in their decision-making and, to ensure a proper check upon any excesses by the other branches of the government, have the right to report to the Speakers of the appropriate legislatures on any political or other influence or pressure exerted on them.

12. The Office of the Public Prosecutor

There should be in all states a Public Prosecutor responsible for recruiting and training prosecutor staff from among law graduates and preparing and presenting all criminal cases to the State courts.

Likewise there should be a Federal Public Prosecutor with similar responsibilities for criminal cases involving either individuals or corporations going before the Federal Courts.

It should be up to the litigants, whether private or institutional, to arrange their representation at Hearings before the High/Supreme Court according to rules which the Court itself will set.

13. Corrections System

Each State should be responsible for setting up, staffing and administering its own series of gaols in which offenders are incarcerated only by decision of the courts.

Corrections officers should be specially trained. Their major objectives, besides tolerant and fair rules for good order and discipline in the institution, should be the rehabilitation of the prisoners and their preparation for release back into the community.

All prisoners will have agreed visitation rights, in private, from their families and their legal representatives at reasonable times.

The States will make mutually-agreeable arrangements for the housing of citizens sentenced by Federal Courts in the State territories unless the Federal government decided to establish its own Federal prison facility.

All state and Federal prisons will conform to international custodial norms and make their facilities available without demur to any requested inspections under UN and international-recognised human rights groups auspices and make any changes that may be recommended from these inspections.

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Such a system would, I suggest best serve the citizens of Iraq as a fetter against the legislative and executive branches of government doing evil against the citizens.

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Attachment to the Discussion Paper

POST CONFLICT JUSTICE MECHANISMS

by



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Suggested

DIVISION OF POWERS IN A FEDERAL REPUBLIC OF IRAQ

Explicit Powers to be granted to the Federal Government and exercised through the passage of laws and regulations in the federal Parliament only within the limits prescribed by the new Iraqi Constitution, could include:

Foreign Affairs:

Only the Federal Government, through a Foreign Affairs ministry, shall represent Iraq in foreign countries and in the UN and allied international organisations and negotiate international agreements with other sovereign powers.

However -

- any bilateral or multilateral treaties negotiated and international agreements must be ratified by the Federal Parliament before they come into force; and
- all UN treaties and covenants to which Iraq is already a signatory and becomes one in the future, automatically become part of the metropolitan law of Iraq and are to be enshrined in Acts and associated Regulations to be passed promptly by the federal Parliament.

Through its offshore consular services the federal Government shall issue simple visas to citizens other countries to come into Iraq for a period of 90 days, withholding these only on health or security grounds. Any other types of visas the federal Parliament may wish to issue can then be applied for within Iraq.

Defence:

Only the Federal Government, through a Defence Ministry, shall raise, train and arm functional and reserve units of an Army, a Navy and an Air Force.

However -

- no armed intervention beyond the borders of Iraq will be permitted without the prior consent of the Federal Parliament; and
- no conscription of any Iraqi citizens to be trained and to serve in any of the armed forces shall be permitted unless approved by a national referendum of the people of Iraq after agreement by the Federal parliament and then only for a nominated period; and
- No internal Military Intelligence activity of any sort will be permitted. Enforcement of military law shall be in the hands only of military police units who will have no power to interfere in any way whatsoever with non-military civilians.

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and

- Only the Federal Parliament has the power to declare war, upon the prior recommendation of the Prime Minister and the Minister of Defence jointly with the President.

Treasury and Finance:

The Federal Government will have power to raise its finance only by the imposition of income taxes and a goods-and-services tax, customs and excise duties and appropriate agreed levies, as approved by the Federal parliament.

The Federal Government will be obliged to assist the states' budgets by the payment of at least 30% of the monies thus raised to them each year by way of "no-strings" grants distributed in accordance with the population of the states.

Central Bank:

Only the federal Government through Parliament shall set up a Central Bank which shall regulate all aspects of the banking system including privately-owned and operated banks in the nation. The Central Bank shall be operated by an independent Board of Directors appointed by the Federal Government and will independently of the Government and the Treasury sustain the Iraqi economy through wise monetary policy.

National Identification of Citizens

The federal Government will be responsible for

- registering all birth, deaths and marriages in the nation and issuing certificates of registration
- issuing a simple national identity card to all Citizens
- issuing a passport to all Citizens wishing to travel abroad. Exit permits are banned.
- Maintaining a DNA database of all citizens, access to which is to be confined to medical researchers and law enforcement authorities or as federal Parliament may from time to time decide.

Health and Social Services:

The federal Government shall set up and operate through an independent Health Commission a network of hospitals and aged care facilities and a national health-care system so that all citizens receive proper, professional and affordable health care. The national health commission shall register all privately-owned and operated hospitals and set standards for their operation and care provided.

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As part of this, an element of the health care to be available to all citizens should be the provision at no charge to them of all the medicines and pharmaceutical drugs their doctors may prescribe to preserve their health and medical well-being.

