

# Establishing Justice and the Rule of Law in Iraq: A Blueprint for Action

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Under the auspices of the U.S. State Department-supported Future of Iraq Project, a working group on transitional justice has been consulting since July 2002 with the Iraqi Jurists Association on a range of options pertaining to post-war justice in Iraq. Composed primarily of former Iraqi judges and lawyers, the working group has also consulted extensively with international experts, including several Institute experts on transitional justice, to produce a 300-page blueprint for action. On May 21, 2003, the Institute hosted a Current Issues Briefing to explore the findings of the working group's new blueprint for establishing justice and the rule of law in Iraq. Moderated by Neil Kritz, director of the Institute's Rule of Law Program, the briefing featured presentations by working group members Tariq Ali al-Saleh, Reyahd Abdul Majeed al-Kabban, Abdul Mun'im al-Khatib, and Sermid D. Al-Sarraf.

## Designing a Blueprint for Reform

Sermid D. Al-Sarraf opened the session with an overview of the Iraqi Jurists Association's work over the past several months as part of the State Department's working group on transitional justice in Iraq. Stressing that all of the members of the working group had practical experience as legal practitioners in Iraq, al-Sarraf noted that the State Department had not given any editorial input into the working group's findings or subsequent report. He also pointed out that the Iraqi Jurists Association represented the largest collection of Iraqi lawyers, judges, scholars, and other jurists outside of Iraq.

Focusing on the report's findings, al-Sarraf stated that the working group's report and recommendations covered three primary areas:

1. *Truth, Accountability, and Reconciliation.* This included recommendations on how to deal with the prosecution of war crimes by the Hussein regime as well as issues such as dealing with murder under national laws.
2. *Legal Reform.* This focused primarily on how to take existing Iraqi laws and legal codes and reform them so that they are consistent with generally accepted international standards regarding the basic protection of human rights.
3. *Institutional Reform.* This examined how to reform the overall institutions that make up the current Iraqi judicial system—including the courts, police, prison, and military and security services—as well as how to ensure that the Iraqi system of law and order as a whole would serve the people and not just the head of state.

In closing, al-Sarraf emphasized the report's recommendations were gender neutral and only covered issues regarding the rule of law and administration of justice during the immediate transition and not a complete overhaul of the Iraqi legal system. He also stated that Iraq has a large community of legal practitioners and scholars which the United States and the international community should draw upon in addressing legal reform—including the drafting of a new constitution—in Iraq. "It's up to the Iraqi people to decide," al-Sarraf said in closing, "if they want to change the family code and adopt a new civil code."

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## Dealing with Legacies of the Past

Elaborating on the working group's findings regarding truth, accountability, and reconciliation, Abdul Mun'im al-Khatib stressed that the old society had been discredited and that Iraq must start now at "page one" in addressing human rights abuses under the Hussein regime. Of critical importance, al-Khatib pointed out, was addressing the culture of "impunity" that had taken root in Iraqi society under Hussein and the Baath party. This, he lamented, had dramatically undermined the faith of the Iraqi people in the ability of the state to fairly and equally administer the rule of law throughout the nation. "They [Baath party members] always got away with murder and the rest [guilty or not] were always under threat of being captured," al-Khatib noted.

Al-Khatib stated that the working group had made a series of recommendations designed to help rebuild faith in the legal system and ensure that no one group or party would be above the law again. A healthy democratic society cannot be ruled by force or fear, he pointed out. Moreover, al-Khatib stressed, setting up a system for the public airing and punishment of the Hussein regime's past crimes and human rights abuses would be an important part of the transition. Without clear progress in the eyes of the Iraqi people on such issues, al-Khatib cautioned, it will be difficult to truly reform the Iraqi legal system and build the legal foundation needed for a healthy democratic society in Iraq.

