



JUDICIAL REFORM INDEX

FOR

IRAQ

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Introduction

The Judicial Reform Index (JRI) is an assessment tool implemented by the American Bar Association's (ABA) Rule of Law Initiative through the Iraq Legal Development Project (ILDLP). It was developed by the American Bar Association's Central and East European Law Initiative (ABA/CEELI), with the purpose to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable the ABA, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

The ABA embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, the ABA acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, the ABA has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

- (1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: "[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy." Larkins, *supra*, at 616.

Methodology

The ABA sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary*; *Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"*; *Council of Europe's European Charter on the Statute for Judges*; as well as the 1999 *Beirut Declaration* and the 2003 *Cairo Declaration on Judicial Independence*. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications. The ABA has continually integrated new standards and guidelines into its JRI process, such as the *Bangalore Principles on Judicial Conduct*.

Drawing on these norms, the ABA compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, the ABA developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European or other regional concepts, of judicial structure and function. Thus, certain factors are included that an American or a European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, the ABA reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally accepted as basic elements, the ABA determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and the ABA debated internally whether it should include one at all. During the 1999-2001 time period, the ABA tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI's Executive and Advisory Boards, as well as outside experts, the ABA decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, the ABA did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of that statement to that

country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral." Cf. Cohen, *The Chinese Communist Party and 'Judicial Independence': 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from "a completely unfettered judiciary to one that is completely subservient"). Again, as noted above, the ABA has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, the ABA determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and – as JRIs are updated – within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, the ABA decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help the ABA – and its funders and collegial organizations – determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. The ABA also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country's judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. The ABA offers this product as a constructive step in this direction and welcomes constructive feedback.

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Assessment Team

The Iraq JRI 2006 analysis assessment was conducted by Dr. Sami Shubber and Dr. Aziz Al-Okaily. The team received strong support from the ABA and ILDP staff in Iraq, Jordan, and Washington, including Iraq Country Director Alexander A. Kravetz, Attorneys Jaleel Al Saidi, Riyadh Adnan, and Sarab Hassan, Middle East Programs Director Angela Conway, Research and Program Development Deputy Director Simon R. Conté, Middle East Program Managers Clara Mathieu and Jenna Mace, Deputy Regional Director for Gender Programs Aline Matta, and Regional Judicial Advisor Frank McLoughlin. Thomas F. Cope served as editor, and Olga Ruda, the ABA Rule of Law Initiative's Judicial Reform Focal Area Co-Coordinator, provided guidance throughout the assessment process, edited the report and prepared it for publication. The conclusions and analysis are based on interviews with 34 stakeholders in the Iraqi judiciary conducted in Iraq and Jordan during May and June, 2006, and relevant documents that were reviewed at that time. Records of relevant authorities and individuals interviewed (whose names are kept confidential) are on file in the Washington, DC office of the ABA. A supplemental report that focuses on the Kurdish judiciary in Iraq will be produced in the fall of 2006.

The interviews conducted in Iraq took place under extremely difficult security conditions. In some instances, the assessment team could only travel to courthouses in cars belonging to the High Judicial Council. At least one interview could not be conducted on site in Baghdad because of the deteriorating security situation in that part of the city. This security situation may have affected the interviewees' provision of information. We are extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.

Executive Summary

Brief Overview of the Results

The 2006 Judicial Reform Index (JRI) for Iraq¹ was conducted in May and June, 2006 during a period of extreme turmoil and violence. The security situation has greatly hindered the operation of the courts. Despite all, since the fall of the Baath regime, the judiciary has made some significant advances, particularly in the areas of enhancement of the judiciary's role in managing its own affairs and in the expansion of its role in oversight of civil rights and liberties and government actions. Overall, Iraq received a positive correlation on 7 out of 30 JRI factors, a negative correlation on 12 factors, and a neutral correlation on the remaining 11 factors. The results reveal an important dichotomy. There are positive correlations on many factors related to the legal reform of the judiciary's role and structure, but primarily negative correlations for many of the factors related to how the courts operate day-to-day. In many instances, neutral correlations indicate that, as a matter of law, the Iraqi judiciary has made great strides, but that it is too soon to determine whether these legal advances will be put into practice. The legacy of Saddam Hussein's rule is a major factor in many of the negative correlations identified in this JRI. It will take many more years and a concerted long-term effort by Iraq's current and future judicial leadership to address the lack of balanced gender, ethnic, and religious representation in the courts and the inadequacy of court buildings, to name but two prominent issues. Much will depend on whether Iraq becomes stable again in the near future and, if it does, whether the Iraqi government that emerges will respect the principle of judicial independence set forth in the 2005 Constitution of Iraq and will accept a judiciary that is empowered to act independently of the government.

Significant Reforms and Improvements Identified in the 2006 Iraq JRI

A number of key reforms in the Iraqi judiciary, such as greater structural judicial independence, occurred during the period in which Iraq was governed by the Coalition Provisional Authority (CPA). These include the creation of the High Judicial Council (HJC), composed exclusively of judges, that operates the judiciary with substantial independence from the Ministry of Justice (MOJ) and the government. Other reforms, such as the development of broader judicial oversight, came about as a result of the ratification of the new Constitution in 2005.

Examples of specific strengths and achievements include:

- The judiciary as a unit has achieved **substantial structural independence from the MOJ and from the executive branch** of government in general. The **newly formed HJC** has been empowered to manage court employees and to develop an annual budget independently of the MOJ. Interviews with both judges and other legal system stakeholders indicate widespread support for judicial independence within the legal community. A **serious concern remains, however, about the independence of individual judges** from political, religious, and personal influences.
- **Judicial salaries have been increased significantly** since the fall of the Baath regime. It appears that this has been a factor in attracting many well-qualified applicants for judicial positions. Concerns remain, however, about how evenly non-monetary benefits, such as the use of government vehicles, are distributed among judges.

¹ The 2006 Iraq JRI does not include an analysis of the Kurdistan Region of Iraq. A supplement to this JRI covering the Kurdistan Region will be completed by the end of November 2006.

- The formation in June 2006 of an **independent, non-political, voluntary Judicial Association**, which would include both judges and prosecutors, potentially will enable the judges to address issues of concern to the judiciary as a whole.
- The 2005 Constitution greatly **enhanced the role of the judiciary in overseeing civil rights and liberties, as well as government administrative practices**. The courts now have extensive authority over the review of laws and governmental actions and the power to nullify or overturn decisions that violate the Constitution or relevant laws. Early cases involving the newly created Federal Supreme Court appear to **indicate that the Iraqi Government will accept adverse rulings**, perhaps signifying a broader acceptance of the principle of judicial review of executive actions. It remains to be seen, however, whether acceptance of this exercise of authority by the courts will become the norm.

Major Concerns Identified in the 2006 Iraq JRI

- **Safety and security remains the fundamental issue** for Iraqi judges and their families. Indeed, the most serious issue facing Iraqi judges today is survival. The growing insurgency has made **judges and courthouses a centerpiece of attack**. Several judges and their family members have been assassinated since 2003, and many more have been threatened and have gone into hiding when not at the courthouse. Although judges are provided with bodyguards and other security measures, they remain at serious risk. Until security is restored to Iraq, judicial improvements of any sort will be difficult or impossible to implement.
- Despite advances related to structural independence of the judiciary, the **independence of individual judges remains a concern. Judges face intense pressure from external forces and individuals**, often for reasons related to strong family, tribal, ethnic, and religious loyalties. **Wasta, the practice of doing favors for persons with whom you have a family or other personal connection**, remains widespread. Although judges frequently rebuff these improper advances, it is impossible to measure how frequently **wasta** affects judicial actions. Given the polarization currently occurring in Iraqi society, it is likely that **pressure from religious and political leaders of various sects and factions** on judges who belong to the same sect or faction has grown. Furthermore, threats against judges and their families from individuals or groups connected to violent factions in Iraqi society have clearly increased.
- A number of problems in the Iraqi judiciary relate to an ongoing **lack of respect for the courts' authority by other parts of government**. For instance, there have been reports that the Ministry of Interior has **detained individuals in non-exigent circumstances without court authorization**, despite legal requirements to the contrary. Furthermore, there is frequently a **lack of enforcement of judicial decisions** by the police, who are charged with enforcing court judgments. Weak enforcement is due to a lack of coordination between the courts and the police, as well as the security situation and a lack of resources.

Concerns Related to Lack of Accountability, Transparency, and Efficiency of the Judiciary

- Unless they are parties to the case at issue, Iraqi citizens have **little ability to hold judges accountable or to access information on the activities of the courts**. For instance, ordinary citizens have **no right to file a complaint against a judge** for misconduct, unless they are also a party to the case at issue. The invasion of Iraq in 2003 resulted in extensive damage to court files. Members of the public are **unable to examine court records** without special permission of the court, nor is there a public method for them to obtain judicial decisions of Iraqi courts. The poor condition of court

buildings, which results in some judges conducting civil trials in their offices, means that the public and the media often have **inadequate access to courtroom proceedings**.

- There is **no continuing legal education system** for Iraqi judges, which hinders judges from keeping up with developments in the law. Attempts by foreign governments and international NGOs to train Iraqi judges on cutting-edge issues have occurred, but it is impossible to gauge the sustainability of these efforts. Many of these courses involve flying Iraqi judges out of the country for short periods of time, with little or no follow-up.
- A related concern is that Iraqi judges are **unable to access information easily**. Judges and court employees have **no formal means of learning about court decisions** promulgated elsewhere in Iraq. **Law libraries have been devastated** in many parts of the country by post-invasion looting. Secondary source legal materials are difficult to find. Most judges and court employees **are unable to access the Internet for legal information**, due either to lack of adequate computer equipment, lack of training on how to use this equipment, or lack of steady electricity supply in some instances.

Concerns Related to Gender, Ethnic, and Religious Imbalance in the Courts

- Despite some progress in achieving gender balance within Iraqi courts, **women still represent less than two percent of the judiciary** (13 women out of 738 sitting judges). The main reason for this disparity is the legacy of the Baath regime, when women were banned from the bench for nearly 20 years during 1984-2003. The current **judicial leadership is making strides in addressing this imbalance**. For instance, more than 10% of students presently enrolled at the Judicial Institute are women. However, a greater effort will need to be made to address this imbalance, particularly given the rise of religious parties and factions in Iraq that are opposed to women serving in the judiciary.
- Similarly, it appears that **full representation for all ethnic and religious groups in the judiciary has not yet been attained**, due mainly to decades of Baath domination of the courts, which favored Sunni Arabs over other minorities. Although the present ethnic composition of the courts is harder to measure, there are judges of various ethnic and religious backgrounds, including the current Chief Justice, who is a Shi'a Muslim. However, there are no formal programs aimed at stimulating the training, placement, and advancement of ethnic and religious minorities in the Iraqi judiciary.