Only the federal Government shall, in the interest of the health of the citizens prescribe standards for foodstuffs and medicines and drugs and require compliance from producers and users.

The federal Government shall also devise and operate a social security system an appropriate combination of superannuation and pension payments to ensure an appropriate living standard for all citizens, regardless of age and employment status.

Fuel and Energy

The federal Government shall be responsible for the further development, operation and the internal sale and the exporting of the fuel and energy resources of the nation.

However-

- the federal Government shall pay to the states in which these fuel and energy resources are found a special resource rent annual payment of 30% of the market value of such resources extracted from the grounds; and
- The States containing these resources may also set conditions on the extraction and processing of these fuel and energy resources to limit pollution and preserve the built and natural environment and the health and amenity of the citizens of the areas in which these resources and processing plants are located.

Trade, Interstate and Civil Aviation Transport Systems:

The federal Government shall develop and maintain a network of divided road highways throughout the nation and set tolls for their use. However

- the movement of citizens and trade goods and services between the states shall be absolutely free and unregulated.

Only the federal Government shall set up, construct and operate railway services and freight centres between the states and with neighbouring countries and impose charges for the use of these facilities, such charges to have the prior approval of the federal Parliament.

The federal Government will maintain a network of international airports and air traffic control services and it will register national and international airlines to use those facilities at charges approved by the federal Parliament.

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The federal Government shall have the power to negotiate trade agreements for both the importing and exporting of goods and services and to issue export licences and levy export duties for primary products, goods and services originating in Iraq.

Customs and Excise

The federal Government only shall have the power to develop and maintain a Customs service and levy customs duties and excises at ports and places of entry into Iraq, consistent with its international obligations set down in approved agreements.

Communications

Only the federal government shall set up and maintain a national broadcasting service of radio and digital TV to be operated by an independent commission free of all government interference in its programming and staffing.

The federal Government shall also establish and a communications commission to set standards for telephone and data services and register communications services providers for radio, TV, telephone and data services, including Internet service providers.

However

- there shall be no interference whatsoever with the content of such services, except as may be agreed by the federal Parliament in the form of codes which reflect the national and the public interest developed in cooperation with the service providers; and
- the privacy of citizen's communications between each other shall be absolute. No tapping of telephones, interception and reading of mail and e-mail, monitoring of computer communications or secret recording of conversations can be authorised, except in cases of high national security or cases of organised criminal activity and then only by the authority of a written warrant from the federal President.

Education & Research

Primary and secondary education shall be the exclusive power of the states. The federal Government shall set up, develop and a system of universities and other tertiary institutions and research institutes in all states.

Access to education at all levels shall be absolutely free of charges and fees on students and limited only at the tertiary level and higher by the setting of entrance standards by the teaching institutions.

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National Security

Only the federal Government shall establish and maintain a national security and intelligence organisation to gather intelligence overseas as required and to monitor and track down and put a stop to espionage activity within Iraq.

However, as noted,

- such a service or services shall have no powers of arrest or detention without legal representation to any Iraqi citizens detained within one day of their detention; and
- any charges of offences against Iraqi citizens shall be handed on promptly to the Office of the Public Prosecutor for formal Hearing in open court.

Limitations

There shall no longer be in the Republic of Iraq, a Ministry of Justice or Ministry of the Interior. The delegated powers previously exercised by such ministries in the past shall be allocated to other ministries and/or departments as the first Prime Minister may nominate for the approval of the first federal Parliament.

ALL OTHER POWERS RESERVED TO THE STATES

All other administrative powers of government devolve to the states of the Federal Republic of Iraq and are subject to and limited by the powers and rights conferred on citizens by the Constitution.

Such powers can come into effect only when appropriate Laws and allied Regulations are passed by the state Parliaments and publicly promulgated as the law of the State. These powers may be varied by agreement between the States and the Federal government as ratified by the Parliaments.

These powers will include but not necessarily be limited to the following:

Land -- all lands not already privately registered and held become the property of the State and shall be managed and/or disposed of as the state government with the consent of the state Parliament may see fit. However

- The owners of any lands privately held which the state Government may wish to resume for public purposes must be compensated at fair market value to be determined by the state's Administrative Appeals Tribunal if no agreement on the amount of compensation can be reached.

Revenues -- raising revenues by way of land taxes, stamp duties on the transfer of property, motor vehicle registrations and suchlike

Treasury -- the raising of state-guaranteed bonds and offshore loans to finance development projects and recurrent budgets

Education -- the setting of standards of primary and secondary education which meet the requirements of educators, industry and the universities

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Transport – the provision of and regulation of intrastate road and rail systems and intrastate air services; and the licensing of vehicles and motor vehicle drivers

Social services – the provision of child care and child protection services, aged care and other community assistance services not provided by the federal government and considered desirable.

The professions – the registration and regulation of the professions.

Agriculture and mining – advice, assistance, research and regulation of agricultural and mining activity in the state except fuel and energy resources which are reserved to the federal Government.

