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THE CONFLICT IN IRAQ

Islamic Slant in Charter Decried

Iraqi secularists fear that religious hard-liners will gain strength, and rights may erode, from the draft constitution's endorsement of Islam.

By Edmund Sanders
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BAGHDAD — As Iraq's transitional National Assembly prepares to approve a new draft constitution as early as today, legal experts and some political leaders warned Wednesday that the charter's explicit endorsement of Islam could give religious hard-liners a tight grasp on a country that was once one of the Middle East's most secular.

In an effort to strike a compromise between the nation's religious and secular communities, Iraq's proposed constitution reserves a central place for Islamic law in the legal system while safeguarding personal freedoms and democracy.

But the text's ambiguous language and apparently conflicting provisions left neither side particularly happy, and if approved, the document probably will be the subject of heated debate in Iraqi courts for years to come.

For instance, the draft constitution makes Islam the "official religion" of Iraq and "a main source" of law rather than "the" source, as many Shiite conservatives sought. But secularists remain concerned about a clause that prohibits any law that "contradicts the undisputed rules of Islam."

Critics fear the provision could be used by religious hard-liners to impose a strict version of Islamic law, such as banning alcohol, restricting women's rights and imposing harsh Koranic punishments such as stoning.

The Iraqi draft constitution also calls for gender equality and privacy rights and prohibits laws that contradict democracy or "basic freedoms" guaranteed by the charter.

"It's not a workable document," said Abdullahi Ahmed An-Naim, an Islamic scholar and law professor at Emory University. "They brushed their differences under the carpet and crafted language that they could vote for. It's a time bomb that will explode as soon as it's enacted," he said.

An-Naim said a similar move to make laws conform to Islam by Sudan's Arab-dominated government in the 1980s sparked a 20-year civil war when southern Christians rebelled. "It was a disaster."

In Iraq, Iyad Jamal Din, a Shiite Muslim cleric and political activist who opposes mixing religion and government, voiced similar concerns. "It tries to preserve human rights, but within a choking religious society that is a clone of the Iranian system," he said. "I fear this constitution will lead us into a dark society controlled by extremists."

Although Iraq's charter does not envision installing a "supreme leader" like Iran's Ayatollah Ali Khamenei, questions are already emerging about certain provisions. For example, what are the "undisputed rules" of Islam? What constitutes

"contradicting?" Since alcohol is banned in the Koran, should Iraq become a dry nation? Are women required to cover their heads? Does a prison sentence for a thief contradict the Koran, which calls for amputation of the hand?

"The problem is that there are no agreements on these questions," said Peter W. Galbraith, a former U.S. ambassador to Croatia who advised Kurdish politicians on the constitution. "It allows any cleric to make his own interpretation of the law and opens the door to a whole range of abuses."

Galbraith said the draft fell well short of the sort of democratic government the Bush administration hoped to install in Iraq. "The U.S. now has to recognize that they overthrew Saddam Hussein to replace him with a pro-Iranian state," he said.

Kurdish negotiators had objected to many of the provisions, but they eventually agreed after securing a separate provision that would allow them to draft their own regional constitution, which could override the national charter on issues such as religion and human rights, Galbraith said.

By the same token, Shiites in the south could seek to pass a regional constitution with even stricter rules than the national one, he added.

U.S. officials in Washington and Iraq have praised the draft. President Bush noted that a provision requires 25% of parliament seats be set aside for women.

Zalmay Khalilzad, the U.S. ambassador to Iraq, said the charter was the best possible in light of Iraq's ethnic and religious differences. He said the document accurately reflected the views of many Iraqis, who strongly believe that Islam should play a role in the state.

"This is a synthesis of Islamic traditions with the universal principles of democracy and human rights," Khalilzad told reporters after the draft was submitted to the National Assembly this week. "It sets a new path for the future for others to follow."

As U.S. envoy to Afghanistan, Khalilzad oversaw passage of a constitution that gives Islam even stronger authority than does Iraq's draft. But the Afghan charter was viewed by many in the West as a step forward because it was much more liberal than the Taliban regime it replaced.

In Iraq, non-Muslims said they were anxious about their rights under the proposed constitution. Standing in front of a row of amber scotch and whiskey bottles, Baghdad liquor store clerk Bassam Aboudi, a Christian, is bracing for further intimidation by religious zealots.

Already hundreds of liquor store owners have closed shop or fled the country amid bombings and assassination attempts by Islamists. If the country officially embraces Islamic law, Aboudi said, he will join the exodus. "This is what is driving so many people out of the country," he said.

Women's rights advocates, who had hoped to secure additional freedoms, also expressed disappointment. They are particularly concerned about the status of a popular, long-standing civil law guiding family matters, such as divorce, child custody and inheritance.

The draft makes no mention of the law, but instead refers to settling such matters based upon religious beliefs, raising the specter of Islamic religious courts.

"Iraqi women will lose so much if this constitution is passed," said Suha Azzawi, a University of Baghdad professor who is a member of the constitutional panel.

Religious leaders, including Iraq's senior Shiite cleric, Grand Ayatollah Ali Sistani, had hoped the constitution would give Islam an even more prominent role, making it "the" source of all legislation, Prime Minister Ibrahim Jafari, also a Shiite, said. They also sought special status for Shiite clerics based in the city of Najaf, but dropped the clause after Kurdish opposition. In return, they won the provision banning laws that contradict Islam.

Shiite leaders said the draft constitution strikes the right balance.

"Democracy will not contradict with Islam," said Humam Hamoodi, head of the constitution-drafting committee.

Legal experts say the Islamic leanings in Iraq's draft fall somewhere in the middle range when compared with other constitutions in the Muslim world. It is not nearly as rigorous as that of Iran, where the Koran is supreme, but it is more conservative than in Lebanon, a mixed Muslim-Christian country whose charter does not mention religion.

The new Iraqi text is a departure from Iraqi constitutions under British rule or Saddam Hussein's regime, which generally spoke only of the "spirit of Islam" as being a part of the nation's fabric.

After the draft constitution is approved by the National Assembly it will be put to a nationwide referendum in October. If passed, the likely legal battles to define the constitution will rest with a new Supreme Court that is to include Islamic scholars and legal experts. Earlier drafts called for clerics to serve on the court, but the details about its makeup will now be left to lawmakers.

One leading Iraqi attorney said he did not foresee a wave of lawsuits testing the limits of the constitution.

"After everything Iraq has been through, all the troubles, people won't want to stir things up anymore," said Tariq Harb, a well-known legal expert who supports the draft. "They are tired of fighting."

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Times staff writer Caesar Ahmed contributed to this report.

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