

# The Constitutional Guarantees for Human Rights in the Provisions of Iraq's Constitution of 2005

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Constitutional Provisions represent the top of the legal system in the state due to its supremacy over other written and customary rules, and for this reason constitutional guarantees of human rights acquire a special importance and protect them against the public authorities. This research will focus on the constitutional guarantees of human rights in Iraq's constitution of 2005.

**Keywords:** *Constitutional Guarantees, Human Rights, Iraq's Constitution.*

## Introduction

The issue of human rights is one of the most important subjects that constitutions and human rights treaties care to organise and guarantee because of their importance to human lives, being vital interests that cannot be discarded and because of their association with the human personality and existence. Based on this, the constitution of the Iraqi republic, issued in 2005, aspired to organise and guarantee human rights and fundamental freedoms after Iraqi individuals experienced a confiscation of these rights and freedoms over the past period/era of dictatorship (Ahmed, 2009). This analytical study on the provisions of the Iraqi constitutions organising human rights will assess the constitutional organisation for human rights to identify the limits of that organisation and the restrictions imposed on human rights (Adeed, 2009), as well as the guarantees provided by the Iraqi constitution's provisions to these rights and freedoms. Looking at the fact that the Iraqi constitution was issued recently – relative to other constitutions – the studies and research on it are few or almost non-existent, which reflected on the task of the researcher in this study. In addition, this modernity never allowed for the application of its provisions for a time that would help identify its points of strength and weakness (Ali, 2011).

## Literature Review

### *The Human Right to Life, Freedom and Bodily Safety*

This group of rights represents the most valuable of what a person possesses. They are the foundation of other human rights. The Iraqi constitution in article 15 laid a general foundation in guaranteeing these rights and what relates to them. It referred to the right of every individual to life, security and freedom. It is not permissible to deprive or restrict these rights except in accordance with the law and based on a ruling by an appropriate judicial body. Based on the past provision, we can present the following observations: (Ali, 2007) The constitutional protection is granted to the citizen and other foreigners, because the text was absolute without distinction. The proof is the clause (for every individual...) (Adeed, 2009). The provision referred to a very important guarantee, represented in prohibiting any restriction to or deprivation of these rights, except in accordance with the law or based on a ruling by an appropriate judicial body. This undoubtedly will protect these rights against violations that might take place by the executive authorities. This issue is delegated to the appropriate judicial authorities. We noticed convergence in the position taken by the Iraqi constitution regarding these rights, with both article 3 of the Universal Declaration for Human Rights (1948) and article 6 of the International Covenant on Civil and Political Rights (1966). The question might arise pertaining to the position of the Iraqi constitution from the death penalty, being a form of depriving the right of life (Abdel-Hakim, 2000). To answer this question, we say that the Iraqi constitution never organised the provisions and condition of the death penalty. To our judgment, this is a self-evident issue that should be left for the normal legislation because it includes details not present in the constitutional document. The only reference to that subject is article 73 of the constitution, which organised the authorities of the President of the Republic (Khidir, 2013). The 8<sup>th</sup> paragraph stipulated that it is among the presidential duties to ratify the death sentences issued by the appropriate/competent courts. But the meaning of the right to freedom and personal security refers to the human freedom and security to exercise the right to life and all other rights. The personal freedom and security of people branches to other rights and freedoms of high importance (Maitham, 1999). The respect for personal private life, sanctity of the home, secrecy of communications and correspondence, and freedom of movement are only forms and expressions of personal freedom. It can be added that personal security cannot be attained except by prohibiting arrest and detention (unless for legitimate reasons and according to the law); torture; as well as physical and psychological harm. It is also important to acknowledge a group of general legal principles, such as: penal liability is a personal liability, non-retroactive penalties, and the assumption of innocence (Saleh, 1991).