The environment – management of, research into and regulation of the natural and built environment in the State.

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Attachment to the Discussion Paper

POST CONFLICT JUSTICE MECHANISMS

by



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Suggested

**POINTS FOR A DECLARATION OF THE RIGHTS OF CITIZENS
OF IRAQ**

An explicit listing of the Rights of Citizens must include the following:

1. All persons born in Iraq automatically have the right to Iraqi citizenship and nationality and are thereby entitled to a national identity card, a passport and all the other residual rights of citizens, no matter where they subsequently reside.
2. All citizens are to be treated by all lawful authorities equally and with dignity and without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, ethnic or social origin, property, birth or other status
3. Every citizen has the right to life, liberty and security of person and all have the right to recognition as a person before the law. No citizen may be held in slavery or certitude. No citizen shall be subjected to physical or mental torture or threat of torture or to cruel, inhuman or degrading treatment or punishment or to arbitrary arrest, detention or exile.
4. Every citizen has the right to freedom of movement and residence within the borders of Iraq. There shall be absolutely no restriction whatsoever on a citizen's free improvement between towns and states comprising the Federal Republic or Iraq.
5. All citizens have the right at any time to leave the territory of the Republic at any time without restriction and to return to it freely on presentation of his passport.
6. All citizens have the absolute right to freely communicate with each other whether by face-to-face meeting, by telephone, by mail or by computer, including over the Internet. No monitoring, tapping or bugging
7. All citizens have the right of private ownership of lands on which they reside and which they work and no citizen shall be arbitrarily deprived of any of his/he lands. Any lands resumed for lawful public purposes will be compensated by the resuming authority at full market value or the final ruling of the Administrative Appeals Tribunal should agreement not be reached.
The ownership of land will be defined as ownership of the surface of the land, the air

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above the surface to a height of 50 metres and to the ground below the surface to a depth of 50 metres. But ownership of any minerals or other resources below that depth is reserved for government - the federal Government in the case of a sub-surface fuel and energy resources, the state government in the case of deposits of minerals.

Full, just and fair compensation based on prevailing market value plus an appropriate royalty must be paid to any citizen owner of land whose area of land is in any way disturbed by access to any underlying resource

8. Citizens shall not be subjected to arbitrary interference with their privacy, their family, their home or correspondence and personal papers nor to attacks upon their honour and reputation. The law of Iraq is to provide full protection against such interference or attacks.
9. No law can be made about the establishment of a religion or restricting the practice thereof, except that this right does not necessarily extend to proselytising by a particular religious group, if civil distress or unrest may ensue in any particular area of the Republic.
10. No law shall be made restricting the freedom of speech or of the Press and associated news media or the right of citizens' peaceful assembly to seek to have the authorities redress grievances.
11. The right of citizens to acquire, own and use their property for lawful purposes may not be abridged – nor shall the right of citizens to be secure in their persons, their residences, their documents and papers and their effects be abridged by unreasonable search and seizure.
12. Any intrusion onto a property of any citizen for purposes of search must only be conducted by at least two duly authorised law enforcement officers accompanied by the district mukhtar or a representative of the Office of the Public Prosecutor who shall first present to the head of the household a search warrant sworn before and signed by a judge of the District Court and stating the reason for the search being made.
13. No citizen may be arrested except by a duly authorised law enforcement officer of a state or a federal authority without the presentation of a proper identity authority carrying the officer's name and number and a stated reason for the arrest and a verbal statement of the citizen's rights. The arrested citizen must be taken immediately to the nearest police station and formally charged before any subsequent interview. No interview may be conducted except in the presence of a legal representative of the citizen's choice or if none is nominated, an officer of the Legal Aid service.
14. Any person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a speedy and public trial before a jury of his peers in the district in which the alleged crime was committed, to have the right to

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legal counsel, to be confronted by and have the right to cross-examine the witnesses against him and to obtain and present witnesses in his favour and otherwise have had all the guarantees necessary for his defence.

15. Any citizen arrested shall not have excessive bail required of them, not have excessive fines levied against them.
16. All citizens regardless of sex or ethnic origin have after the attainment of the age of 18, the right to enrol themselves as an elector for an electorate in which they reside at the time of any state or federal election and further have a responsibility to vote in these elections and in any associated referenda.
17. No citizen may be compelled to belong to any association, party or union and every citizen has the right to freedom of association and peaceful assembly.
18. Every citizen has the right to access without fear or favour all the public services of the Republic and to access all the lawful privately-operated services including all media and communications services.
19. All citizens have the right to education at the primary, secondary and post secondary technical level, to tertiary education if they are so suited, to work, to free choice of employment, to equal pay for equal work, for just and favourable conditions of work rest and leisure, to protection against unemployment and to form and to join trade unions for the protection of their employment interests.
20. In the exercise of their rights and freedoms, all citizens shall be subject only to such limitations as are determined by law and passed and promulgated by the Parliaments of the Republic solely for the purpose of securing due recognition and respect for the rights and freedoms of other and of meeting the just requirement of morality, public order and the general welfare of the democratic society which constitutes the Republic of Iraq.