Iraq Background

Iraq had a great civilization in the ancient history of Sumer and Babylon and was known to the ancient world as Mesopotamia. It is the birthplace of the first comprehensive legal code in history, the Code of Hamourabi, some four thousand years ago. During the Islamic era, Baghdad was the capital of a great Muslim empire, extending from Morocco to China. In the Abbasid period (749-1258), at the time of Haroun Al-Rasheed (786-809), Baghdad was a great center for culture, science, art, and commerce. However, with the decline of the Islamic empire and the destruction of Baghdad by the Mongol Hulagu in 1258, Iraq went through a period of decline. It became part of the Ottoman Empire in the 16th century, and it was not until the 20th century that Iraq began to emerge from this period of Ottoman control. The British occupation of Basra (1914), Baghdad (1917), and Mosul (1918) put an end to the Turkish domination of Iraq.

In 1921, following creation of the League of Nations after the end of the First World War, Iraq became a mandated territory and a monarchy, under the United Kingdom's administrative authority. Iraq became an independent state in 1932 and a founding member of the United Nations in 1945, after the end of the Second World War. The monarchy lasted until July 14, 1958, when a coup d'état led by General Abdul Karim Kassim took place, and Iraq became a republic. In 1963, another coup d'état took place, led by the Baath Party, and Kassim was killed without a trial. This was followed by a period of political change until 1968, when the Baath Party came to power again. The Baath regime was in power from that date until April 9, 2003, when the United States military entered Baghdad and overthrew the regime and its leader, Saddam Hussein.

The independence of the judiciary was first declared by Order No. 35 of the Coalition Provisional Authority [hereinafter CPA] on Re-Establishment of the Council of Judges, dated September 13, 2003 [hereinafter CPA ORDER NO. 35], which provided for the creation of the Higher Judicial Council [hereinafter HJC]. The Council was declared independent from any control, supervision or observation from the Ministry of Justice [hereinafter MOJ]. *Id.* §§ 1, 6. Following thirteen months of military occupation, an Interim Government was appointed in Iraq and took power in July 2004 pursuant to the LAW OF ADMINISTRATION OF THE STATE OF IRAQ FOR THE TRANSITIONAL PERIOD of March 8, 2004. Democratic elections were held in January and December 2005, leading to the formation of a national government in May 2006. This was the first democratically elected government since the end of the monarchy in Iraq, and included representatives from the Shi'a, Sunni, and Kurdish communities, among others.

Legal Context

In 1920, an Iraqi national government was formed and began the adoption of laws and regulations for the country. Iraq became a monarchy in 1921 when King Faisal the First was made King of Iraq. In 1925, the first Iraqi constitution was adopted, and it was changed when Iraq became a republic after the revolution of 1958, led by Abdul Karim Kassim. A provisional constitution was adopted on July 27, 1958, and several new constitutions were promulgated between 1958 and July 16, 1970. The Constitution was amended several times during the Baath regime. After the fall of the Baath regime on April 9, 2003, a new Constitution was adopted in October 2005, following approval by a popular referendum.

The Iraqi Constitution of 2005 provides for a federal State, which is a parliamentary and democratic republic. See art. 1. It also provides for three federal authorities: the legislative, the executive, and the judicial, which function on the basis of the separation of powers. *Id.* art. 47. The Constitution further specifies a wide range of civil and political rights and freedoms. *Id.* arts. 14-46. The federal system consists of the capital, Baghdad, and regions, governorates, and local administrations. *Id.* arts. 11, 116. At the present time, there are 18 governorates in Iraq.

The legislative authority consists of the Council of Representatives (the Parliament, or *Majlis Al-Nowab*) and the Federal Council. *Id.* art. 48. The Parliament is composed of members in the ratio

of one seat for 100,000 citizens, and there are now 275 members of the Parliament. The Federal Council will consist of representatives of territories (*aqaleems*) and governorates which are not part of these territories. However, this Council is not yet established, for it has to be established by a law adopted by a 2/3 majority of the Parliament. *Id.* art. 65. The executive authority consists of the President of the Republic and the Cabinet. *Id.* art. 66. Finally, the judicial authority consists of the HJC, the Federal Supreme Court, the Court of Cassation, the Attorney-General, the Judicial Supervisory Committee and other federal courts, which will be regulated by law. *Id.* art. 89. The Constitution guarantees the independence of the judiciary. *Id.* art. 87.

The Iraqi legal system is a civil law system, and it is based on the Egyptian legal system, which in turn is based on the French legal system. Under this system, the judicial precedent concept, found in the common law system, does not exist. Nor is there compulsory law-reporting of decided cases. However, certain important decisions of the Court of Cassation were published in some legal periodicals, which ceased publication in the 1990s. It is worth mentioning that during the Baath regime, the judiciary was part of the MOJ, and thus it was part of the executive authority leading to the loss of its independence. On the other hand, the Revolutionary Command Council [hereinafter RCC], headed by Saddam Hussein, became the legislative authority, whose decisions became binding laws. Those decisions were, on the whole, adopted more in the interest of the Baath regime than the interest of the Iraqi people, with lingering negative effects on the legal culture of the country. The HJC is now implementing a significant program of reviewing all legislation adopted under the Baath regime, in order to determine which laws should be annulled completely, amended, or retained. Furthermore, the new Iraqi Parliament has embarked upon the adoption of new laws in various legal areas, such as foreign investment, public health and environmental law, to give but a few examples.

In the hierarchy of the order of laws in Iraq, the Constitution prevails over any other law in the country, and any law that contradicts the Constitution is considered null and void. The same applies to any provision in the constitution of any territory or any other law. CONST. art. 13. Furthermore, when Iraq becomes a party to an international treaty, or ratifies such a treaty, it must enact a national law to give effect to that treaty. *Id.* art. 61(4).

History of the Judiciary

When Iraq was under the control of the Ottoman State, the religious courts (*Al-Mahakim Al-Shariah*) were the competent authorities in settling disputes between litigants. These courts applied Islamic law (specifically, the Hanafi School). When civil and criminal courts were created in the Ottoman State in 1856, criminal cases were removed from the jurisdiction of the religious courts to the non-religious, criminal system. This was followed by the removal of commercial cases from the jurisdiction of the religious courts to the commercial courts. The latter courts applied the relevant commercial laws for land and sea transport. Similar changes were introduced in Iraq in 1880, and the courts began to apply the laws newly adopted by the Ottoman legislature, which were based on European laws. See Medhat Mahmoud, *The Judiciary in Iraq: A Review of the Legislation Regulating Judicial Affairs in Iraq* at 7, IRAQI JUDICIAL FORUM (Oct. 2004) [hereinafter *Judiciary in Iraq*].

However, when British forces entered the southern city of Basra in 1914, the military authorities adopted some laws and regulations for Basra, which they called the Iraqi Code. The Code and regulations were based on Indian law. In 1915, the British authorities established the Basra courts, and a British officer became the highest judicial officer in Basra. These courts began, for the first time, to conduct proceedings in Arabic rather than Turkish, as was the case during the Ottoman rule. Following the capture of Baghdad in 1917, the courts had largely ceased to function, because of the departure of the Turkish judges and the destruction of the courts' files. Only one religious court (*Sharia* Court) and one court of limited jurisdiction, a reconciliation court (*Sulh* Court) were left in Baghdad. The British authorities restored the functioning of the courts along the following lines:

1. A Court of Appeal in Baghdad, composed of a British president and two Iraqi judges, which was the highest court for all the occupied parts of Iraq. Its decisions were final.
2. Courts of first instance in Baghdad, Hilla, Baqouba, Basra, and Mosul. They were presided over by British judges, with Iraqi judges as members of the courts. These courts had jurisdiction in civil and commercial areas.
3. Reconciliation courts in Baghdad, Basra, Mosul, Amarah and Kirkuk, with jurisdiction limited to minor issues.
4. Religious courts, which were the same as those under the Ottoman State, with jurisdiction on personal status issues for Muslims.
5. Criminal courts, composed of three categories of jurisdiction, and a Supreme Criminal Court. The judgments of the latter court in serious criminal cases had to be approved by the British Governor-General in Iraq.

During the period of the British occupation of Iraq, the Arabic language became the official language of the courts, and the judicial system was unified for Baghdad, Mosul, and Basra, with a justice department headed by Sir Bonham Carter. As Justice Auditor, he was responsible for all judicial matters in Iraq, representing the Royal Governor-General.

In 1929, the first Iraqi law regulating the judicial system was adopted. The law dealt with issues such as the appointment of judges, their promotion and transfer. It also provided, for the first time in the history of the judicial system, for the establishment of the Committee for the Affairs of Judges and Religious Judges. This Committee was entrusted with, *inter alia*, the nomination of judges and religious judges and soliciting the intervention of the Minister of Justice for their appointment, promotion, and transfer from one court to another. This Committee could be considered as the forerunner of the present HJC. This Committee was reorganized in 1945, 1956, and 1963, when it was renamed the Judicial Council. In 1977, the Law of the Ministry of Justice (Law No. 101 of 1977) was adopted. It provided for the creation within the MOJ of a body called the Justice Council, which assumed the functions of the Judicial Council. The creation of this body has been described by Iraq's current Chief Justice as "an indication of the end of the independence of the judiciary and the end of its role as an independent authority from the executive and legislative powers, for the law made the Minister of Justice, who represents the executive power, the head of the Judicial Council." See *Judiciary in Iraq* at 25.

It was not until 2003, after the fall of the Baath regime, that a new situation arose when the HJC was re-established by CPA Order No. 35. The HJC was entrusted with the function of supervising the judicial system in Iraq, independently from the MOJ. CPA ORDER NO. 35 § 1. This Order was followed by Memorandum No. 12 on Administration of Independent Judiciary, issued by the CPA on May 8, 2004 [hereinafter CPA MEMORANDUM NO. 12], on the implementation of the independence of the judicial system, giving effect to CPA Order No. 35. CPA Memorandum No. 12 has enhanced the independence of the judiciary by providing for the financial and administrative independence of the HJC from the MOJ, including placing court employees under the control of the HJC. See §§ 3, 4.

The independence of the judiciary has been enshrined in the Iraqi Constitution. Art. 47 of the Constitution provides for the creation of three federal authorities, the legislative, executive, and judicial, each of which exercises its functions on the principle of the separation of powers. Moreover, "the judicial authority is independent and its functions are exercised by the courts at their various categories and levels, and the courts render their judgments in accordance with the law." *Id.* art. 87. Furthermore, "the judges are independent and no authority other than the law governs the exercise of their functions, and no authority can interfere with the judiciary or the administration of justice." *Id.* art. 88.

