

IRAQI JUDGES COME TO PRAGUE



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M THANKS TO THE EFFORTS OF U.S. DIPLOMATS AND INTERNATIONAL ORGANIZATIONS, IRAQ IS MAKING REAL PROGRESS IN PROMOTING THE RULE OF LAW.

BY BARBARA DILLON HILLAS

Most of the news that appears in the mainstream media about Iraq is depressing, centering on insurgent attacks on coalition forces and Iraqis at large. Encouraging developments seldom get any media exposure, although there are some interesting stories that ought to be shared.

In particular, there has been real progress in the area of justice sector reform. Despite the daily violence, many ordinary Iraqis are trying to build a new society completely different from the one they have known for decades. Prominent among them are the judges of Iraq.

As they well know, the rule of law is a prerequisite for political stability, economic development and public confidence in public institutions. In Iraq, the most important component in establishing the rule of law is reforming Iraq's judicial system so that it is fair and transparent. Given Iraq's troubled history, this will not be a simple or easy task, unfortunately.

By the time the Coalition Provisional Authority assumed temporary control of Iraq in 2003, the country had suffered under 35 years of increasingly corrupt and dictatorial rule by the Arab Socialist Revolutionary Party (Ba'ath Party), including 24 years under Saddam Hussein. The prison system in Iraq had effectively been destroyed and a criminal population of some 38,000 inmates had been released onto the streets following the U.S.-led invasion. Months after Hussein's regime was ousted in May 2003, most of the country's courts were not functioning, and most court facilities were destroyed or damaged. The judiciary included corrupt individuals, human rights violators and technically incompetent Ba'ath Party functionaries.

Nearly two years later, according to the Iraqi Interim Government, the Iraqi judiciary is now independent and the justice system is operational. The nation's courts are open, issuing judgments in civil cases and imposing punishment in criminal cases. Those convicted are serving their sentences. The Judicial Review Committee has reviewed all 860 judges and prosecutors in Iraq, removing 169 from the Iraqi judiciary for senior Ba'ath Party affiliation and corruption. The committee has also reinstated 72 judges who were wrongly removed by the former regime.

New rights, which did not exist under Saddam Hussein, and are similar to those American citizens

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enjoy, are now available to all defendants in Iraqi criminal courts. These include the right to a fair, expeditious and open trial; the right to a fair and public hearing by an independent and impartial tribunal, regardless of whether the proceeding is civil or criminal; the right of all accused persons to legal counsel; and the right to remain silent. The defendant must be notified of these rights at the time of arrest. Furthermore, torture has been abolished as a means

to extract evidence.

To ensure that Iraqi defendants are able to exercise those rights effectively, however, it is essential to train judges to administer their courts fairly and transparently. And that is where the Central European and Eurasian Law Institute came in.

The Training Begins

The CEELI Institute, or CEELI, as it is generally known, is a graduate-level legal and judicial education center based in the Czech Republic. A public benefit corporation, CEELI's principal mission since it was established in Prague in 1999 by the American Bar Association has been to assist post-communist governments throughout Central and Eastern Europe and the former Soviet Union. It does so by providing intensive practical and skills-based training to help these countries reform and strengthen their judicial systems.

The CEELI Institute has its roots in the Central European and Eurasian Law Initiative, an ABA project begun in 1990 to bring law reform to some 30 countries in the region. CEELI receives support from the American Bar Association, USAID and a variety of other public and private sources. (For more details, please visit the institute's Web site, www.abanet.org/ceeli/special_projects/ceeli_inst/about.html.)

This past summer, I served as the institute's interim director for six weeks here in Prague. It was a unique experience in every sense of the word, but the opportunity to help Iraq stands out as one of the most fulfilling projects I've carried out.