Specifically no citizen of Iraq shall be bound by the terms of any decrees or executive orders passed at any time, whether past or future, without the authority of an elected Parliaments by way of the passage of a law or by a motion of ratification of a particular executive decision.

21. No Parliament at any level of government in Iraq shall pass laws that conflict with the rights of citizens as listed in this Constitution or as contained in the Universal Declaration of Human Rights or the Principal UN International Human Rights Treaties to which Iraq is or becomes in the future a signatory, including the present Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment yet to be ratified by Iraq; except that
22. Consideration of the abolition of the death penalty be deferred for a period of no longer than ten years after the collapse of the regime to allow for appropriate

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punishment of those Iraqis found guilty of crimes against humanity, to wit their fellow citizens, as defined by international law

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Discussion paper for the Transitional Justice Working Group

LEGAL REFORMS FOR TRANSITIONAL JUSTICE

by



B6

It is obvious that the collapse of the Ba'athist regime of Saddam Hussein could well lead to widespread civil disorder and strife throughout Iraq, along the lines of the 1991 *Intefada*. There would then arise the serious risk that innocent citizens may suffer intense persecutory treatment at the hands of angry populations if wrongly accused of involvement with the Ba'athist regime.

Equally there is a deeply felt belief that those Iraqis who of their own choice involved themselves with the Ba'athist regime be held to account for the way in which they either participated in or countenanced the atrocities committed on citizens in the years since Saddam Hussein and his version of the Ba'ath Party - and then his family - came to power in 1979 - if, indeed, they escape the inevitable initial retribution.

It is therefore proper to consider how best civil order and good governance can be restored to Iraq and what transitional administration measures and transitional justice system can be put quickly into place to ensure the protection of all citizens

Some suggestions:

1. The establishing authorities, military or otherwise, responsible for the ending of the regime should act by special mandate to restore good order and the rule of law for a period of not longer than three months and in the process -
 - immediately set about registering and releasing all prisoners held in regime gaols and replacing them with persons to be arrested for holding any high offices by special favour or having been unfit for these appointments.
 - Sequestering and placing under armed guard, all former regime property across the nation, including presidential palaces, Mukhabarat and Ba'ath Party offices, government factories, government warehouses and shops, government rail and road transport equipment of any kind, government communications transmission systems - including both broadcast and telecommunications facilities - and all other government items.
 - Freezing all property ownership transfers so as to permit the later return to citizens of property seized from them by the previous regime;
 - Registering all claims and complaints by citizens as to property and personal ill-treatment.

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- Dissolving the Ba'ath party and prescribing it from future participation in the governance and political processes of Iraq.
 - Declaring as no longer operative all decrees and executive orders issued by Saddam Hussein and the Revolutionary Command Council and Ministries, unless especially specified by the interim authority.
 - Formally declaring an amnesty for all Iraqis previously regarded as Army deserters, persecution escapees and persons incriminated for political or other opposition to the regime – and formally abolishing conscription for the armed services.
 - Declaring as reinstated for a period of six months, the temporary Constitution adopted on 14 July 1958
2. In order to prepare for the assumption of power by an interim Iraqi government, the same establishing military or other authority convenes within one month a conference of Iraqis comprising at least one delegate from each of all the major political parties in opposition, whether within or outside Iraq and from each of all the ethnic and religious groups and from each of all the professional groups constituting the peoples of Iraq.
- This conference be empowered –
- In the first instance to select a temporary central government comprising an interim President, members of a Cabinet of Ministers and an interim Federal Court of at least five Judges, to assume powers from the establishing authority, for the administration of the country and the protection of citizens for a period of no more than 12 months; and
 - In the second instance to re-convene itself as a Constitutional Convention meeting full time within Iraq to finalise a completely new Constitution dedicated as previously suggested to establishing a federal system for Iraq comprising legislatures, an executive and a judiciary and other institutions as previously foreshadowed. Their writing of the new Constitution should be on the basis of mutual agreement.
3. Upon the selection of the interim President and his Cabinet and the Judges of the Federal Court, specific dates be set for -
- A national referendum on the new Constitution, to be held no later than nine months from the collapse of the Ba'athist regime; and
 - A general election for such Parliaments and local government councils as may be agreed under the new and approved Constitution to be held three months later – and at which all citizens not in custody shall have the right to nominate for office and the responsibility to vote on the day of the election.
4. In parallel
- A. The interim President and his Cabinet will immediately decide their administrative priorities and set about implementing them, including the necessary action to
- Arrest, hold in prison and prepare the cases against, Saddam Hussein, his family members and all his senior and regional associates on charges applicable to the tenets of international law on crimes against humanity;

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- Register all newspapers and magazines which citizens may wish to publish with a view to having them publish within one month of application
 - Invite and register all persons and organisations to tender for licences for radio and television services, broadband and Internet services and other media and telecommunications services with a view to having them licenced within one month of application and functioning within three months.
 - Call applications for registration of political parties, human rights organisations and social and educational organisations.
 - Appoint a small general staff of such military services as are considered desirable, a national Commissioner of Federal Police, a Corrective Services Commissioner to rehabilitate the national prisons and the Director of a national security and intelligence organisation; and
 - Appoint a Public Prosecutor, with a brief to begin recruiting his staff.
- B. The Judges of the Federal Court will immediately review the current state of the Iraqi judicial system, confirm the appointments of those judges particularly at the lower court levels considered to be untarnished by the former regime and request them to resume work on civil and Sharia'ate personal status cases as soon as possible.