Structure of the Courts

The structure of the courts in Iraq is regulated by the Constitution, the Judicial Organization Law (Law No. 160 of 1979) [hereinafter JUDICIAL ORGANIZATION LAW], CPA Order No. 35, and CPA

Memorandum No. 12. Generally speaking, the structure of the courts consists of civil and criminal courts. The civil courts are divided into first instance courts and appeal courts, and the criminal courts are divided into courts with jurisdiction over serious crimes and courts with jurisdiction over less serious crimes, with the Court of Cassation as the final court of appeal for both jurisdictions. Furthermore, a new court called the Federal Supreme Court has been created by the Constitution. There are no military courts in Iraq at the present time, but the Constitution envisages the creation of such courts by legislation. See art. 99. Moreover, the Constitution prohibits the creation of special or exceptional courts. *Id.* art. 95. Following is a summary of the court structure in Iraq.

Courts of first instance (*Mahakim Al-Badai*) are courts established in the administrative center of each Iraqi governorate, or in a lesser administrative district. JUDICIAL ORGANIZATION LAW art 21. Each court consists of one judge and has jurisdiction over cases defined in Articles 31-33 of the Law of Civil Procedure (Law No. 831 of 1969) [hereinafter LAW OF CIVIL PROCEDURE]. This jurisdiction covers matters such as debts of very low sums of Iraqi Dinars, sale of real estate by part owners, and personal status cases of non-Muslims and foreigners not subject to Islamic law. There are currently 126 courts of first instance in Iraq.

Personal status courts (*Mahakim Al-Ahwal Al-Shakhsiya*) are established in any place where there is a court of first instance. There can be one or more such courts, and one judge sits in each court. JUDICIAL ORGANIZATION LAW arts. 26, 28. The jurisdiction of a personal status court comprises cases of marriage, succession, and related issues. LAW OF CIVIL PROCEDURE arts. 300, 302, 305. There are currently 126 personal status courts in Iraq.

An **Appeal Court (*Mahkamat Al-Istinaf*)** is defined as “the high judicial body for a governorate or more, and is composed of a President and a sufficient number of Vice Presidents and judges, and it exercises specific jurisdiction assigned to it in law.” See JUDICIAL ORGANIZATION LAW art. 16. Iraq is divided into 16 judicial appeal districts. The jurisdiction of an appeal court is to consider appeals from the decisions of courts of first instance in the relevant district. LAW OF CIVIL PROCEDURE art. 34.

Felony courts (*Mahakim Al-Jinayat*) are established in the center of a governorate, and there can be more than one such court in one governorate. JUDICIAL ORGANIZATION LAW art. 29. Each court is composed of a President, who is the head of the appeal court in the governorate or one of his/her deputies, and two additional judges. *Id.* art. 30. The President and the other members of the court are nominated by the HJC. The jurisdiction of these courts covers cases of serious crimes referred by the investigating courts and cases referred by misdemeanor courts. A case will be referred by a misdemeanor court to a felony court when the latter believes that the ruling to be issued would be outside its jurisdiction. LAW OF CRIMINAL PROCEDURE art. 139(A) (Law No. 23 of 1971) [hereinafter LAW OF CRIMINAL PROCEDURE]. There are presently 126 felony courts in Iraq.

After the fall of the Baath regime, a new criminal court has been established by CPA Order No. 13 on the Central Criminal Court of Iraq (July 11, 2003) [hereinafter CPA ORDER No. 13], called the Central Criminal Court for Iraq (***Almahakama Al-Markazia Liljinayat Fi AlIraq***) [hereinafter CCCI]. The CCCI is vested with authority over certain crimes, such as terrorism, organized crime, governmental corruption, or cases where a criminal defendant may not be able to obtain a fair trial in a local court. CPA ORDER No. 13 § 18(2). It can take cases from the regular investigative courts as well as its own investigative court, with appeals to the Court of Cassation. *Id.* §§ 18, 21. Its composition is similar to that of a felony court. All local courts in Iraq must comply with an order by CCCI. *Id.* §§ 9, 18(6). This also includes the Kurdistan region.

Misdemeanor courts (*Mahakim Al-Junah*) are established along with certain courts of first instance. JUDICIAL ORGANIZATION LAW art. 31. There can be more than one such court in a particular district (indeed, currently there are 128 such courts). One judge sits on each court. In the absence of a judge specially appointed to such a court, the judge of the court of first instance in the relevant place sits as the judge for this criminal court. Its jurisdiction is limited to cases of

lesser offences and violations of regulations referred to it by the investigating court. There is one special type of such a court, which deals with traffic violations only. It is called the **traffic court**, consisting of one judge.

Investigating courts (Mahakim Al-Tahqeeq) are generally established in places where there is a court of first instance, and the judge of the latter court is the investigating judge, unless a special judge is appointed. *Id.* art. 35. It is often the case that a special judge is, in fact, appointed. There can be one or more such courts in the relevant district. As the name of these courts suggests, their jurisdiction is to investigate criminal complaints and to take the necessary measures as regards referral of the accused to the relevant court. In certain instances, the investigating judge may issue rulings, such as when the complainant waives his/her complaint and the crime is of a type where conciliation is an option. LAW OF CRIMINAL PROCEDURE art. 30A. The investigating judge may issue fines directly in minor criminal matters, such as in cases involving drunkenness or begging. *Id.* art. 134(4). At the present time, the number of investigating courts in Iraq is 130.

Juvenile courts (Mahakim Al-Ahdath) in Iraq are divided into two types: one where the court tries the offender for the crime he/she is accused of committing, and the other where the court investigates the offence of which the youth is accused. JUDICIAL ORGANIZATION LAW art. 33. In the first category, if the offence in question is serious, then the court is composed of a President, who is a judge, and two arbitrators, who are specialists in the field of criminology or in a relevant scientific field, such as psychology. If the offence in question is not serious, the case is tried by an individual judge. When the court serves as an investigating court, an individual judge conducts the investigation regardless of the magnitude of the alleged crime. A minor is defined by the Law on the Protection of Minors (Law No. 76 of 1983) as anyone who has completed his/her ninth year of age and who has not reached the age of eighteen years. See art. 3. There are currently 15 juvenile courts in Iraq.

Labor courts (Mahakim Al-Amal) are established in each governorate, in conformity with Labor Law (Law No. 71 of 1987). There can be one or more such courts in each governorate, and one judge sits in each court. See art. 137. The jurisdiction of a labor court comprises civil and criminal cases mentioned in the Labor Law, the Law on Pension and Social Security for Workers, and other relevant legislation. Presently, there are 15 labor courts in Iraq.

Customs Courts (Mahakim Al-Gamarig) are courts established to deal with customs issues. A customs court is presided over by a judge and two other members – a judge and a legal officer of the Ministry of Finance. See *Judiciary in Iraq* at 51. There are only three customs courts in Iraq. Some additional functions were assigned to these courts by CPA Order No. 25, essentially allowing the investigative customs court to issue confiscation orders for vessels involved in smuggling.

The **Court of Cassation (Mahkamat Al-Tamyeez)** is the final court of appeal in the country, and it exercises judicial control over all the courts in Iraq. It is composed of a President, five Vice Presidents, and up to 24 other judges. JUDICIAL ORGANIZATION LAW art. 12. It is situated in Baghdad. *Id.* The President of the Court is the Chief Justice in the country and serves as the head of the HJC. CPA MEMORANDUM NO. 12 § 2.

The **Federal Supreme Court (Almahkama Al-Itahadiya Al-Olya)** [hereinafter FSC] is a new court in Iraq, which was established by Article 92 of the Iraqi Constitution. The Court is composed of a number of judges, experts in Islamic jurisprudence, and legal experts,² whose number and

² A legal expert is a person well-versed in the civil law system and the laws passed by the legislative authority. An expert in Islamic jurisprudence is a person whose expertise lies in the domain of Islamic law. It is worth noting that, even though the Constitution provides for both types of experts serving on the FSC, it is not clear whether these experts are required to also be judges or have judicial training.

selection procedures, as well as the rules for functioning of the FSC, must be enacted by the Council of Representatives by a 2/3 majority. The jurisdiction of the FSC is laid down in the Constitution and includes control of the constitutionality of laws and regulations, interpretation of the Constitution, settlement of disputes arising from the implementation of federal laws, settlement of disputes between the central government and governorates, and between the governorates themselves, and approval of the results of parliamentary elections. See art. 93.

The **Administrative Court (Almahkama Al-Idariya)** was established by the State Consultative Council (*Majlis Shoura Al-Dawlah*) [hereinafter SCC] and is part of the MOJ. LAW OF THE STATE CONSULTATIVE COUNCIL art. 7(2) (Law No. 65 of 1979) [hereinafter SCC LAW]. This Court is not subject to the HJC. It is composed of three members: a President, who is a judge of the first category of judges or a consultant in the SCC; and two members who are either judges of at least the second category of judges or assistant consultants at the SCC. The Court has jurisdiction to hear cases arising from administrative decisions taken by ministers, government officials and administrative departments, and other actors within the public sector. It has the power to annul such decisions if it finds them tainted by illegality. Its decisions may be reviewed by the FSC. LAW OF THE FEDERAL SUPREME COURT art. 4(3) (Law No. 30 of 2005) [hereinafter FSC LAW]. It should also be noted that the Constitution provides the legal basis for the establishment of a *conseil d'état* that will be responsible, *inter alia*, for the administrative jurisdiction in the country. See art. 101. If and when the *conseil d'état* is established, it will likely become the highest organ to which appeals can be made from Administrative Court decisions.

The **HJC** was established in 2003 by the CPA. See CPA ORDER NO. 35, implemented by CPA MEMORANDUM NO. 12. The HJC consists of 26 members, including the Chief Justice of the Court of Cassation, who serves as the President of the Council; the Vice Presidents of the Court of Cassation; the Director-General of the SCC; the Director-General of the Office of Public Prosecution; the Director-General of the Judicial Supervision Office; the Director-General for Administration; and the Presidents of the Appellate Courts. CPA ORDER NO. 35 § 2.1. Its duties include providing administrative supervision over all judges and public prosecutors, except members of the FSC and the Administrative Court; investigating allegations of professional misconduct involving judges and public prosecutors and taking disciplinary measures against them, including dismissal; and nominating candidates for judicial appointment, promotion, and transfer. *Id.* § 3.

Conditions of Service

Qualifications

To qualify for appointment as a judge, one must be at least 28 years old, have a degree in law from a recognized law school, and graduate from the Judicial Institute in Baghdad following two years of training. To be admitted to the Judicial Institute, the applicant must have had three years of experience in legal practice, either as a practicing lawyer or a court official. Judicial candidates must also be Iraqi citizens by birth, both of whose parents were also Iraqi citizens by birth. Graduation from the Judicial Institute is not required, however, for practicing lawyers with at least ten years of legal experience who are not older than 45 years of age.

Appointment and Tenure

All judges are appointed by the HJC. Judges of all courts, except the FSC, are initially appointed for a one year probationary period. After one year, a judge's appointment may be confirmed for a permanent tenure until the retirement age of 63, provided that the judge's professional performance has been satisfactory and that he/she has conducted himself/herself properly. Judges of the FSC are appointed for lifetime tenure.