- **The Right to the Protection of Private Life**

This right is associated with the personal independence of the person, and the safety he/she should enjoy in everything related to or touching his/her privacy. The Iraqi constitution granted

this right for every individual as long as they don't violate the rights of others or public morality in article 17/1<sup>st</sup>. It is noticeable that the Iraqi constitution conditioned the granting of these rights to the non-violation with the rights of others and public morality (Tarek, 2005). However, we did not find these restrictions in article 17 of the International Covenant on Civil and Political Rights (1966), where the protection of these rights was absolute without any restrictions. This is similar to the Egyptian constitution of 1971, in which article 45 stipulated that the private lives of the citizens have special sanctity that is safeguarded by the law (Adeed, 2009). There might be points of view defending the necessity of such restrictions to adjust the conduct of the individuals. But the notions of rights of others and public morality have wide meanings and implications that are difficult to adjust using specific or clear provisions. This leads to violating the private life of individuals using the pretext of safeguarding these notions (Abdel-Hakim, 2000).

- **Sanctity of Home**

The right to sanctity of home is closely associated with personal private life, because of the importance represented by the home in the life of a person. It is the miniature environment for a person, and the place in which he/she resides and exercises personal activities. The Iraqi constitution guaranteed the freedom of home, so it prohibited to enter into homes or search them except by a judicial order and in accordance with the law (article 17/2<sup>nd</sup>) (Hanna, 2011). After reading this text, no one can deny the guarantees provided by the Iraqi constitution for homes, which is an absolute protection in all natural and exceptional circumstances. It is worth noting that the Iraqi constitutional provisions in this arena were inspired by the Egyptian constitution. We noticed that article 17/2<sup>nd</sup> of the Iraqi constitution is to a large extent in convergence with article 44 of the Egyptian constitution, except in stipulating the guarantee of providing a reason as a condition for a correct judicial order to enter and search homes (Tarek, 2005).

- **The Freedom to Communications and Exchanges by Post, Telegraphic, Telephonic and by Electronic and other means**

The Iraqi constitution in article 40 guaranteed the freedom to communications and correspondences. The article stipulated that the freedom of communications and exchanges by post, telegraph, telephone and by electronic and other means is guaranteed. They will not be monitored or spied upon or revealed except for legal and security necessity in accordance with the law (Khidir, 2013). Studying the aforementioned provision, we present the following observations: The Iraqi constitution guaranteed the freedom of communications and correspondences regardless of their types and never identified specific means of communications (Ali, 2007). This means that the specification in article 40 was not for the purpose of enumeration. This means that all the means of communication and correspondence were guaranteed, especially by adding the word ...and other which added flexibility to the limits of applying the provision. The Iraqi constitution safeguarded the freedom to

communications and correspondences through the judiciary. This is an important guarantee because of the impartiality and independence enjoyed by the judicial authority, which protects the freedom of communications and correspondences against the control of the executive authority. As well, this will put a constitutional limitation on the legislative authority that will be considered during the drafting of legislation organising the freedom of communications and correspondences (Saleh, 1991)

• **The Human Rights of Movement:**

The Iraqi constitution referred to the right of movement in article 44, which safeguarded the freedom of Iraqis to movement, travel and residence within and outside of Iraq. It also prohibited the exile, forcing out, or forbidding of an Iraqi from returning to his/her nation. It is noticeable that the provision of article 44 of the Iraqi constitution was absolute, without any reference to referring the organisation of the freedom of movement, travel, or residence to the ordinary legislator (Hanna, 2011). We see in that a constitutional weakness that should be avoided in a way that allows the ordinary legislator (the Parliament) to organise that freedom. It is also noticeable that article 40 never presented any guarantees or solutions pertaining to the residence of foreigners in Iraq, especially the issue of forcing the foreigner out of Iraq. It is worth noting that article 13 of the International Covenant on Civil and Political Rights (1966) allowed the forcing out of the foreigner lawfully residing in the state after a law was issued (Mahmoud, 2005). But in what relates to the position of the Iraqi constitution on the human rights in personal security: Article 19 of the active Iraqi constitution referred to a number of rights related to personal security. In addition, it is closely associated with the law on criminal/penal procedures, and the principles that organise the treatment of prisoners. We will present these rights in the following fashion: (Maitham, 1999) (i) The right to resort to the judiciary, fair treatment in judicial and administrative procedures. (ii) The right to defence in all stages of investigation and trial, and obliging the court to provide a lawyer for those who don't have one. Costs should be incurred by the state. (iii) Prohibition of detention, arrest or imprisonment unless in the appropriate detention facilities that consider social and health care. Penal liability is a personal liability. (iv) The principle of non-retro-activeness of the penal code, unless in favour of the suspect (Adeed, 2009). (iv) Presumption of a suspect's innocence unless proven guilty. (v) Public court sessions.