The judges will also set up their own interim registry and make decisions on which civil cases they should proceed with and institute liaison with the Public Prosecutor on the cases he will be initiating as a result of the regime downfall.

They will also examine any decrees or executive orders from the transitional Presidency and Cabinet to ensure they conform with the interim 1958 Constitution and the Universal Declaration of Human Rights and other UN Covenants relating to Human Rights and endorse or advise accordingly.

These transitional units of government and the judicial system will continue their work until after the election of the Parliaments and establishment of whatever State and federal administrations are authorised by the new Constitution. These transitional units will then become absorbed, as appropriate, into the governance of the new Iraq.

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APPENDIX BB

Discussion paper for the Transitional Justice Working Group

POST CONFLICT EDUCATION

by



December 2002

B6

There will be no dispute that in a democratic Iraq, a fair and comprehensive Education system will be crucial in bringing about the changes needed to permit Iraq and all Iraqi citizens to blossom to the point where they can begin to realise their full potential.

Therefore it is important to give priority to and place proper stress on the need to re-establish a full and fair Education system available to all Iraqis – free and comprehensive at the primary and secondary levels and free on the basis of merit at the post secondary technical institute and the tertiary University levels.

It must be recognised that before the advent of the Ba'athist regime of Saddam Hussein, Iraq had what is generally regarded as a high-quality education system at all levels. At the time of the Kingdom, the Iraqi education system was modelled on the British system of that time. Major colleges taught courses using books used at the British universities. The national Baccalaureate examination was based on the British national exam. That is why Iraqi students never had serious problems during their academic studies in foreign countries.

Now all that has been undermined by the Ba'athist approach to education. There is therefore a dual challenge for a renewed Education system in Iraq.

The first challenge for a post-conflict democratic Iraq is to rid the education system of the pernicious prosyletising by the Ba'ath Party regime of their weird concepts of nationalism and subjection to the regime which are currently instilled in primary and secondary school students – and the requirement that for the most part only members of the Ba'ath party can go on to higher education.

Secondly, the technical institutes and the universities of Iraq are for the most part still accepted internationally for the quality and rigour of their academic and technical training standards. However, in a post-Saddam Iraq there is a special opportunity to upgrade and enhance the system of education so that the talents of the people of Iraq can best be realised for the benefit of all citizens and correct the low level of English among students which now prevails, forcing them to sit for international tests such as the IELTS.

In general

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- Entry to university courses must be on the basis of academic merit only. There must be an explicit ban on any social qualification such as membership of a political party, relationship to a party of government leader, to being only an Arab national and certainly a ban on membership of a particular family or tribe or a particular religion or a particular ethnicity being required for entry to any tertiary institution which receives taxpayers funds.
- The Parliaments of the States or the Federal territory must elect the senior members of the ruling Councils of the universities and technical institutes in their territories. The candidates should be nominated by other members of the Council on the advice of the academic staff of each institution. The Deans of each faculty, school or college of an institution must be selected by the Council of the institution only on the basis of elections among academic staff. Only in such a manner can academic freedom and merit be fostered and preserved.
- Members of Councils and Deans of faculties or schools must further be required to take an oath to serve only the interests of the university or institute, the school and its students and the nation without regard for race, sect or personal relationships.
- Each State and if necessary the Federal territory shall set up an expert Higher Education Commission to register current universities and technical institutes and any new ones that may be established. It will be the responsibility of the federal government to maintain a flow of funds for these institutes and universities, sufficient for them to pay staff salaries and provide all necessar facilities for students.
- All tuition at universities and technical institutes shall be absolutely free to the students and their families who win places at the institution's courses on the basis of merit.

In addition, at the Post Secondary and University level -

- Where post secondary or tertiary institutions are set up by any particular ethnic or religious group, there must be an adherence required for the registration of such schools or institutions to the offering of a common core of secular courses which will be tested by an independent set of examinations or tests set by State Higher Education Commissions or professional bodies.
- It must be a condition of State registration and/or Federal funding that ALL degree or diploma or certificate courses must comprise a set of core required subject units plus elective subject-units from which students may choose to suit their interests and needs, so enabling them to acquire a major specialisation and recognition of another "minor" area of study which can be later built up into another degree.