Training

There are currently no required training courses for active judges in Iraq. In recent years, Iraqi judges have been offered *ad hoc* training courses by international NGOs inside and outside of Iraq. These have included courses on judicial independence and ethics, human rights, and case and court management.

Iraq JRI 2006 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues present, the ABA would underscore that these factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis. The ABA considers the relative significance of particular correlations to be a topic warranting further study. In this regard, the ABA invites comments and information that would enable it to develop better or more detailed responses to future JRI assessments. The ABA views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

Judicial Reform Index Factors		Correlation 2006
I. Quality, Education, and Diversity		
Factor 1	Judicial Qualification and Preparation	Positive
Factor 2	Selection/Appointment Process	Neutral
Factor 3	Continuing Legal Education	Negative
Factor 4	Minority and Gender Representation	Negative
II. Judicial Powers		
Factor 5	Judicial Review of Legislation	Positive
Factor 6	Judicial Oversight of Administrative Practice	Positive
Factor 7	Judicial Jurisdiction over Civil Liberties	Neutral
Factor 8	System of Appellate Review	Positive
Factor 9	Contempt/Subpoena/Enforcement	Negative
III. Financial Resources		
Factor 10	Budgetary Input	Positive
Factor 11	Adequacy of Judicial Salaries	Positive
Factor 12	Judicial Buildings	Negative
Factor 13	Judicial Security	Negative
IV. Structural Safeguards		
Factor 14	Guaranteed Tenure	Positive
Factor 15	Objective Judicial Advancement Criteria	Neutral
Factor 16	Judicial Immunity for Official Actions	Neutral
Factor 17	Removal and Discipline of Judges	Neutral
Factor 18	Case Assignment	Negative
Factor 19	Judicial Associations	Neutral
V. Accountability and Transparency		
Factor 20	Judicial Decisions and Improper Influence	Neutral
Factor 21	Code of Ethics	Neutral
Factor 22	Judicial Conduct Complaint Process	Negative
Factor 23	Public and Media Access to Proceedings	Neutral
Factor 24	Publication of Judicial Decision	Negative
Factor 25	Maintenance of Trial Records	Neutral
VI. Efficiency		
Factor 26	Court Support Staff	Negative
Factor 27	Judicial Positions	Neutral
Factor 28	Case Filing and Tracking Systems	Negative
Factor 29	Computers and Office Equipment	Negative
Factor 30	Distribution and Indexing of Current Law	Negative

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	Correlation: Positive
<p>All judges are required to have a university degree in law and either complete a two-year training program at the Judicial Institute in Baghdad or have at least ten years of experience as a practicing lawyer. Previously, under the Baath regime, admission to the Judicial Institute was granted mainly on the basis of membership in the Baath Party or loyalty to it, without regard in many instances to the quality and education of the applicants. This is no longer the case under the democratically elected constitutional government in Baghdad, where the HJC is now responsible for the affairs of the judiciary.</p>	

Analysis/Background:

The required qualifications for judges in Iraq are: (1) being a qualified lawyer, i.e., having a degree in law from a recognized law school; (2) graduation from the Judicial Institute in Baghdad, where training for two years is required; and (3) three years of experience in legal practice, be it as a practicing lawyer or as a court official, prior to admission to the Judicial Institute. Alternatively, a practicing lawyer with at least ten years of legal experience, and who is not more than 45 years of age, can also be appointed as a judge. JUDICIAL ORGANIZATION LAW art. 36. There are no lay judges in Iraq.

According to the RCC Decree No. 20 of 1996, graduates of the Judicial Institute are appointed as judges by a republican decree and serve under one year of probation. The graduates of the Judicial Institute are interviewed both before admission and after graduation by judges of the HJC in order to assess their suitability for appointment as judges. However, the de facto situation presented two serious problems. First, until the fall of the Baath regime on April 9, 2003, a crucial criterion for admission to the Judicial Institute was membership in the Baath Party or loyalty to it. Secondly, the training of lawyers at most law schools in Iraq was not up to the desired level, because most of the teachers and professors at these schools were appointed, again, on the basis of membership in the Baath party or loyalty to it, rather than based on their competence. By contrast, interviewees have stated that, after the fall of the Baath regime, all applicants to the Judicial Institute who possess the required qualifications are admitted without distinction as to their religion, sex, ethnicity, or political opinion, including some with a past, low-level affiliation to the Baath Party. An unofficial report indicates that more than 1,300 applications have been received by the Judicial Institute for roughly 75-100 available first-year slots.

The Judicial Institute's curriculum consists of some 40% to 50% practical training, with the remainder made up of theoretical training. The topics emphasized in the training are those closely related to the functions of the would-be judge. They include penal law, civil code, evidence, civil and criminal procedure, the law of personal status, criminal investigation, forensic medicine, enforcement of judgments, and other relevant subjects. The practical training component may include serving as a judicial assistant or a clerk to sitting judges, as well as participating in moot courts conducted by the Institute.

The candidates do not receive special training concerning the ethical and professional rules for judges, nor do they receive any training on cultural sensitivity or the role of the judge in society.

However, interviewees stated that issues of honesty, good moral standing, good professional character, and awareness of the role of the judge in society are all taken into account in the selection and assessment of the suitability of the candidates.

Judges are generally selected without reference to any specialization. However, they tend to develop specializations during their work, e.g., in criminal courts or personal status courts, in which case they would be selected for later posts on the basis of their specialty. At the same time, judges in rural or outlying courts may be required to have more than one specialization. In addition, special year-long elective training courses for Institute students in the fields of civil and criminal law have been prepared by the Judicial Institute. These courses include a theoretical component and the requirement of completing a research paper on a particular legal topic. At the end of the course, the judge concerned is selected for the court corresponding to his/her specialization, be it a civil or a criminal court. Completion of this training course is also taken into account in the promotion of judges.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

Conclusion

Correlation: Neutral

Judicial candidates are selected based on legal qualifications, competence, honesty, impartiality, good character, good professional conduct, good reputation, and a “respectable” social background, by a process that is considered fair. This is in contrast to the Baath regime era, when loyalty to or membership in the Baath Party was a *sine qua non* condition for appointment, regardless, in many instances, of the professional and moral qualities of the appointee.

Analysis/Background:

All judges in Iraq are appointed by the HJC. CPA ORDER NO. 35 § 3(c). There are two principal ways to qualify for appointment as a judge in Iraq: (1) graduating from the Judicial Institute following two years of training; or (2) having engaged in the practice of law for not less than 10 years. JUDICIAL ORGANIZATION LAW art. 36. A candidate who qualifies by graduation from the Judicial Institute must also be an Iraqi citizen by birth, with both parents also Iraqi citizens by birth. Accordingly, an Iraqi whose mother or father is a foreigner is not eligible to become a judge, although there may be a conflict between this provision and the new Iraqi Constitution, which allows dual nationality. See CONST. art. 14(2). The candidate, whether male or female, must also be married. JUDICIAL ORGANIZATION LAW art. 36(1). In addition, candidates must have no physical disabilities. Regarding the second path to judgeship, the only conditions are that a candidate have 10 years of experience in the practice of law, is married, and is not more than 45 years of age. There is no licensing exam as such for judicial candidates.

Interviewees stated that it is the competence of the candidate and his/her personal character that play a decisive role in the selection of judges. These considerations apply equally to the graduates of the Judicial Institute and the practicing lawyers with 10 years of experience. As explained in Factor 1 above, during the period of training at the Judicial Institute, students are subjected to written tests and practical training. Once they have successfully passed these tests, they are interviewed by a committee formed by the HJC, including the director of the Judicial Institute and five senior judges, before being appointed as judges. This process is meant to guard

against political influence in the judicial selection by enhancing the professional elements in the selection process.

The key justification behind appointing seasoned practicing lawyers directly to the judiciary is that these lawyers have gained enough relevant experience in various branches of the law during their practice, and yet are still young enough to be able to serve the judicial system for a long time, as the mandatory retirement age for judges is 63. This approach became useful after the fall of the Baath regime, because a large number of politically appointed judges have been dismissed and the need to fill many vacancies in the courts became apparent. It has been reported that the HJC plans to appoint a new group of judges from the ranks of such practicing lawyers, after an intensive period of training for 6 months, although some respondents expressed the view that such training should last for one year. An additional concern expressed with regard to lawyers appointed to judicial posts involved an allegation that, because under this track lawyers are nominated by the relevant appeal courts, the latter sometimes wield undue influence on the appointment process.

According to interviewees, the criteria applied to candidates for judgeship are legal qualifications and competence, honesty, impartiality, good character, good professional conduct, good reputation, and a “respectable” social background (the last item being a common, and yet difficult to define, consideration in many countries in the region for appointment to many types of prominent positions). The perception of the interviewees with respect to fairness and impartiality in the judicial selection process is that judicial candidates are assessed on the information available from their personnel files and information obtained from their supervisors when evaluating their professional duties. Moreover, their wide sense of justice, honesty, and good conduct are taken into account during the assessment of candidates in the course of personal interviews.

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>There is no required continuing legal education (CLE) for judges in Iraq. The absence of CLE may hinder judges from keeping up with developments in, and being up-to-date on, the law. Certain areas of the law, such as human rights or environmental law, are just beginning to be introduced in Iraq in a proper form, and judges lack adequate education in these areas. The judges’ heavy workload and the poor security situation prevent them from seeking CLE opportunities on their own.</p>	

Analysis/Background:

Judges are not required to take CLE courses, though most of the interviewees considered it important for judges to keep up with legal developments. There is no judicial training center charged with ongoing CLE. The Judicial Institute in Baghdad could carry out such a function, but the prevailing circumstances in Iraq, coupled with the lack of trainers and financial resources, prevent the Institute from organizing such programs.

At the same time, it should be mentioned that *ad hoc* educational opportunities, on a limited scale, have been offered to Iraqi judges outside Iraq by donor organizations, including the

European and the International Unions of Lawyers, the International Legal Assistance Consortium, and the American Bar Association through the Iraq Legal Development Project [hereinafter ABA/ILDP]. These opportunities have included courses on judicial ethics and leadership, human rights, judicial independence, and case and court management. Iraqi participants in such courses are nominated by the HJC and attend the trainings at no cost to them. Participation is recorded on the judge's personnel file. There are no statistics available regarding the number of judges who have participated in such courses.

The percentage of CLE courses dedicated to practical skills training was unknown to those who were interviewed. However, the general consensus seems to be that judicial training programs conducted outside Iraq are too short to achieve meaningful practical skills training.