Based on our track record, CEELI was selected to train a total of 200 Iraqi judges between now and 2006, drawing on approximately \$600,000 in support from the

British government's Department for International Development (given via the International Law Assistance Consortium, based in Sweden), as well as some financial assistance from the Czech government. The institute developed the course, titled "Judging in a Democratic Society," with the participation of an international group of experts, as part of a project to bring the rule of law to countries in transition. It emphasizes the skills and practices necessary for a court system to be accessible, efficient and fair. The course has been given many times, in several languages, to judges from over 20 countries. The version of the course for Iraqis adds to the core curriculum materials unique to that region and its legal history. The presentations and all written materials are translated into Arabic.

The two-week course is primarily participatory, although it combines some lecture-based information sharing and comparative best-practices presentations. It includes sessions on judicial ethics, relations with other branches of government, public access to the courts and judicial independence. As the Iraqi judges noted, the previous legal system primarily catered to the needs of a dictator. Yet because the country's legal system was based on French and Egyptian law, with a significant British legal influence as well, there was a strong foundation to work from in modifying their legal framework.

The faculty consisted of five dedicated professionals who each gave two weeks of their valuable time, pro bono. They were: Justice Robert Utter, a distinguished former chief justice of the Washington State Supreme Court, who was the designated "team leader;" Munter al Fadhal, an exiled Iraqi lawyer from Sweden, who is also a human rights specialist; Justice Ernst Markel, an Austrian Supreme Court justice; Judge Judith Chirlin, from the Los Angeles Superior Court; and Dr. Markus Zimmer, a federal court administrator from the state of Utah.

In September 2004, an initial group of 50 Iraqi judges (personally selected by the Iraqi Chief Justice, Madhat Al-Mahmood) landed in Prague for the two-week training course on basic principles of democratic justice. The

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course had been canceled twice because the participants' safe departure from Iraq could not be guaranteed, so it was a great relief when they finally arrived. (In November, CEELI trained the second group of 47 Iraqi judges, and during 2005 it will train an additional 100 Iraqi judges.)

It is worth noting that other groups of Iraqi judges have attended similar conferences on the role of the judiciary. For example, in May 2004, 28

Iraqi judges and Ministry of Justice officials traveled to The Hague for a two-day conference on the rule of law with their international counterparts, including U.S. Supreme Court Justices Sandra Day O'Connor and Anthony Kennedy; the most senior judge in Britain; and judges attached to international tribunals based in The Hague. Conference participants discussed the importance of the rule of law and the role of the judiciary in securing fundamental rights. The conference was organized by the Coalition Provisional Authority's Ministry of Justice in Baghdad, along with the U.S. embassy in The Hague.

The judges in our group came from all parts of Iraq, from now-household names like Fallujah and Basra, and from less familiar places like Karrada or Diyalla. Some were victims of Saddam Hussein's regime, others were related to individuals who were tortured and murdered by Hussein, and still others were survivors of post-Saddam Hussein assassination attempts. There was even one judge whose bodyguards were killed while protecting him from assault.

Because of security concerns, news of the seminar was kept quiet. Nevertheless, the Iraqis were delighted to be visited by some important dignitaries over the course of the two weeks. Deputy Secretary of State Richard Armitage assured them that the United States, Great Britain and the Czech Republic would not rest until they were "seated on the bench, making just and wise decisions for the Iraqi people." Czech Foreign Minister Cyril Svoboda addressed the distinguished group of Iraqi judges at their graduation ceremony, emphasizing what both Iraq and his country had in common: a transition from a totalitarian regime to a democracy.

Transcending Barriers

All 50 participants were men, which is not surprising considering that out of a total of approximately 860 judges in Iraq, fewer than 15 are women. (There were three female participants in the second course held last November.) Initially, they had a difficult time relating to women in positions of authority. Welcoming the group that first day, I felt like a clear windowpane — there was no eye contact, no verbal connection. Only a couple of the judges even acknowledged my greetings. For the first time in my life I understood what many black South Africans had told me about their experiences under apartheid: they might as well have been invisible.