Article 37 added more rights represented in the prohibition of detention or investigation unless via judicial decision. It also prohibited all forms of torture, mental or physical, and inhuman treatment. There is no recognition of any confession extracted by force or threats or torture, and the injured party may seek compensation for any physical or mental injury that is inflicted (Tarek, 2005). According to the past two provisions, the Iraqi constitution provided some details that are usually organised in the provisions of the penal laws. We believe that this was dictated by the era preceding the drafting of that constitution during the dictatorship regime. Stipulating these details, which represent very important guarantees, will provide protection in

facing the legislative and executive authorities. The constitutional legislator did well by prohibiting the psychological torture because, in many circumstances, it is more harmful than other forms of torture (Khidir, 2013). It is worth noting that granting the victim the right to claim compensation, for the physical and moral damage inflicted, is considered an important guarantee for the victims of arbitrary procedures by the investigation authorities. It also represents a constitutional precedence never heard of in past Iraqi constitutions and legislation (Abdel-Hakim, 2000).

### **The Right to Equality and Non-Discrimination**

Most of the jurists resort to classifying human rights into two principle divisions, freedom and equality. Equality means equality before the law, not actual equality. Thus, it is equality between individuals with equal legal positions. The active Iraqi constitution referred to the right to equality and non-discrimination in many parts. Article 14 adopted the general principle of equality before the law without discrimination based on sex, race, nationality, origin, colour, religion, faith, sect, belief, or economic or social status (Ali, 2011). It is noticeable that the aforementioned provision is to a large extent converging with the provisions stipulated in article 2/1 of the International Covenant on Civil and Political Rights. But the only difference is that the Iraqi constitution identified the reasons for discrimination using enumeration, while the International Covenant on Civil and Political Rights was more flexible on that front. The use of words lie (or other...) makes it possible to add other reasons for discrimination. This, according to our judgment, offers more guarantees for individuals in the field of equality and non-discrimination for any possible reason (Maitham, 1999). The Iraqi constitution referred to two expressions of equality, represented in granting equal opportunity for all Iraqis (article 17), and equality between men and women in participating in public affairs as well as enjoying political rights (article 20). It is worth noting that the active Iraqi constitution stipulated the right of equality to national minorities, in the field of language and what relates to it, such as education, speech, expression and issuing official documents (article 4) (Ahmed, 2009).

### **The Right to Nationality**

Nationality is a legal and political link between an individual and his/her state. It grants to the residents of the state the opportunity to exercise civil, political, social or economic citizenship rights. Constitutions granted that right and organised it by legislation to regulate its conditions and detailed provisions. But the active Iraqi constitution was generous in organising the provisions pertaining to nationality in a manner unprecedented to past Iraqi or Arab constitutions. In the following, we will present and comment on the provisions pertaining to the right to nationality as referred to in article 8 of the constitution: (Ali, 2007)

1. “An Iraqi is anyone who has been born to an Iraqi father or an Iraqi mother”. We notice here that the Iraqi constitution grants the original Iraqi citizenship according to the blood right from the father or the mother. It is the first time the right to the Iraqi citizenship according to the mother has been acknowledged, after past Iraqi legislation conditioned this right to having Iraqi-born parents (Adeed, 2009). This provision stirred, and continues to stir, debates inside political and popular circles. Voices called for abolishing this provision and returning to the past scenario, which conditioned this right to having Iraqi-born parents. We believe that the provision stipulated in the Iraqi constitution is nothing but an application to the core and spirit of the equality stipulated in article 14 of the constitution. It will also provide us with practical solutions to remedy the cases on non-citizenship for those born to an Iraqi mother and a foreign or unknown father. It is worth noting that this provision is considered a never-ending request for hundreds of families in Kuwait, the UAE and Qatar, where many of their inhabitants are without citizenship and accordingly denied of education, health insurance, and practicing political rights (Saleh, 1991).