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion	Correlation: Negative
<p>The Constitution of 2005 guarantees equal opportunity to all Iraqis, and current Iraqi law prohibits discrimination or prejudice on the basis of minority status or gender in the judicial field. During the Baath regime, women were forbidden to become judges, while Sunni judges represented a proportion of the judiciary that was significantly greater than their proportion in the Iraqi population. While it is true that the number of women judges, especially at the leadership level, is small, and the current ethnic and religious composition of the judiciary does not yet reflect the population of Iraq in general, important strides are being made to address these negative effects of the Baath legacy.</p>	

Analysis/Background:

Article 36 of the Judicial Organization Law, which specifies criteria for the appointment of judges, does not discriminate amongst candidates on the basis of gender or ethnic origin. Any Iraqi with the right qualifications, regardless of his/her gender, ethnic origin, or social background, could apply for admission to the Judicial Institute and become eligible to become a judge upon successful completion of training there. Furthermore, the Iraqi Constitution enshrines the right of equal opportunity for all Iraqis. See art. 16. Nonetheless, due in large part to the legacy of the Baath regime, under which women were prohibited from entering the Judicial Institute for many years and Sunni Arabs were favored over other ethnic and religious minorities, it cannot yet be said that the judiciary in Iraq reflects the gender and ethnic composition of the Iraqi society. However, some progress has been made since 2003.

Today, there are judges who are Arabs, Kurds, and Turcomen, and those who are Shi'a Muslim, Sunni Muslim, or Christian. But there are no formal programs aimed at stimulating the training, placement, and advancement of ethnic minorities in the Iraqi judiciary. Thus, according to one source, there are currently no non-Muslim students at the Institute.³ A more detailed breakdown on the ethnicity and religion of students was not available.

Women were admitted to the Judicial Institute after its establishment in 1976, and several of them were appointed as judges and prosecutors. However, in 1984, Saddam Hussein prohibited the admission of women to the Judicial Institute and the appointment of prior female graduates,

³ According to the CIA World Factbook (Sept. 19, 2006, available at <https://www.cia.gov/cia/publications/factbook/geos/iz.html>), 3% of Iraqis are non-Muslim.

although women who had already begun their careers as judges could maintain their posts. Since the fall of the Baath regime, the right of women to apply for admission to the Judicial Institute has been restored, and 25 women have been admitted. Some women who had been previously excluded have now been appointed to the bench. The long-term effects of Saddam Hussein's exclusion policy will, however, be long-felt. Currently, only 13 out of 738 active judges are women (i.e., only about 1.8%). At the present time, according to one source, of the 235 students enrolled in the Judicial Institute, 25 (10.6%) are women.

It is also worth noting that, as religious groups attempt to assert political power in Iraq, there is the potential for greater pressure against the appointment of women to the judiciary. For instance, in 2003, the U.S. authorities rescinded a decision to appoint a prominent female lawyer as a judge in the Shi'a cultural center of Najaf, following the protest of some religious groups. As of the time of this JRI, no female lawyers had been appointed to serve as judges in the governorate of Najaf, although several had applied.

Ethnic minorities appear to be adequately represented in the leadership of the judiciary, according to the interviewees. It is worth noting that the current Chief Justice (who also serves as the President of the HJC) is a Shi'a Muslim, and that there are three Kurdish members on the nine-member FSC. However, while there are some women in the leadership posts, e.g., a deputy president of an appeal court in Baghdad, women are not adequately represented at the top levels of the judiciary. This is in part due to the legacy of the Saddam Hussein era, when women were prevented from attending the Judicial Institute for almost 20 years. By contrast, the attitude of the present government in Iraq is towards the promotion of women's causes, and a number of civil society groups are actively advocating for these causes, including the advancement of women into leadership positions in all areas of government.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

Conclusion	Correlation: Positive
<p>The SCC, which is an organ of the MOJ, is the only body entrusted with determining the constitutionality of draft legislations in Iraq. While it only has the power to recommend the annulment or amendment of legislation, its recommendations are highly respected. There is also the newly established FSC, which issues binding decisions on the constitutionality of laws and regulations in force. This judicial review can provide adequate means of protection of civil and political rights, as has been shown in at least one recent case.</p>	

Analysis/Background:

The SCC (*Majlis Shoura Al-Dawlah*), which is part of the MOJ, is entrusted with the task of examining draft legislation in order to assess its compatibility with the Iraqi Constitution, international treaties, and other national laws. The SCC was established in 1979. See generally SCC LAW. When a new law is being prepared, either as an ordinary draft law or one to give effect to a treaty which Iraq has ratified, the SCC provides a legal opinion on the compatibility of the draft law or the treaty with the Iraqi Constitution and other laws in force at the time. *Id.* art 6(2). The SCC can also recommend certain amendments to the draft law in question. *Id.* Although the SCC is not a part of the judiciary, it employs a staff of highly qualified and experienced lawyers and, according to interviewees, its recommendations are highly respected by all concerned.

In addition, the newly-established FSC has the authority, *inter alia*, to determine the constitutionality of laws and regulations in force and to interpret the Constitution. CONST. art. 93. The Court is composed of a number of judges, experts in Islamic jurisprudence, and legal experts whose number and selection, as well as the rules for functioning of the Court, must be enacted by the Council of Representatives by a 2/3 majority. *Id.* art. 92. A legal expert is a person well-versed in the civil law system and the laws passed by the legislative authority, while an expert in Islamic jurisprudence is a person whose expertise lies in the domain of Islamic law. It is worth noting that, even though the Constitution provides for both types of experts serving on the FSC, it is not clear whether these experts are required to also be judges or have judicial training. In addition, there is some ambiguity regarding whether the role of Islamic law experts on the court is consultative, or whether these experts have the same authority as judges to render decisions.

The FSC's competence is different from that of the SCC, which examines and makes recommendations concerning the constitutionality of draft laws and regulations. Although it is not completely clear, it appears that any individual in Iraq has the right to apply to the FSC to challenge the constitutionality of any legislation. *Id.* art. 93(3). The latter provision reads, in relevant part, that "the law shall guarantee the right of ... the concerned individuals and others of direct contest with the [FSC]." Accordingly, an individual can appeal to the FSC, alleging that a certain law or regulation is not compatible with the Iraqi Constitution. For example, if a citizen feels that a new law infringes his/her right to reside in a particular city in the country, he/she can request the FSC to determine the constitutionality of this law.⁴

The FSC has the competence to decide the dispute and can annul the law in question as unconstitutional. The decisions of the FSC are final and binding vis-à-vis all authorities in Iraq. CONST. art. 94. Its decisions are disseminated through available means in Iraq but, as explained in greater detail in Factor 24 below, there is no system of regular reporting of judicial decisions. According to interviewees, most judges and courts understand the role of the FSC and the fact that lower courts are bound by its decisions.

Following the overthrow of the Baath regime, there have been healthy developments in the establishment of judicial authority over the review of the constitutionality of provisions regarding civil and political rights, including rights that are new to Iraq. A recent case illustrates how a civil right has been protected through judicial intervention. A former Minister of Justice of the post-Baath era had banned one of the MOJ officials from traveling abroad. The official challenged the decision before the Administrative Court in Baghdad. The Court annulled the decision of the Minister because of the absence of any legal basis for it under Iraqi law. See Administrative Court Decision No. 81/2005. The MOJ appealed that decision to the FSC. The FSC held that the ban on the travel of the individual concerned had no legal basis under Iraqi law, and that it restricted the freedom of travel of an Iraqi citizen and constituted a denial of the basic rights of the citizen that are guaranteed by the Iraqi law. See FSC Decision No. 4 (March 29, 2006). It is worth noting that the Minister of Justice at issue in this case was still in office at the time this appeal was filed and the decision was rendered.

While it is too early to ascertain the adequacy of the guarantees for the protection of civil and political rights of individual Iraqis through judicial review, this case demonstrates a healthy attitude in that direction and provides an example of the independence of the courts in this context. The FSC is a recent creation in Iraq and, therefore, it has not yet had the opportunity to decide many cases. However, the impact of this case on lawyers and judges appears to have been positive, and has been welcomed by all those concerned with the protection of civil and political rights in Iraq.

⁴ To illustrate the lack of equal treatment under the Baath regime, there was a law denying the right to buy a house in Baghdad to any Iraqi who was not registered as a Baghdad resident as of 1957. The residents of three governorates, however, were exempted from this ban, because of their perceived sympathy towards the regime. This law was repealed after the fall of the Baath regime.

Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

Conclusion

Correlation: Positive

The Administrative Court in Baghdad provides an effective means of challenging administrative acts which impair the civil and political rights of citizens. Although it is an organ of the MOJ, it is possible to appeal its decisions to the FSC. Since the fall of the Baath regime, the Administrative Court has demonstrated independence from the executive branch.

Analysis/Background:

Under the Iraqi legal system, administrative acts can be challenged by the injured party before the Administrative Court, which is empowered to determine the legality of the act in question, unless otherwise specified by the law. It is important to note that the Iraqi Constitution bans giving any immunity from appeal, in any legislation, to any administrative act. See CONST. art 100.

There is presently one Administrative Court in Iraq, situated in Baghdad. Petitioners must therefore travel to Baghdad to avail themselves of the court. It operates under the auspices of the SCC and, as such, is an organ of the MOJ that is not subject to the HJC. The Administrative Court is composed of three members: a President, who is a judge of the first category of judges or a consultant in the SCC; and two members who are either judges of at least the second category of judges or assistant consultants at the SCC. SCC LAW art. 7(2).

The Court has jurisdiction to hear cases arising from administrative decisions taken by ministers, government officials and administrative departments, and other actors within the public sector. The bases for challenging an administrative act in the Administrative Court are the following: (1) a violation of, or incompatibility of the act with, a statute, regulation or decree; (2) the act was not taken by the competent jurisdiction or is tainted in form; (3) an error in the application or interpretation of a statute, regulation, or decree; or (4) abuse of power. *Id.*

Therefore, a person who has suffered an injury from an administrative act or decision can appeal to the Administrative Court and ask for an annulment of the act or decision in question, as well as for compensation of material and moral damages. *Id.* art. 7(2)(d). Decisions of the Administrative Court are binding vis-à-vis all administrative authorities in the country, and are subject to review by the FSC. FSC LAW art. 4(3).

The remedies available under the jurisdiction of the Administrative Court appear to be adequate. Very often, the aggrieved parties from unlawful administrative acts found satisfaction in the judgment of the Court, according to some of the interviewees. A case in point has been described in Factor 5 above and related to the annulment of the ban on the right of a staff member of the MOJ to travel abroad. See Administrative Court Decision No. 81/2005.

The Iraqi Constitution also envisages the establishment of a *conseil d'état*, with jurisdiction, *inter alia*, in the field of administrative justice. See art. 101. If and when the *conseil d'état* is established, it will likely become the highest organ to which appeals can be made from Administrative Court decisions. However, it is not clear at this point whether that body would replace the current Administrative Court.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion

Correlation: Neutral

The courts in Iraq have jurisdiction over all cases concerning human rights and liberties. These rights and liberties are guaranteed in the Iraqi Constitution, and the courts are competent to adjudicate disputes relating to these rights. The involvement of the courts ensures the necessary respect for, and protection of, these rights and liberties.