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- However, for the first 10 years of Iraq's new system, the Universities must prepare students for public administration work, by offering subject units about the development and analysis of democratic thought, democratic constitutions and democratic processes in countries and political systems around the world as well as acquainting them in depth with the chosen Iraqi model.
- There shall also be set up an independent Federal Higher Education Accreditation body comprised of a majority of academics and leading professional persons to accredit all current and future courses (including post-graduate courses) leading to the award of diplomas or degrees.
- The accreditation process will be on the basis of publicly-announced national standards based on a course's ability to deliver up-to-date academic knowledge and the social/ professional application of that knowledge through modern teaching approaches. The body shall publish a list of all courses it has accredited each year before the start of the academic year to inform potential students adequately. No non-accredited course can receive Federal government funding.

At the Primary and Secondary School level

- Every State shall appoint an independent expert Education Commission to take over existing secondary schools and operate them, recruit teachers on the basis of merit and qualifications only and to prepare students at the high school level for a national Baccalaureate examinations. To eliminate the offering of pernicious private and expensive "cram" courses for Baccalaureate candidates, the State Education Commission shall also approve either technical institutes or private education providers to assist Baccalaureate candidate to prepare for the national examination at no cost to their families.
- The Federal government must provide an adequate flow of funds to each State's school system. It will therefore appoint an independent National Education Board of experts charged with the main task of reviewing the standards of secondary students compared with other developed countries and recommending to the State Education Commissions on additions or deletions to school curricula.
- In addition the National Education Board will set up and conduct the annual national Baccalaureate examinations for high school students in their final year and liaise with the State commissions and the universities on the syllabi for this examination.
- Independent schools will be encouraged to establish their institutions after being accredited and registered on the basis of special standards put forward by the National Education Board which shall also be required to approve the quality of teaching staff, facilities and courses.

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- There must be complete academic and social freedom accorded to the teachers and administrations of all schools and institutions at all levels of the education system guided only by community needs and expectations, not by government or religious demands.
- To that end there should be a dissolution then a complete restructuring of the Iraqi Union of Teachers so that it too becomes a series of State branches with a Federal executive. The Union shall be responsible in each State for the registering of teachers on the basis of prior experience and qualifications and with the development of new qualifications and/or refresher courses in close liaison with the faculties of education at universities. Party affiliation shall be explicitly banned as a qualification to be a teacher. The primary mandate of the Union must be to look after the professional standards and the interests of its teacher members and defend their needs and rights.
- The National Education Board will be given as an added responsibility the development of appropriate courses and activities that will engender in both primary and secondary school students an awareness, appreciation of and respect for human rights, citizens rights and multicultural diversity in the new democratic Iraq, particularly in the context of national aspirations and love of country in order to demonstrate the value to citizens of the establishment of international peace and order.
- The National Education Board will also take on the development of appropriate courses, as well, on the natural environment of Iraq and its wildlife and ecosystems and the need for sustainable human practices in agriculture, water management and waste disposal.
- This Board must further be provided with funds to develop high-quality audio-visual and digital aids by way of TV and multi-media programs to support these courses and other courses in the school curricula, for use in classrooms and in school theatres.
- The right to all levels of education **must be completely free** to all citizens of Iraq. All children of primary and secondary school age must attend their local schools at no cost to parents. School-children must be provided with free public transport passes to enable them to attend schools. In regional centres the Education Commission must provide school bus services to bring children to and from schools.
- All elementary schools must also offer child-care/day care services and playgrounds to working parents on a free basis. All intermediate/high schools must be equipped with proper sports facilities such as a swimming pool and ovals for the adequate physical development of students.
- In addition all students at all levels – post secondary and tertiary students as well as school students - must be provided with free access to medical and dental care and medications, including regular diagnostic x-rays and other imaging services (such as CT scanning, ultrasound scanning and mammography). This will require the

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provision of some of these services through mobile medical units, especially for regional schools in outlying centres.

- To ensure the appropriate nourishment at nutritious levels, school canteens must be set up at all primary and secondary schools to provide free milk and nourishing foods and vitamin supplements so as to combat malnutrition and the miserable levels of health that exist today among so many Iraqi children as a result of the regime's rotten schemes.
- To ensure the adequate intellectual development of students, all secondary schools must provide access to computers and to the Internet for students as well as high class library facilities as part of official encouragement for them to pursue their own academic and social research.
- To this end, secondary students should be required to undertake courses in spoken and written English in addition to their normal class instruction in Arabic. This should start as early as possible, perhaps even in kindergarten. This can be a milestone of Iraqi education by ensuring that students can utilise the Internet and keep up with foreign writers and their writings and readily peruse research books as well as keep up with the news of the day to build their general knowledge. Classes in other languages may, of course, be offered to all secondary students as an option.
- At the primary and secondary level, all schools will be required to give during each week of schooling at least two class periods of religious instruction in the religion of the students, as specified by parents. The classroom learning of only one religion to the exclusion of all others must be explicitly banned, either by constitutional or legislative provision.
- All children completing their Intermediate Year must be entitled to the award of a School Certificate without any formal examination. The 9th-grade intermediate examination systems has clearly become too confronting to students as well as serving no useful purpose. The award of a School Certificate to record their progress will suffice – and can be the primary means of their entry into courses offered by post-secondary Technical Institutes.
- All students going on to complete High School must sit for the Baccalaureate examination, which shall reflect achievement at a national examination and be the primary means of assessment for entry into university courses.
- All elementary and secondary schools will be required to foster the establishment of special parent societies so that parents of schoolchildren can join in cooperation with teachers and administrators in understanding and appreciating the benefits of the enhancement of their local schools for the welfare of all students and their community as well as their country.