2. “It shall be forbidden to withdraw the Iraqi citizenship from an Iraqi by birth for any reason. Those who have had their citizenship withdrawn have the right to reclaim it and this should be regulated by law”. This provision was a natural reaction to a group of many decisions that were issued by the past dictatorial regime. According to them, thousands of Iraqis were stripped off their citizenship. Hence, this provision provided an important guarantee to the individuals, and remedied the past problems by giving the right to reclaim the withdrawn citizenships (Mahmoud, 2005).

3. “Every Iraqi has the right to carry more than one citizenship. Those who take a leading or high-level security position must give up any other citizenship. This shall be regulated by law”. The Iraqi constitution allowed an Iraqi to carry more than one citizenship, which is – in our judgment – not a positive track, because of the practical problems that emanate from multiple loyalties based on multiple nationalities. The constitutional legislator did well by conditioning that those who take a leading or high-level security position must give up any other citizenship (Khidir, 2013). This is a serious test to the idea of loyalty and citizenship. It is worth noting that the constitutional legislator referred the organisation of the provisions stipulated by that issue to the ordinary legislator to identify the definition/notion of sovereign or security position. This constitutional provision does not provide us with a clear definition to these terminologies (Ali, 2011).

### **Freedom of Opinion and Expression**

The freedom of opinion and expression means the freedom of a person and his/her right to adopt different opinions and express them to the outer world. It is the foundation of the different freedoms and other intellectual rights. Constitutions and human rights treaties granted this right

with reference to its limitations and regulations to safeguard other rights and freedoms for other individuals and the state's public order (Feisal, 2006). It is worth noting that the freedom of opinion and expression is closely associated with another set of rights and freedoms, like the freedom of press, media, freedom of assembly and peaceful protest. The active Iraqi constitution referred to this freedom in article 38, which stipulates that "the state guarantees, as long as it does not violate public order and morality" (Khidir, 2013) 1st - the freedom of expressing opinion by all means. 2nd - the freedom of press, publishing, media and distribution. 3rd - freedom of assembly and peaceful protest to be organised by law. In addition, article 37/2<sup>nd</sup> referred to the state's commitment to protecting the individual from coercion in thought, religion or politics.

After studying and analysing the past two provisions, we provide the following observations: (Ahmed, 2009) The constitutional legislator was not successful in drafting article 38, as reading its text gives the impression that the legislation will organise only the freedom of assembly and peaceful protest, without care given to other freedoms, such as the freedom of press and media, which will remain subject to the restrictions of public order and morals. We believe in the necessity of amending this provision in a way that allows organising the freedom of opinion and expression, in their different forms, by the law in a specific manner. This opinion is in line with article 19/3 of the International Covenant on Civil and Political Rights (1966), which allowed restrictions on the freedom of opinion and expression in accordance with the law only (Tarek, 2005). We noticed that article 38 provided restrictions on the rights and freedoms it stipulated. This is a non-conventional method in the constitutional and legal organisation for human rights, because the origin is the right or the freedom, and the exception is the restriction (Khidir, 2013). It would have been better for the Iraqi constitution to provide some of the fundamental basics pertaining to freedom of the press, media, assembly and peaceful protest, which represent necessary principles in the field of practicing these rights. This would provide guarantees at the constitutional level. This would also lead to safeguarding them against the legislation that might be issued in the future and the practices of the executive authority. An example of such guarantees would be journalists' accountability, prohibiting the shutting of newspapers or confiscating them administratively (Maitham, 1999) or judicial supervision on administrative procedures organising assembly and peaceful protests. Another example would be article 48 of the Egyptian constitution (1971), which stipulated that "Liberty of the press, printing, publication and mass media shall be guaranteed. Censorship on newspapers shall be forbidden as well as notifying, suspending or canceling them by administrative methods". The Iraqi constitution never stipulated the right to access information, although this right is important. The International Covenant on Civil and Political Rights stipulated that right in article 19. We see that this is a weakness in the field of organising the freedom of opinion and expression, which should be remedied by stipulating the guarantees for that right for individuals within the legal boundaries. (Ali, 2007).