## Forging a Fair Foundation for the Future of Iraqi Society

One of the top priorities, identified by the working group is reforming the nature of the Iraqi government to include a vigorous set of checks and balances, according to Reyahd Abdul Majeed al-Kabban, Elaborating on the group's recommendations regarding institutional reform, al-Kabban stressed that a stable democracy in Iraq would require the creation of independent executive, legislative, and judicial branches. This, he noted, was not only important in creating stable power-sharing mechanisms needed to accommodate Iraq's diverse population, but in rebuilding a sense of trust in the government by ensuring that power could not again be consolidated under one single person.

In addition to general institutional government reform, al-Kabban stated, the working group believed that a number of more detailed reforms would need to be made to the existing Iraqi judicial system to ensure accountability and the rule of law. The working group's report focused on four main priorities:

1. *Institutional Judicial Reform.* For the courts to function more effectively, the report suggested that the current network of regional and national courts be reorganized and unified into one system. The top court, the report suggested, should be a constitutional national court similar in nature to the U.S. Supreme Court.
2. *Military and Intelligence Service Reform.* The report stressed that clear safeguards and restrictions must be placed on the domestic activities of the Iraqi military and intelligence services. This included drawing clear distinctions between national security and state functions related to the administration of law and order as well as prohibiting and setting penalties for the use of weapons of mass destruction by the state on the people of Iraq.
3. *Penal System Reform.* To ensure the proper treatment of prisoners and to safeguard against the fragrant human rights abuses committed by the Hussein regime, the report suggested a set of wide-ranging reforms to the Iraqi penal system. Included were recommendations about the treatment and protection of the rights of women in the penal system.
4. *Legal Training and Reform.* To aid in overall reforms that will be needed to build a foundation for an accountable system for the administration of justice in Iraq, the report suggested that reforms be made to the system for training legal professionals. In particular, the report noted that professional training should place a much greater emphasis on the role and duties of legal professionals as members of the overall judicial system as opposed to personal technical proficiency.

## Assessing the Environment for Legal Reform

The last of the day's speakers, Tariq Ali al-Saleh, chair of both the working group and the Iraqi Jurists Association, discussed his impressions on the climate for legal reform in Iraq garnered from his recent trip. Having met with a wide assortment of legal scholars and jurists around Iraq, al-Saleh stated that it was clear from his trip that "the people of Iraq are in dire need of the rule of law." He also stressed that demonstrable progress on legal reform was important not only for the people of Iraq, but for the region as a whole. Reform of the administration of the rule of law and protection for human rights could both serve as a model for reformers in neighboring states, al-Saleh pointed out, as well as encourage more active involvement by other countries in the process of rebuilding Iraq.

Turning to the issue of how to deal with the prosecution of war crimes, al-Saleh stated that from his meetings in Iraq and work over the past several months as chair of the working group on transitional justice he believed that an international war crimes tribunal was not a feasible option. Not only would this encounter fierce opposition within Iraq, he noted, but it would likely be politically and economically unachievable at the United Nations. Instead, al-Saleh suggested, a better course of action might be for the international community to assist the people of Iraq in the establishment of an Iraqi criminal tribunal using judges from Iraq as well as neighboring states and other international experts. While he conceded that such an effort would likely need some type of sanction from the United Nations for international legitimacy, it would nevertheless be a better option than current efforts led solely by the United States—an actor who he noted does not currently have the needed legitimacy either within Iraq or in the overall region to effectively operate such a tribunal.

In closing, al-Saleh stressed that reestablishing and reforming the administration of the rule of law in Iraq would require more than simply putting an end to looting, theft, and other such crimes. There are potentially thousands guilty of massive war crimes in Iraq that must be brought to justice for Iraqi society to heal and to restore faith in both the state and the legal system. However, with the danger of revenge killings and other such problems looming on the horizon, al-Saleh warned that the time to address these matters was running short. "Our purpose," al-Saleh noted, "is to understand the situation in Iraq before it's too late."

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## About this Event Summary

This summary reflects the presentations and comments from "Establishing Justice and the Rule of Law in Iraq: A Blueprint for Action"□a Current Issues Briefing held at the U.S. Institute of Peace May 21, 2003. The views summarized above reflect the discussion at the meeting; they do not represent formal positions taken by the Institute, which does not advocate specific policies.