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- In addition primary and secondary schools must encourage their students to experience their country, its rich history and the varied cultures and scenic attractions of its various regions by preparing special school excursions and vacation trips.
- All primary, secondary, post-secondary and university school years shall follow the same academic year according to international standards and comprising, say two or three semesters a year with adequate vacation breaks.
- Governments may request of the independent Education Commissions in their state or in the federal territory, the development and offering of courses to meet the specific requirements of their communities for their technical or social enhancement. But NO government is be permitted to have any direct say in the actual curriculum or the teaching of such courses.
- States should also establish special selective schools for the more talented of their students who can be chosen for such schools at the end of Year 6 at primary School. These special schools can offer more challenging and more demanding courses to ensure the students achieve their full potential.
- Teachers at all levels, primary, secondary post secondary and tertiary will be selected and appointed ONLY on the basis of merit through having been accredited by the restructured Iraqi teachers Union. There shall be absolutely no discrimination against teachers on ethic, religious or other discriminatory grounds.

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Discussion paper for the Transitional Justice Working Group

MEDIA INFORMATION IN POST CONFLICT IRAQ

by



B6

Iraq suffers under the Ba'athist regime of Saddam Hussein, the worst example of information deprivation of citizens virtually anywhere in the world. Once the despised regime goes, there will need to be not only a radical overhaul of the role, ownership and operation of all elements of cultural education, arts but especially that of the media of Iraq and the role it has been playing to enhance the personality cult of Saddam Hussein.

There will be an absolute need for public re-organisation of not only the media but also of the providing of information, both at a government and private level, so they can re-think how they would appropriately communicate with all Iraqi citizens on a mass basis and attract their attention in order to provide them with intelligent and genuine information, particularly about what governments can and propose to adopt internally and in the international arena

They will need also to consider what would be the best to offer the people of Iraq so as to enhance their awareness of their needs and their rights as equal citizens despite their difference in colour, race and language as all citizens of Iraq must be equal whether poor or rich.

At present either the Ba'ath Party or family members of Saddam Hussein indirectly own and manipulate all the media outlets. The regime bans or tightly regulates new forms of media services, all with the aim of restricting citizens' access to information so the regime can practice the worst excesses of deliberate manipulations of the perceptions of citizens.

It is known that on one occasion a fellow friend was summoned by Saddam Hussein and requested to convince his friends to go forward and apply to establish a new party. But when that person asked Saddam to allow the party to own a newspaper, the president responded by declaring that he will never give approval for a private paper which would criticise the government and demand better food and better vegetables for the people.

We have in another paper canvassed the seizing after the removal of the regime of all media outlets and their disposal by, say, auction on reasonable terms to the citizens of Iraq through Iraqi corporate entities and with or without international corporate participation plus the complete freeing of the access of citizens to information from

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anywhere in the world by any mediums – press radio, TV, broadband and including the Internet.

A. The Media of Iraq

Further consideration of press, radio and TV services leads to the following requirements to meet the information requirements of a democratic system:

- One of the current Iraqi daily newspapers may be maintained by the interim administering authority as its “official organ” but be published only in English and besides news, carry intelligible announcements of legislative/administrative decisions. All Arabic-language newspapers must be turned over to the community through Iraqi corporate entities. These newspapers can draw on the “official organ” as they see fit.
- One of the current Iraqi national radio networks to be offered to a public broadcasting entity as a public multicultural broadcaster, funded by government grants, along the lines of the Australian SBS radio network, broadcasting programs in the various languages of Iraq – the Kurdish dialects, Assyrian, Chaldean, Sabian-Mandaean, Turkmen, Armenian, Syriac etc. as well as some Arabic and English.
- One of the current Iraqi TV networks be likewise offered to a multi-cultural public broadcasting group to offer a wide selection of intelligent and attractive TV programs again along the lines of the Australian SBS TV network.
- Foreign TV services such as Al Jezeera, Egyptian Space and Nile and the TV services of the Syrians, the Saudis, the Kuwaitis and other Arabian channels plus the foreign services from Russia and France and the BBC, CNN and Deutsche Welle which provide programming in Arabic and English should be invited to offer their programs either by direct broadcast or by pay subscription. This will ensure a diversity of programming from international as well as national sources. In this regard the successful experience of the United Arab Emirates in encouraging major networks to establish a base for their Middle East coverage should be noted, as well as the loyalty this has engendered..
- It is critical that the Iraqi News Agency (INA) be immediately seized from the Ba’ath Party and the regime and developed by the initial administering authority as an outlet for the relay of international news about Iraq from all sources and for the relay to all points in Iraq of legislative, administrative, legal and political decisions that affect some or all of the communities of Iraq in an authoritative but readable and intelligible manner.