Yet, despite what appeared to be insurmountable obstacles, somehow we bridged the barriers of our respective cultures and histories over the next few days. A lot of the credit must go to the instructors themselves, of course, both for their enthusiasm to explain the current international practices of an independent judiciary, and their attention to developing a rapport within the religiously and ethnically diverse group to foster a genuine exchange of ideas.

If I had to identify a single “magic moment,” I might point to the attempt on the third day by the Utah court administrator, Dr. Markus Zimmer, to teach the participants how to say hello in the language of his parents (and the land of his birth): “Schwyzertüütsch.” Whether it was the sheer incongruity of that sound or the amusement value of trying to reproduce it, all of a sudden, there was laughter ... laughter that transcended the language barrier. And we continued to forge a stronger and stronger bond over the rest of our time together.

The two-week course was punctuated with poignant experiences. One judge ended up in the cardiology department of the Military Hospital in Prague just before he would have had a massive heart attack, where he discovered that the operating Czech doctor had been performing similar procedures in Basra. Then there was the Iraqi judge who broke down in tears during his speech at the residence of the U.S. ambassador, full of emotion at recalling what they all had experienced back home.

I also recall the quick response of the Czech police when we alerted them to the fact that a young “foreign” man was videotaping the institute — only to find out

that the young man was the brother of one of the judges. For many of these Iraqis, Prague was the place for family reunions, because so many of their kin had fled there under Saddam Hussein’s rule.

Finally, there was the emotional farewell speech given by the senior American judge, Justice Robert Utter, at the graduation ceremony, as he wished his band of “brother judges” well in their future endeavors, knowing that they were all returning to a dangerous uncertainty.

Tears streamed not only down his cheeks, but also down the cheeks of every single Iraqi judge.

A Return to Wise Rule

By the end of the two weeks I had received numerous invitations to visit Kurdistan and other places that, not too long ago, seemed so remote and alien. By the end of the workshop I was “Barbara, the one who brings good news,” or “Barbara, the treasuries,” or “Barbara, citizen of the planet,” or “Barbara, the special alloy that Allah did not include in the periodic table.” (In Arabic, these appellations are much shorter!)

But perhaps my favorite memory from that last day is when the two most senior judges, an Arab and a Kurd — who’d had an especially hard time accepting my leadership role — embraced me, each awkwardly planting three kisses on my cheeks.

The judges have returned to their everyday turmoil and ordeals, with “Personal Action Plans” they had developed with their instructors. These plans were realistic assessments of what the judges could begin to do back home, in their own courthouses. I still get an occasional e-mail from a few of them, inviting me to teach law at a university in Kurdistan, or visit the courts where they preside. I cannot yet respond, “Yes, with pleasure!” But I hope to do so soon. Tragically, one of the judges who was a key participant in our November 2004 course, the secretary general of the Judicial Council in Baghdad, Judge Qais Hashim al-Shammari, was brutally murdered, along with his brother-in-law, in January.

Justice Utter recounts a story the Iraqi judges had shared with him, of “a time when Iraq was ruled by a wise king. He was universally revered and well served by the judges of his kingdom, who were looked upon as God’s messengers on earth. So great was the respect of



Photo credit: Markus Zimmer

The author is sitting on the ground in the front row, fourth from the right.

the king for his judges that when he entered a room where they were seated, he remained standing and did not ask them to stand. When he left the room, as a sign

goal of rebuilding the Iraqi judiciary to the point of respect it reached in the story of the ancient king is fulfilled." Amen. ■

of respect he walked backwards so he would not turn his back on them."

Under Saddam Hussein, the birthplace of Hammurabi's Code was ravaged by abuse of the rule of law. Yet from the outset, the Iraqi judges taught us that the foundations of belief in that concept still run deep in Iraq. Whether the Iraqis can rebuild on these foundations remains to be seen. But, echoing the senior American judge's thoughts, "[We] can only hope their

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