Analysis/Background:

The courts have civil jurisdiction over all persons, be they natural or juridical, including the government, and over all disputes, except those removed by special provisions of the law, such as matters removed to the personal status courts. LAW OF CIVIL PROCEDURE art. 29. Moreover, courts are prohibited from refusing to adjudicate a case on the grounds of ambiguity of the law or the absence or deficiency of a provision. *Id.* art. 30. This provision covers cases concerning civil rights and liberties.

The domestic legal system in Iraq incorporates international standards in the areas of civil rights and liberties by enacting laws containing such standards. Firstly, a significant number of these rights and liberties are contained in the Iraqi Constitution (*see* arts. 14-46) and are guarded by the courts. They include: the protection of personal freedom and dignity (*id.* art. 37(1)(a)); the prohibition of torture or inhumane treatment (*id.* art. 37(1)(c)); freedom of expression (*id.* art. 38A); and freedom of forming organizations and political parties (*id.* art. 39(1)). Another way that Iraq incorporates international standards in the area of civil rights and liberties is by becoming a party to a human rights international treaty, for example, on the prevention of torture. Under art. 61(4) of the Constitution, Iraq gives effect to the treaty by enacting a national law that incorporates the international standards contained in the treaty into local law. The courts have to apply this law when the occasion arises.

For example, no one can be kept in custody or investigated except in accordance with a judicial decision. CONST. art. 37(1)(b). According to the U.S. Department of State, during the transitional period “the Prime Minister had a wide array of powers, including the authority to detain and search suspects. The law provides that all such actions must be pursuant to an arrest or search warrant unless there are ‘extreme exigent circumstances,’ and detained suspects must appear before a judge within 24 hours of arrest. If the investigative judge finds a basis on which to press charges, the prisoner remains confined and is transported to an I[raqi] C[orrections] S[ervice] detention facility to await trial.” *See* UNITED STATES DEPARTMENT OF STATE, *Iraq, in* COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2005 (March 8, 2006). That being said, since 2003 there have been reports that agencies connected to the Ministry of the Interior have arrested and imprisoned persons under non-exigent circumstances without court authorization. Leaders within the judicial branch, acting through the HJC, have reportedly objected to these illegal activities. *Id.*

The jurisdiction of each court, be it a court of first instance or a court of appeal, is defined by the Law of Civil Procedure and the Law of Criminal Procedure. For instance, according to interviewees, there is judicial supervision of criminal cases at every stage of investigation through the ultimate decision of the Court of Cassation, in cases that are appealed to that level. In addition, certain other courts, e.g., the FSC, have their own statutes which define their jurisdictions. Moreover, the Constitution prohibits the creation of special or exceptional courts. *See* art. 95.

Interviewees believed that the ordinary courts are prepared to address issues concerning civil rights and liberties. During the Baath regime, there was a complete lack of protection of civil rights and liberties of Iraqi citizens by the courts. Since the fall of that regime and promulgation of the new Constitution guaranteeing civil rights and liberties in 2005, matters have greatly improved, but the courts have not had much expertise in this area of the law as yet. It is worth noting that some judges and lawyers may also be unfamiliar with some concepts concerning constitutional civil rights and liberties and their roles in upholding these rights and liberties.

There are presently no military courts in Iraq. They were abolished by the decision of the CPA after the fall of the Baath regime in 2003. The Iraqi Constitution envisages the establishment of military courts through enactment of a statute for that purpose; however, such courts would only be competent to deal with offences of a military nature, committed by members of the armed and security forces (but not civilians), and within the limits laid down in the statute. See art. 99.

Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

Conclusion	Correlation: Positive
<p>Under the Iraqi legal system, judicial decisions can only be reversed through the judicial appellate processes. The practice of courts has maintained this principle and enhanced it.</p>	

Analysis/Background:

The appellate structure under Iraqi law consists of appeals from a lower court to an intermediate appellate court, followed by an appeal to the Court of Cassation, which is the highest court of appeal in the country. The right of appeal applies to both civil and criminal cases. There is also the FSC, which is the highest authority of appeal in cases involving the Constitution. It does not handle appeals from ordinary courts; however, as explained in Factor 6 above, it is competent to hear appeals against decisions of the Administrative Court.

In civil cases, decisions of the first instance courts may be appealed to the appeal court of each governorate. LAW OF CIVIL PROCEDURE art. 185. Grounds for challenging civil court judgments include: a claim of legal error, misapplication or misinterpretation of the law; rendering the judgment in violation of the court's jurisdiction; a procedural error; a decision contradicting a previous final decision on the same case and between the same parties; or a material mistake in the judgment. *Id.* art. 203(1)-(5). The appeal court can approve the decision of the court of first instance, reverse it, or issue a new decision without remanding the case to the lower court. *Id.* arts. 193, 219. Decisions of the court of appeal may be further appealed to the Court of Cassation, whose decisions are final. *Id.* arts. 203, 219. The panel of judges who reviews such cases is called the Civil Committee and consists of a president, who is a Vice President of the Court of Cassation, and at least four members of the Court. JUDICIAL ORGANIZATION LAW art. 13(c). The Court of Cassation has the power to approve the original decision, reject the appeal, or remand the case to the original court for a new trial. LAW OF CIVIL PROCEDURE arts. 210, 212(2). It can also call the parties before it and decide the case on its own, after hearing the arguments of both parties. *Id.* art. 214. If it does so, the parties have the right to appeal to the Court of Cassation through "the correction of decision procedure." *Id.* When the Court of Cassation remands a case to a lower court for a retrial and the latter insists on its position, if the new decision is appealed against, all 30 judges of the Court of Cassation will decide the case *en banc*, and that decision will be final. *Id.* art. 220(1).

In criminal cases, the defendant's right of appeal lies directly from the felony court or the misdemeanor court to the Court of Cassation. In addition, the office of the prosecutor (the Attorney-General's office) also has the right of appeal against all decisions in criminal cases as the representative of the public interest, directly to the Court of Cassation. Grounds for appeal in criminal cases include: a claim that there was a breach in the law; a mistake in the application of the law or in its interpretation; or a fundamental error either in the procedures or the assessment of the evidence, which influenced the judgment. LAW OF CRIMINAL PROCEDURE art. 249. The panel of Cassation Court judges that reviews criminal cases, the Criminal Committee, consists of a Vice President of the Court of Cassation and at least two other judges. JUDICIAL ORGANIZATION LAW arts. 13(1)(e), 13(2). There is a right of appeal to the felony court in the relevant district of misdemeanor court decisions in cases of violation of regulations. The same applies to the decisions of investigating judges. LAW OF CRIMINAL PROCEDURE art. 265. The Criminal Committee of the Cassation Court would ultimately handle these appeals. However, in cases where the death penalty is imposed, the general committee of the Court sitting *en banc* considers the appeal. *Id.* art. 257(b). The Court has the power to reject the appeal, approve the decision of the original court, reduce the penalty, review the verdict of not guilty and punish the accused, or remand the case to the original court either for review of the penalty with a view to increasing it or for a retrial. *Id.* arts. 258, 259.

There is only a limited time available to file an appeal of a lower court decision, in criminal and civil cases. LAW OF CRIMINAL PROCEDURE art. 252(a); LAW OF CIVIL PROCEDURE arts. 187(1), 204. In criminal cases, the appeal has to be filed within 30 days, beginning from the first day after the date of judgment. In civil cases, the appeal has to be made within 15 days in the case of an appeal to the Court of Cassation of a case involving less than IQD 1,000 (approximately USD 0.68).⁵ LAW OF CIVIL PROCEDURE art. 187. Such cases may not be appealed to the appeal courts, but only directly to the Court of Cassation. *Id.* art. 185. In cases involving greater than IQD 1,000, it is unclear whether the time limit for filing an appeal to the appeal court is 10 day or 30 days. For personal status cases, appeals to the Court of Cassation must be filed within 10 days. For all other appeals from appeal court judgments to the Court of Cassation, there is a 30 day time limit. *Id.* art. 204. If an appeal is not taken within the proper timeframe, the lower court decision will become final and binding on the parties. Final decisions in completed cases cannot be reopened, and no party is allowed to go back to the court to ask it to decide the same cause of action, in accordance with the principle of *res judicata*.

Under the Baath regime, there were instances of the executive authority annulling court decisions. There have been no instances of non-judicial reversals in the judicial system in Iraq in the post-Baath era. The principle of the separation of powers, enshrined in the Constitution of 2005 (see art. 47), does not permit any authority, other than the judiciary, to deal with appeals or with the right to reverse decisions of the courts. Similarly to the executive powers in other countries, the President of the Iraqi Republic may issue special pardons regarding certain crimes on the recommendation of the Prime Minister. This power does not extend to cases involving private claims, international crimes, terrorism, or administrative or financial corruption. *Id.* art. 73(1).

The assessment team was unable to obtain representative information as to the frequency of appellate proceedings in Iraq or their outcomes.

⁵ In this report, Iraqi Dinars are converted to United States dollars at the approximate rate of exchange when JRI interviews were conducted (IQD 1,470 = USD 1.00).

Factor 9: Contempt/Subpoena/ Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion

Correlation: Negative

As a matter of law, judges in Iraq have adequate subpoena and contempt powers. While there are no available statistics to assess the exercise of such powers, it is likely that, due to the present circumstances in Iraq, a gap exists between the powers granted under the law and those exercised. The poor security situation in Iraq makes the issuance of subpoenas and the enforcement of decisions very difficult.

Analysis/Background:

Judges in Iraq have the legal power to oblige parties to attend proceedings and to maintain order during the proceedings of the court. The main tool used to secure the presence of defendants before the courts in civil cases is the official notification of the defendants of the case against them by the court. The notification is carried out by persons appointed by the MOJ or by an official letter from the relevant court, either through registered mail, telegram in urgent cases, or by the police. LAW OF CIVIL PROCEDURE art. 13(1). The court can also consider the case in the absence of the claimant or the defendant. *Id.* art. 56.

During the proceedings in both civil and criminal cases, it is the responsibility of the trial judge to maintain order in the courtroom. He/she has the right to eject from the courtroom any person who disrupts the court's proceedings. If that person refuses to leave the court and continues disrupting the proceedings, the trial judge has the right to imprison him/her for 24 hours, or impose a fine, in civil cases, of not more than IQD 1,000 (USD 0.68), with immediate effect. *Id.* art. 63(1). In criminal cases, the fine is only 3 dinars. LAW OF CRIMINAL PROCEDURE art. 153. Such decisions are final and cannot be appealed. LAW OF CIVIL PROCEDURE art. 63(1); LAW OF CRIMINAL PROCEDURE art. 153. Indeed, thousands of people both inside and outside Iraq have seen the exercise of this power by judges trying Saddam Hussein.