B. *Government Information*

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It is axiomatic that in a democracy the government must have no direct control whatsoever over the content of any public medium. But equally there is a requirement of a democratic government to ensure that it functions transparently and accepts the challenge of keeping the citizens it serves as fully as possible. Yet the nature of the news and public affairs coverage in a free public media system is highly competitive.

This then poses a dual challenge for a democratic government. Firstly it must be prepared to keep citizens as fully informed as possible of decisions, programs and policies that they feel will have either a direct or indirect impact on them and their lives and their plans for their futures. Secondly it must establish the public information apparatus that will enable it to fulfill this responsibility in an environment it cannot and must not control but in which it will find much competition for the attention of citizens.

Each unit of government must therefore engage and properly fund their own public affairs section that will prepare the information about government activity in an intelligible attention-getting and fully professional fashion.

For a country like Iraq which has never experienced in living memory any requirement to keep citizens fully informed, rather only to tell them what the regime wanted them to hear, this is a challenge of a new and different kind.

To this end --

- There can be no Ministry of Information in a new and democratic government of Iraq. Each government organisation must be responsible for its own public information program and information people.
- the various organs of the new system of democratic governments that will emerge in the post conflict period may need international help in recruiting and training suitable Iraqi public affairs professionals from bodies like the UN; and
- selected Iraqi universities should be requested to design and offer special bachelor degree and postgraduate diploma programs in public communications; and
- an award from these tertiary institutions should be made a requirement for professional employment in the public affairs units of government organs.

These are among the measures that would make a start on an important aspect of the building of democratic institutions and an informed citizenry in a post-conflict Iraq.

In conclusion we believe that a major challenge of the country is to disseminate the right information about Iraq and the Iraqi people. We do not need to fabricate lies and false information. We should rely on presenting in a very reliable manner the facts that will serve to enhance the image and reputation of the Iraqi people and their aspirations for peace and progress, as well for a peaceful coexistence with all other nations in order to

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maintain sound relations and to help serve the peace in the region and in the world based on equal opportunity and justice.

Public Information and the Arts

- **Special attention must be given to setting up and expanding public libraries around the country with books from all the world no matter what their position toward Iraq, Arabs or Islam might be. There is a need to educate the new generation of Iraqis to be immune from fear of the influence of foreign propaganda.**
- **Special attention must also be given to the re-invigoration of the arts and the theatre in Iraq, but on the basis of artistic freedom and creativity. No longer can artists and writers cower from centralised demands to worship a leader and his party. Because of this Iraq is now the least artistic nation in the Middle East. Government grants through independent Councils must be provided to artists, writers, actors, producers and film-makers along with encouragement to speak their critical artistic minds without fear of the new democratic system to come in Iraq.**

Cultural Items and Antiquities

Nor can it be overlooked in this context, the question of the Iraqi peoples' right to all of those special items which they associate with their culture and history, because these inform them of their place in our region and in the world.

The current regime has chosen a clique of experienced smugglers to establish a bridge whereby members of the regime can enrich themselves by seizing Iraqi antiquities and historical items for private sale in Europe and in the United States and retaining the profits for themselves. To cover their crimes, the regime accused the *Intefada* of 1991 of being responsible for the looting of the Antique Houses in Aur, Babylon and Baghdad,

Iraqi citizens know quite well that these thieves and smugglers are connected particularly Saddam's cousin and son-in-law Arshad Alyassin Altikriti. Though his continual smuggling, the regime has accumulated millions of UK pounds and American dollars to add to Saddam's private hoard of billions of dollars.

We therefore suggest that a separate specialised High Commission, headed by a member of the new Supreme Court, to take up this important cultural barbarism and to call upon Iraqi citizens and others to present their information about the fate of these valuable antiquities and co-ordinate through UNESCO to track them down the country's stolen antiques wealth and have them returned to Iraq, for the benefit of the people of Iraq.

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Finally ...

As the world shrinks and Iraqis become a more active in this smaller world, we must realise that our own affairs and destiny are matters that can affect others in the world particularly through trade and economics and even in stockmarkets anywhere .

We need to understand that the meaning of independence has been changed by new international rules, conventions and practices - and that any event that could happen in our domain. is likely to attract strong media interest and international reaction.

Iraq must prepare for this setting up in Iraq a strong and independent system of press and electronic media and a strong and professional approach to the providing of full and comprehensive public information by government and public and private organisations staffed by professional people - and by removing Iraqis from the artistic straightjacket.

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(Permission to release the names of each participant is in the process of being confirmed. Please contact the IJA office to obtain this list.)

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