## **The Right to Establish and Belong to Political Organisation**

Political parties and associations are a form of assembly for individuals possessing common opinions, inclinations and directions. They as well represent a means to unify efforts and resources to achieve common objectives and ends. From here emanates the point of distinction between political parties and associations. The first seek to take power or participate in authority. Thus they have political objectives. On the other hand, the objectives of associations vary between scientific, humanitarian, professional, and cultural fields, without an interest in political objectives or ends. We believe that the freedom to establish political parties and associations is in line with another freedom, which is the freedom to belong and voluntary withdrawal from them (Ali, 1988). The active Iraqi constitution referred to this freedom in article 39, which stipulated “1<sup>st</sup> - Freedom to establish and belong to political organisations and parties is guaranteed, and it will be organized by law. 2<sup>nd</sup> - No person can be forced to join or remain a member of a political party or organisation” (Feisal, 2006). I don’t want to repeat what I previously mentioned about organising the freedom of press, media, assembly, and peaceful protest. The Iraqi constitution omitted reference to some important guarantees pertaining to the formation of political parties and associations, like preventing the administrative authorities from dismantling political parties and associations and delegating that authority exclusively to the judicial authority (Saleh, 1991). It is worth noting that the Iraqi constitution provided some restrictions on the freedom of establishing and belonging to political parties, such as: (i) Prohibiting any entity adopting racism, terrorism, Takfir (declaring someone an infidel), sectarian cleansing, or the Saddamist Baath Party (Article 7/1<sup>st</sup>). (ii) Prohibiting armed forces personnel and security apparatuses from exercising any role in the rotation of power (Article 9/1<sup>st</sup>/A). (iii) Judges and members of the Public Prosecution are prohibited from belonging in any party or political organisation, or working/participating in any political activity (Article 98/2<sup>nd</sup>).

The Iraqi constitution in article 45 stipulated an important provision unprecedented in past Iraqi constitutions, as it obliged the state to enhance the role of the civil society institutions; and promote, develop and maintain their independence in line with their legitimate objectives/causes and peaceful methods. We believe that this provision represents a foundation that can be resorted to, in order to promote civil society institutions, in what relates to their establishment and exercising their activities in the society, without any violation to their independence from the state’s institutions (Abdel-Hamid, 1974).

## **Freedom of Thought, Conscience and Practicing Religious Rites**

Thought, conscience and belief are synonyms, each associated with the internal being of a person. Ideas and beliefs are non-material and not visible to the outside world unless the person expressed them by any means or exercise. It is noticeable that most of the constitutions use



belief in a manner that confines it in a religious framework. They refer to belief in an absolute manner, which does not provide any addition or guarantee for this freedom as long as the issue is confined within psychological or intellectual boundaries. Based on that, the importance of practicing religious rituals/rites manifests, being the true expression of what people believe in, in a way that does not violate the law. The active Iraqi constitution referred to the freedom of thought, conscience and belief in a general provision (article 42). But the exercise of religious rites was referred to in the constitutional article 43, which stipulated: “1<sup>st</sup>. The followers of every religion and sect are free in: (a) the practice of their religious rites, including the (Shiite) Husseiniya Rites. (b) the administration of religious endowments and their affairs and their religious institutions, and this will be organized by law. 2<sup>nd</sup>. The state guarantees freedom of worship and the protection of its places)”. Article 2/C referred to the full guarantee for religious rights for all individuals in the freedom of belief and religious practice; such as Christians, Yazidis, Mendais and Sabeais. We see a clear weakness in organising the practice of religious rites, as article 43/A was absolute and had no reference to restricting this practice or regulation. It would have been better for the constitutional legislator to subject practicing religious rites to the rule of law (Ali, 1988), because this entails protecting many interests. Such restriction is also in line with article 18/3 of the International Covenant on Civil and Political Rights (1966), which allowed subjecting individual freedom in expressing one’s religion or belief to the restrictions stipulated in the law (Feisal, 2006). Adding to the aforementioned, we see that the constitutional legislator was not successful in naming a specific type of the Zaidi rites, which is the Husseiniya, as there is a violation to the idea of equality between religion, sects, and cults, which the Iraqi constitution tried to stipulate in article 2/C and in the constitution’s preamble. We should refer to the arguments of the protagonists of that exclusiveness that revolved around finding a sort of guarantee to practice these rites that the past dictatorial regime prohibited by all means, and provided for that end all its security apparatuses. By that we find ourselves before constitutional provisions forced by the past and that were a reaction to past practices (Tarek, 2005).

