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## **Iraq: The New Constitution Must Protect Human Rights**

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Summary

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### **Summary**

The people of Iraq are now engaged in a process of drafting a new constitution. This is a unique opportunity for Iraq to draft a new Constitution that is inclusive and protects human rights. This document highlights some recommendations that are of particular relevance to Iraq today. It focuses primarily on the Chapter titled "Basic Rights and General Freedoms".

Among other things, the document discusses the relation between national law and international law, and recommends that the new Constitution should make a specific reference to international law as one of the sources of national legislation.

The document also discusses derogations, limitations, and restrictions of rights, and recommends that the new Constitution should guarantee all rights at all times, and should only be restricted or suspended in accordance with international law, including situation of emergency.

The draft Constitution includes very positive provisions relating to the prohibition of torture, and other cruel, inhuman and degrading treatment or punishment. However, it remains silent on a number of other important issues. These include establishing universal jurisdiction over offences of torture. In addition to compensation for victims, it should establish the right to rehabilitation, restitution, satisfaction, and guarantees of non-repetition. There should be a clear prohibition to expel, return ("refouler") or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

The draft Constitution includes some important provisions for the guarantees of due process and fair trial. However, there are some important guarantees that are missing. These include the presumption of innocence until proven guilty, the right to liberty and security of person and the prohibition of arbitrary arrest, the right to reparation for miscarriage of justice, and the right to trial by a competent, independent and impartial tribunal established by law.

Amnesty International also believes that the death penalty should be abolished. It is the ultimate cruel, inhuman and degrading punishment. It violates the right to life. It is irrevocable and can be inflicted on the innocent; moreover, it has never been shown to deter crime more effectively than other punishments.

The document recommends that the new Constitution should establish universal jurisdiction for the crimes of genocide, crimes against humanity, war crimes, torture, extra-judicial executions and "disappearances".

The draft Constitution does not include effective guarantees to most of the economic, social and cultural rights. The new Constitution should guarantee that Iraqi authorities will take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of economic, social and cultural rights. The document also lists some essential economic, social and cultural rights guarantees that should be included in the Constitution in relation to work, education, health, standard of living and cultural rights.

The current draft guarantees some rights to Iraqis only while others to everyone in a way that is not consistent with international human rights law. It is important that the new Constitution prohibits discrimination and protects rights to all those under the jurisdiction of Iraq, according to international human rights law. The document details the limited areas of rights that can be guaranteed to citizens only under international law.

The new Constitution should protect and promote equality between men and women. It is also essential that the discussion around the new Constitution addresses concerns about certain provisions contained in the current draft, especially the one which stipulates that Islam is the main source of legislation. Amnesty International takes no position with regard to any religion, but is concerned that interpretations of Islamic law may be used to perpetuate discrimination against women and other forms of discrimination. The draft Constitution also includes some phrases that reflect stereotyped roles of women which should be amended. The document refers to UN Security Council Resolution 1325 which stresses the importance of taking measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution.

The Constitution should define the child as "every human being below the age of eighteen years". The new Constitution should also clearly prohibit the recruitment or enlistment of children under 18 years into armed forces (or groups), and their use in hostilities. The new Constitution should also guarantee rights of the child in accordance with the Convention on the Rights of the Child, in relation for example to education and employment, and should reflect the four underlying principles of the Convention on the Rights of the Child.

It is important for Iraq to create or maintain specific mechanisms for promotion and protection of human rights, including through the courts and the judiciary. It will therefore be important that the Iraqi judiciary, as the guardians of the Constitution, is strengthened.

<b>KEYWORDS:</b>
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This report summarizes a 16 page document (6033 words), **Iraq, The New Constitution Must Protect Human Rights** (AI Index: MDE 14/023/2005) issued by Amnesty International on 11 August 2005. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

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