

Politics Breaks Out In Iraq

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Op-Ed

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Iraq's draft constitution should be evaluated on two standards: its substance in the areas of democracy, human rights and proposed political structure; and its potential to be a national compact that brings Iraqis together and undermines the insurgency. It meets the first test. With respect to the second, the jury will decide in the Oct. 15 referendum.

The draft enshrines values and structures that should aid Iraq's democratization, as well as its lasting stability, freedom and prosperity. It contains an enlightened synthesis of universal values and Iraqi traditions. It states that no law may be enacted that contradicts "the established provisions of Islam," "the principles of democracy," and "the rights and basic freedoms stipulated in this constitution" -- rights that are far-reaching. This formula requires that Islam be interpreted to be consistent with democracy and human rights.

The draft states that all Iraqis are equal before the law regardless of "gender, race, ethnicity, origin, color, religion, sect, belief or opinion, or economic and social status." It protects the rights of personal privacy; the sanctity of the home; public trials for criminal defendants; and the freedoms of movement, expression, association and political organization. It states that all defendants are innocent until proven guilty. It prohibits extrajudicial punishment, group punishment, property seizures without compensation, and intellectual, political, or religious coercion.

The draft guarantees women the right to participate fully in public life. In fact, it requires that electoral laws ensure that women hold no less than 25 percent of seats in the legislature. It prohibits all "forms of violence and abuse in the family" and "tribal traditions that are in contradiction with human rights." It accords Iraqi citizenship to all children of Iraqi mothers -- a provision that is revolutionary in this region.

On the controversial issue of personal-status law, the draft states that the National Assembly must enact a statute giving Iraqis the choice of using religious or civil law. This is the same choice available in Israel.

While some leaders wished to make Islam the source of legislation, the draft makes Islam a fundamental source of legislation. At the same time, the draft guarantees "the freedom of belief and religious practice" and holds that "each individual shall have the freedom of thought, conscience, and faith."

The structure of the government in the constitution supports Iraq's democratic transition. It can also help bridge the fundamental differences between Iraq's three communities. It gives the legislature the power to check and balance the executive and establishes an independent judiciary to guarantee constitutional limitations on the state. To provide structural protections to minority factions and broad ownership on key legislation, the draft requires two-thirds majority votes for approval.

The draft postpones any decision to create federal regions beyond the Kurdish area until the next Assembly is seated, a key Sunni Arab demand. Because Sunni Arabs will participate in the December election, they will participate in deciding this issue.

The draft also provides a balanced solution on the control of resources in the context of federalism. It states that oil and gas resources belong to the people; that the federal government, with regional and provincial governments, will manage current resources and equitably share revenue; and that together they will develop a strategy for managing future discoveries based on market principles and encourage investment.

Ethnic and sectarian factions rather than truly national forces are dominant. Iraq's leaders differ on fundamental goals and deeply distrust each other. The process for drafting the constitution made progress on bridging the divide between them as they worked to develop a common road to the future.

Shiite Arab and Kurdish leaders -- who dominate the Assembly and are governing Iraq in a coalition -- first agreed on a draft. Subsequently, they brought in the Sunni Arabs and took into account their views -- which led to a number of adjustments in the Shiite and Kurdish text. Even on the sensitive issue of de-Baathification, Shiite Arab and Kurdish leaders partially accommodated Sunni Arab demands by reducing the margin needed in the Assembly to dissolve the de-Baathification commission -- from two-thirds to an absolute majority.

Ultimately Iraqis will need to reach a national compact. Some Sunni Arab leaders have so far rejected this draft, although many are privately more positive and say that intimidation by the insurgents makes announcing support too dangerous. If Iraqi voters ratify the draft overwhelmingly, it becomes a national compact. If they reject the draft, the next Assembly will negotiate anew. Under all scenarios, the United States will continue to encourage Iraqi leaders and communities to come together. A central achievement of this process is that the draft came about through negotiation, not the exercise of violence. In essence, we can say that politics has broken out in Iraq.

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