In civil cases, the Enforcement Department (*Maktab Al-Tunfeeth*), which is part of the MOJ, is responsible for the enforcement of judicial decisions. See LAW OF THE MINISTRY OF JUSTICE art. 3 (Law No. 18 of 2005). In criminal cases, the accused, if found guilty, is forcibly sent to jail.

In the enforcement of judicial decisions relating to debts, the debtor is summoned to appear before the Enforcement Department within 7 days from the date of notification, in order to state his/her objections, if any, to the enforcement of the decision of the court. If the debtor has objections, the matter would be referred to a court of first instance. The official in charge of enforcement has no right to put the debtor in jail. Such a right belongs to the judge of the court of first instance, in accordance with arts. 468-469 of the Iraqi Penal Law (see Law No. 111 of 1969).

There have been many reports of a lack of enforcement of court decisions in both criminal and civil matters. According to these reports, this is due to the existing security situation, the lack of coordination between the courts and the police, who are charged with enforcing decisions, and the lack of resources. Some judges in Iraq see the issue of lack of enforcement of judgments as one of the most serious issues facing the Iraqi judiciary and the legal system. Unfortunately, no statistics are available concerning subpoena, contempt and enforcement of judgments. It is also unclear whether there are adequate resources to ensure that judicial decisions, both interim and final, are respected. Interviewees differed in their assessment of whether there is a gap between powers granted and powers exercised by judges – some believed that it existed while others did

not. The former group attributed the existence of such a gap to the prevailing security circumstances in Iraq.

III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion	Correlation: Positive
The judiciary has its own budget, which is estimated, drafted, and implemented by the HJC, through its Accounts Department, according to the needs of the judiciary.	

Analysis/Background:

Pursuant to the Constitution, the judiciary has an independent budget. The HJC prepares the draft budget and submits it directly to the Council of Representatives for approval. See art. 91(3). The budget is prepared according to the needs of the judiciary, in terms of human, material, and program resources. Once approved, the HJC has control over how the judicial budget is expended. Unfortunately, there are insufficient details as to how the information about the judiciary's budget needs is assembled. However, there is an Accounts Department within the HJC, which seems to be responsible for assembling the information for this purpose. This organ was established only after the fall of the Baath regime. Under that regime, the judiciary was part of the MOJ and all its affairs, including the financial and budgetary affairs, were administered by the MOJ.

Once the judicial budget is approved, the Accounts Department administers the funds allocated to the judiciary and pays the salaries of judges, retired judges, and officials of the courts. Although the assessment team was unable to ascertain this, it appears that other expenses, such as payments for supplies, are paid for directly to the vendors by the Accounts Department, insofar as the courts in Baghdad are concerned. For courts outside Baghdad, the Accounts Department appears to transfer certain sums of money to the courts, so that they themselves pay for their supplies as the need arises.

In Iraq, courts charge fees for their services, but these fees are not incorporated into the judicial budget directly. They are given to the Ministry of Finance, which allots the resources to the State Budget. Court fees are then allotted to the budget of the HJC, although it is unclear whether 100% of fees that are received are allotted to the HJC.

According to the information provided to the assessment team by the HJC, the amounts budgeted for the judiciary in 2005-2006 were as follows:

JUDICIAL BUDGETS IN IRAQ, 2005-2006

Court	2005 Budget		2006 Budget	
	in IQD	in USD equiv.	in IQD	in USD equiv.
Courts funded through HJC	43,214,193,826	29,397,411	67,809,500,000	46,128,912
Court of Cassation	2,681,742,235	1,824,314	5,525,257,500	3,758,679

FSC	n/a		6,624,400,000	4,506,395
TOTAL:	45,895,936,061	31,221,725	79,959,157,500	54,393,985

The bulk of these amounts (77% in 2005 and 69% in 2006) were earmarked for the payment of judicial salaries.

There were no complaints during the interviews concerning the adequacy of budget allocated to the judiciary. The perception appears to be that there is sufficient funding to cover court expenses, such as utilities, furniture, or office supplies. The assessment team has observed that offices of almost all of the interviewees had new furniture and other utilities, such as fans and air conditioners. Therefore, the judges have not had to come up with their out of pocket resources to cover the basic needs in the courts.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.

Conclusion	Correlation: Positive
<p>Until the fall of the Baath regime in 2003, the salaries of judges were too low and did not correspond to the status of a judge. As a result, judges were more likely to be exposed to the risk of corruption, which occurred in many instances. Since the fall of that regime, the salaries of judges have been increased considerably, thus affording the judges and their families the dignity and comfort.</p>	

Analysis/Background:

The pay scale for Iraqi judges depends upon the category to which the judge belongs. JUDICIAL ORGANIZATION LAW art. 38(1). There are four categories of judges, from one (the most senior) to four (the most junior). As explained in Factor 15 below, judges are promoted from one category to another after five years of service in a particular category. It was reported to the assessment team that, in addition to salary, judges receive a risk allowance equal to 50% of their salary. The following table shows the current monthly compensation paid to judges:

JUDICIAL COMPENSATION IN IRAQ

Category	Salary (IQD)	Risk Allowance (IQD)	Total (IQD)	Total (USD equivalent)
One	1,750,000	875,000	2,625,000	1,786
Two	1,500,000	750,000	2,250,000	1,531
Three	1,250,000	625,000	1,875,000	1,276
Four	1,000,000	500,000	1,500,000	1,020

In addition, judges are entitled to an allowance paid on top of their salaries, as a sort of location adjustment. It varies between 7% and 100% of the judge's salary, depending on where the judge works. The amount is smaller in Baghdad and the centers of governorates, and higher in small towns and administrative units. See JUDICIAL ORGANIZATION LAW art. 38.

These new salaries were introduced after the fall of the Baath regime in 2003. Under that regime, salaries were so low that a significant number of judges engaged in corruption and accepted bribes. That behavior reflected unfavorably on the judiciary in general. The present salaries of

judges are higher than those of any other group of government employees. As such, they can attract accomplished lawyers, including those in private practice, to join the judiciary, although it should be noted that most judges begin their careers within the judiciary as investigators or clerks and then embark on a lifelong career as a judge. The salary reform is a positive factor in the improvement of the recruitment of judges in Iraq. The scale of judicial salaries now can afford them a dignified standard of living.

Regarding non-monetary benefits, in theory, each judge has the right to have a government car for transportation between his/her office and home, but according to interviewees, not all judges have been given cars for this purpose. It should be noted that, under Iraqi law, it is not permissible to reduce or withhold judicial benefits as a reprisal against judges. Other measures can be used against a judge who has committed an inappropriate act, such as delaying promotion.

Judges are not permitted to earn outside income. The Iraqi Constitution provides that judges cannot have any other jobs. Specifically, a judge is not allowed to become a member of parliament or an official with the executive authority. See art. 98(1).

Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

Conclusion	Correlation: Negative
<p>Most court buildings in Iraq are not adequate to provide a professional office environment or to convey the respect deserved by the judiciary. Almost all of them are too old and need repairs, and lack adequate heating and air-conditioning facilities. Although efforts are being made to repair and modernize old buildings and to build new ones, the prevailing circumstances make it difficult to carry out this effort quickly.</p>	

Analysis/Background:

In 2004, the HJC took over from the MOJ the responsibility for courthouse maintenance. Court buildings in Iraq fall into two categories: government-owned and government-rented. As far as the former are concerned, there are some that were built as courthouses; while others were not designed to be courthouses, they are nonetheless used as such. Those built as courthouses have suffered generally from neglect under the former regime, and many were severely looted and even destroyed by citizens during the U.S. invasion of Iraq. Almost all of them, it would appear according to interviewees, are too old and need repairs. As for the buildings initially built for purposes other than courthouses, they have been modified, because of necessity, for use as courts. In most if not all cases, they appear to be unsuitable for use as courthouses. The same considerations apply to rented buildings. For instance, one interviewee informed the assessment team that one courthouse in Basra was situated on the top of a police station, with a very difficult staircase to climb.

It should be noted that court buildings in Iraq compare unfavorably with other government buildings, such as those belonging to some ministries. It is also worth noting that the office of the head of the prosecution department, the Attorney General, is situated in the same building as the office of the Chief Justice. Both offices are still situated in the building of the MOJ, even though they are no longer subordinate to the Ministry.

Generally, court buildings in Iraq lack adequate heating, air-conditioning and plumbing systems. This is a result of neglect by the former regime and the other factors mentioned above. Even those buildings that were built specifically to serve as courthouses have deteriorated greatly due to a lack of maintenance. Buildings used by the courts that were not built for that purpose are particularly non-user-friendly.

Court buildings in Iraq at the present time do not have adequate seating for all purposes. For example, there are courtrooms for criminal cases, generally speaking, but it would seem that a lot of judges, particularly outside the capital, hold trials in civil cases in their offices. On the other hand, there are information kiosks in most court buildings, where citizens and lawyers are provided with information on the status of their case. For example, a lawyer or an ordinary citizen, coming to the Court of Cassation for inquiry about his/her case, will be asked at the entrance to the building about the purpose of his/her visit. Then he/she is provided with the relevant information and directed to the relevant person or office.

There is no adequate space for keeping records and archives in court buildings. Such spaces, where they exist, tend to be narrow, and one finds case files on top of each other. One of the interviewees attributed this state of affairs to the huge size of the courts' workload. He made a comparison between the workload of the highest court of appeal in a Western European country, which had 580 cases a year, with that of the Court of Cassation in Iraq, which had 40,000 cases a year.

In each court building in Iraq, there is a special room for practicing lawyers, where they can meet with each other and their clients; however, such rooms are not suitable for conducting confidential meetings. In practice, attorney-client meetings are usually held at the offices of the lawyers. Privacy and security of suspects are also key issues. Quite often, suspects are held in public areas awaiting appearance before an investigative judge. Courthouses are generally overcrowded and chaotic, which also raises security concerns.

The state of disrepair of court buildings does not give the lawyers and ordinary citizens going to a court of law a respectable impression of the judiciary. There is a huge need for more and better buildings with modern facilities. Since the fall of the Baath regime, during the transitional period, the US military was involved in the reconstruction of some courthouses in Baghdad and elsewhere in Iraq. Some work has also begun on the repair of some court buildings in Baghdad. Further, the assessment team was informed that a courthouse is under construction in Basra. Nonetheless, these efforts will take time to complete, and the security situation currently prevailing in Iraq makes it difficult to carry out these projects in a speedy manner.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

Conclusion	Correlation: Negative
<p>Judges in Iraq are under constant threat of assassination and, indeed, 14 of them have already been assassinated over the 12-month period preceding the JRI interviews, while others have been injured. The HJC is responsible for the protection of judges and court facilities, but in view of the serious security situation in the country, the Council's efforts in eliminating these threats have not been successful.</p>	

Analysis/Background:

Judicial security in Iraq is a very important matter at the present time, in view of the overall security situation in the country. The government agency responsible for judicial security is the HJC, whose Directorship of Judicial Guards is in charge of judicial security. The Directorship has assigned two personal guards to each judge, focusing special attention on those judges who conduct criminal trials. Additional bodyguards are assigned to judges facing a high risk of attack. All judges have been issued guns, and many have been trained on how to use them.