### **Right to Participate in Administering Public Affairs**

This right is the real measure to the existence of democracy in the system of rule and administration. By guaranteeing it, the individuals’ participation freely and equally in managing the state’s affairs, directly or through electing representatives, is manifested. Here we see the importance of elections, which should be recurring, free and transparent. It should also take place by secret ballot. The active Iraqi constitution referred to that right in article 20, emphasising the principle of equality between men and women, as this article stipulated that “Citizens, male and female, have the right to participate in public matters and enjoy political rights, including the right to vote and run as candidates)”. It should be noted that the Iraqi constitution referred to some conditions pertaining to voting and nomination to the Council of

Representatives. It delegated the organisation of the details to legal article 49 (Abdel-Hamid, 1974).

### **The Right to Work**

The constitutions of most of the states paid attention to the right to work. But they differed in the role of the state pertaining to that right, depending on /according to the philosophy these constitutions manifested. It is noted that the outlook to that right has developed with time. The international efforts in that subject have created other rights associated closely with the right to work (Feisal, 2006). We can enumerate these rights as follows: The right of the worker to choose work; the right to work in just and favourable conditions, and with appropriate remuneration; the right of the worker to limit working hours; the right to join trade unions and participation in their project and; the right to strike. The active Iraqi constitution guaranteed this right, as article 22 stipulated that “1st - Work is a right for all Iraqis in a way that guarantees them a good life. 2nd - (Ali, 2011) The law regulates the relation between employees and employers on an economic basis, while keeping in consideration rules of social justice. 3rd - The state guarantees the right to form or join syndicates or professional unions. This shall be regulated by law”. Article 24 stated that the state shall guarantee the freedom of movement for workers, goods and Iraqi capital between the regions and the provinces. In addition, article 37/3<sup>rd</sup> prohibited forced labour. It is noted that the past provisions avoided reference to the idea that work is a duty or referring to the obligation of the state to provide work opportunities for citizens. By this, the provisions emphasised the adoption of the constitution to the liberal philosophy of economy. This is totally different from the constitutional provisions that organised the right of work in past Iraqi constitutions, especially those of 1968 and 1970. The Iraqi constitution had no reference to the right to strike. Here, it is worth noting that the cancelled Transitional Administration Law for the Iraqi State, 2004, referred to that right and conditioned it to be peaceful (Ali, 1988).

### **Right to Ownership**

The meaning of this right pertains to possessing things, and utilising them within the boundaries allowed by the law. Based on that, the right to property allows the owner to use and exploit whatever he/she has according to the law. The Iraqi constitution emphasised this concept in article 23/1<sup>st</sup>, which stipulated that “Private property is protected and the owner has the right to use it, exploit it and benefit from it within the boundaries of the law”. Article 23/2<sup>nd</sup> referred to the social task of the property right, when it allowed taking away the property for the public interest in exchange for fair compensation. This shall be regulated by law. We believe that this provision omitted the reference to the necessity of subjecting the decision, of taking away the property, to judicial supervision (Abdel-Hamid, 1974). This is important as it safeguards and protects the right to property against the administrative authorities. It is worth noting that article

23/3<sup>rd</sup>/B prohibited ownership for the purposes of demographic change. Although that prohibition has political motivations, represented in preventing the change in demographic equation in Iraqi provinces and cities – especially those debated, like Kirkuk – the text of the provision was absolute without restrictions or limitations. It was also full of ambiguity, as it never identified the limit that can be described as demographic change. The provision also never identified the authority specialised to bestow that description on processes of ownership (Mahmoud, 2005).

### **The Rights of the Family, Motherhood, and Childhood**

Article 29/1<sup>st</sup>/A&B of the Iraqi constitution referred to these rights and their guarantee. It emphasised that family is the foundation of the society, and that the state should guarantee the protection of motherhood, childhood and old age. Article 29/3<sup>rd</sup>& 4<sup>th</sup> prohibited the economic exploitation of children, as well as any violence and abuse in the family. No doubt these provisions are referential to the legislator, who should consider them while legislating in order to make them applicable. It is clear that the provisions in article 29 of the Iraqi constitution were in line to a large extent with the provisions referred to in article 10 of the International Covenant on Economic, Social and Cultural Rights (1966) (Maitham, 1999).

### **The Right to Health Care and Social Insurance**

The Iraqi constitution referred to the right of every Iraqi to health service. The state is in charge of public health and guarantees the means of protection and treatment by building different kinds of hospitals and health institutions (article 31). The constitution also included provisions of no precedence in past Iraqi constitutions. They are represented in obliging the state to care for the disabled and those with special needs and also to rehabilitate them to be integrated into society. In addition, it stipulated the right to live in a correct environmental atmosphere. The state is also obliged to protect and preserve the environment (Articles 32 & 33). The right to social insurance was granted by the constitution to Iraqis, especially for children and women, in case of old age, sickness, inability to work, orphans and the unemployed. The state works to protect them from illiteracy, fear and poverty and provides them with housing and the means to rehabilitate and take care of them (Ali, 1988).

### **The Right to Education and Culture**

The right to education has special importance, being the first step in putting the person on the track that enables him/her to understand his/her other rights, and thus claiming and protecting them (Feisal, 2006). The international human rights treaties referred to that meaning, and focused on the objective of education in promoting the respect for human rights and fundamental freedoms. Article 34 of the Iraqi constitution guaranteed the right to education, as

it stipulated: “1<sup>st</sup> - Education is a main factor for the progress of society and it is a right guaranteed by the state. It is mandatory in the primary school and the state guarantees fighting illiteracy. 2<sup>nd</sup> - Free education is a right for Iraqis in all its stages. 3<sup>rd</sup> - The state encourages scientific research for peaceful purposes in a way that benefits humanity and it promotes excelling, creativity and the different manifestations of excellence. 4<sup>th</sup> - Private and national education is guaranteed and regulated by law” (Mahmoud, 2005). We see in that provision a good foundation to build the concepts of social development and servicing humanity. This would be of the noble objectives of education and scientific research, away from politicising education and limiting it to the framework of the authority’s thought and objectives. But the right to culture was referred to by the Iraqi constitution in article 35, which stipulated that “the state guarantees the cultural activities and institutions in what is appropriate to Iraqi cultural history and civilisation. It should also adopt genuine Iraqi cultural directions. It would have been better if the constitutional legislator emphasised the sponsoring of cultural activities and institutions in a manner that leads to continuity with other cultures and peoples. This sponsorship should not be confined only to cultural and civilizational aspects in Iraq (Abdel-Hakim, 2000).

## Conclusion

1. We realised that organising the rights and freedoms in the Iraqi constitution differed completely if compared to the preceding Iraqi constitutions. This is true concerning the guarantees included and moving away from associating human rights to the thought of the authority or the ruling party. It is to a large extent in line with the principles of the international human rights treaties, especially the Universal Declaration for Human Rights (1984), The International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966). But the religious touch vivid in article 2, and in the formation of the Supreme Court (article 92). In our judgment, this would represent a serious challenge in the short run in a state with multiple religions and sects.
2. We realised that there is a group of provisions in the Iraqi constitution that were the outcome of practices taking place during the era of the past dictatorship. We believe that the faith in the human rights principles and recording them in the constitutional provisions emanate from being crucial interests for people at any time, not for what they represent as reactions at a specific era.
3. We noted that the organisation of human rights in some constitutional provisions (such as the provisions organising the freedom of opinion and expression in their different forms) never included reference to guaranteeing some of the foundational principles pertaining to the right of the freedom. It would have been better if they were stipulated in the constitution in order to provide more guarantees for human rights against the legislative and the executive authorities.



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