There are also guards responsible for the protection of court facilities. These guards are part of another governmental security body, the Facilities Protection Service, whose main function is to protect government institutions against terrorist attacks. Another measure taken to protect court facilities is the installation of high and strong concrete barriers around court buildings in order to protect them from suicide bombings. Furthermore, any person entering a courthouse is subject to body search, and his/her briefcase is put through a metal detector to ensure the absence of any weapons or other criminal material.

The CPA and its successor organizations have invested a lot of resources into this area, both in terms of facilities protection and personal security of judges. Guards were originally trained in Baghdad by a foreign contractor. Judicial bodyguards were selected by the judges themselves, however, and in many cases they appointed relatives and friends. Several guards were not competent and did not take their jobs seriously, with the consequence that the judges in question were not protected at all times. The U.S. Marshals Service currently works on providing security to the Iraqi courts.

Despite all of these security precautions, judges in Iraq have been routinely threatened, and several have been assassinated or injured. Specifically, 14 judges have been assassinated over the 12-month period preceding the JRI interviews. These assassinations were committed outside of the court facilities. There have also been several attacks on or near courthouses. It is worth mentioning that a number of judges who received death threats, whether over the telephone or through other means, have left their homes and are now living secretly with friends or relatives. The current Chief Justice's only son was assassinated in 2006, and the Chief Justice has left his home and is now living in the International Zone in Baghdad. Even litigants feel threatened when they are in court facilities. In addition to these cases of assassination, there are many well-known cases of threats or intimidation against judges, even though they are not officially reported. In the light of the security situation in the country, all security organizations are on a state of alert against terrorist attacks.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

Conclusion	Correlation: Positive
Following the initial probationary appointment of one year, ordinary judges in Iraq may be confirmed until the prescribed retirement age of 63 years, which can be extended. FSC judges are appointed for life.	

Analysis/Background:

When judges are first appointed, they are subject to an initial probationary period of one year. See RCC DECREE NO. 20. According to some of the interviewees, after the end of that period, the judge’s appointment may be confirmed for a permanent tenure, provided that his/her professional performance has been satisfactory and that he/she has conducted himself/herself properly. The HJC appoints judges for both the initial probationary period and the permanent tenure.

Judges are appointed for a permanent tenure until the prescribed retirement age of 63 years. JUDICIAL ORGANIZATION LAW art. 42(1). Prior to reaching this age, judicial tenure may only be terminated for specified official misconduct, as explained in Factor 17 below. The retirement age could be extended for two years above the age of 63 (i.e., until 65) for ordinary judges. Judges of the Court of Cassation, reportedly, can have their retirement age extended by five years (i.e., until 68). Any extension beyond the retirement age of 63 years is subject to the approval of the HJC. Criteria that the HJC would normally consider in deciding to postpone a judge’s retirement include the ability and expertise of the judge, whether the judge has a specialty that is in demand, and the needs of the court for his/her services.

On the other hand, judges of the FSC are appointed for life. However, the assessment team learned that a judge of that Court may ask to be released from the judicial function at the age of 63 years. He/she can also be retired on medical grounds before the age of 63.

It should be noted that under the Baath regime, judges who were considered undesirable by the regime were removed under the guise of retirement, as the executive authority decided. In one notorious case in the 1990s, the then President of Iraq decided to pension off nine judges of the Court of Cassation, even though they had not then reached the mandatory retirement age, because he did not like a decision of the Court in a particular case. After the fall of the regime, those judges were reinstated.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>Judges are promoted in Iraq on the basis of objective criteria, which take into account, <i>inter alia</i>, their professional performance, conduct, and length of service. The decision to promote a judge is taken by the HJC, thus removing this matter from the interference of the executive authority. Given the newness of the post-Baath judiciary, however, there is no information concerning the application of these criteria in practice.</p>	

Analysis/Background:

There are four categories of judges, one to four, with one being the highest. Judges are promoted from one category to another after five years of service in a particular category. This promotion is not automatic. The judge applying for promotion must submit a research paper on a legal topic, and performance of his/her judicial functions must have been satisfactory. A judge holding a master’s degree in law is exempted from submitting a research paper for one promotion, while a judge holding a Ph.D. degree in law is exempted from the submission of such a paper for two promotions. JUDICIAL ORGANIZATION LAW art. 45(1). The HJC is the competent body to decide on the promotion of judges from one category to a higher one, and from one court to a higher court.

The length of service required for the advancement of a judge from one category to a higher one is only one of the factors in the determination of the suitability for advancement. Other criteria used in this process are: (1) the reports of the head of the relevant appeal court concerning the judge's professional ability, managerial skills, and the number of his/her decisions which have been affirmed or reversed, including the reasons therefor; (2) the opinion of the HJC with respect to the judge's conduct and what he/she has received in terms of appreciation or punishment; (3) the annual appraisal reports by the judge's supervisor related to his/her performance of judicial functions and the standard of the judge's research paper; and (4) whether the decisions of the judge demonstrate sound arguments and show his/her pursuit of judicial and jurisprudential activities. *Id.* art. 46.

If applied properly, it would be fair to say that these criteria are adequate, serious, and reasonable for the advancement of judges. However, given the emerging state of the Iraqi judiciary, there is no information concerning the application of these criteria in practice. It should be pointed out that under the Baath regime, membership in the Baath party and loyalty to it were given more consideration than the above criteria for the advancement of judges.

Key leadership positions in the judiciary are not subject to rotation. The assessment team was informed that presidents of all courts, such as an appeal court or a felony court, are selected on the basis of their competence and specialization. The judges in these positions typically do not spend a very long period of time on the same court, in order to avoid the establishment of personal relations with the local citizens and lawyers, which might affect the impartiality of the judge. Nonetheless, there are no term limitations imposed on judges in key leadership positions.

One concern worth noting is that under Iraqi law, senior positions in the judiciary are not advertised, nor are they subject to competition. The HJC selects candidates for such posts from among highly competent judges who sit on a particular circuit. For example, if the post of the President of the Court of Cassation becomes vacant, one of the Vice Presidents of that court will typically be elected for the post. According to respondents, judges of the FSC are typically selected from judges of the Court of Cassation.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	Correlation: Neutral
<p>Judges in Iraq are assured immunity from criminal proceedings, although they can be sued, on specific grounds, in civil cases. This immunity is respected, and there appear to be no cases of its abuse by judges.</p>	

Analysis/Background:

Judicial immunity means that a judge cannot be held criminally liable for acts done in the performance of his/her judicial functions. However, this immunity does not extend to a judge's civil transactions outside his/her duties, e.g., the purchase of a car. In such cases, the judge is subject to the law like any other citizen. Furthermore, a judge cannot be arrested, nor can any other criminal measures be taken against him/her, except when the judge is caught in the act of committing a crime. JUDICIAL ORGANIZATION LAW art. 64. There is also a distinction between the immunity in civil and criminal cases. While no case can be brought against a judge who erred in the exercise of his/her judicial function in criminal cases, in civil cases proceedings can be instituted against a judge in the following situations: (1) in case of fraud committed by the judge, serious professional error contrary to the law, or prejudice aimed at harming one of the parties in

the case before the judge; (2) if the judge accepted some material benefit in order to favor one of the parties in a case; and (3) if the judge refused to do justice in a case. LAW OF CIVIL PROCEDURE art. 286.

The HJC may grant a waiver of immunity to a judge facing criminal charges. JUDICIAL ORGANIZATION LAW art. 61(1). The matter is reviewed by a committee established by the HJC to investigate the judge's action. The committee then makes its recommendation to the HJC on whether or not to waive the judge's immunity. In practice, judicial immunity appears to be respected. None of the interviewees were aware of any case where the immunity of a judge has been waived, nor was there any mention of any case of abuse of immunity by judges.

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

Conclusion	Correlation: Neutral
<p>The law in Iraq allows the taking of disciplinary measures against judges who commit professional misconduct. The applicable procedures also afford judges the right of defense and the right to submit evidence to rebut accusations against them. Furthermore, judges can only be removed from office in accordance with Iraqi law, and only in limited situations, with the approval of the full HJC and the Presidency Council.</p>	

Analysis/Background:

Judges in Iraq are subject to disciplinary measures in cases of professional misconduct, as described in the Judicial Organization Law and the Law of Civil Procedure. In such cases, the matter is referred to a committee composed of at least three senior judges from the HJC, titled the Disciplinary and Professional Standards Committee. CPA ORDER NO. 35 § 5. If the judge concerned is found guilty of professional misconduct, he/she will be subject to one of the following measures: (1) a warning, which will have the effect of delaying the promotion of the judge or the grant of a location allowance by six months; (2) a delay in the promotion or the grant of a location allowance for a period of 1-3 years; or (3) a dismissal of the judge if he/she is found guilty, by a competent court, of an act incompatible with the dignity of the judicial functions or is found to be unsuitable to continue his/her functions. JUDICIAL ORGANIZATION LAW art. 58. It was indicated to the assessment team that, in the case of dismissal, the decision of the Committee must be approved by the full HJC and the Presidency Council (i.e., the Iraqi President and two Vice Presidents). It should be noted that the Iraqi Constitution provides that the removal of judges must only occur in cases specified by law. See art. 97. This is in contrast to the situation under the Baath regime, when judges who were considered "undesirable" by the regime were removed under the guise of retirement, as the executive authority decided. See Factor 14 above for additional details.

In disciplinary cases, the conduct of judges is evaluated in accordance with criteria that include the nature of the accusation, the good-faith of the complainant, and the nature and value of the evidence submitted. These criteria are not laid down in a particular law, but they are understood and applied as such by the judges in such situations. Moreover, the principle of due process is respected. Particularly, the accused judge has the right to defend himself/herself and rebut the accusation. JUDICIAL ORGANIZATION LAW art. 60. Furthermore, the judge has the right of appeal to the Court of Cassation against the disciplinary decision of the Committee. *Id.* art. 62. The results of judicial disciplinary investigations are not completely confidential. Interested parties, such as the accused judge or the party in the civil case accusing the judge of misconduct, may have

access to the records; however, they are not made available for public scrutiny. The rationale, according to the opinion of some interviewees, appears to be the desire to protect the integrity and reputation of the accused judges.

Disciplinary Committees have sufficient resources and preparation to investigate alleged improprieties by judges. However, it is unclear whether, and to what extent, this disciplinary process has been put to use since the fall of the Baath regime in 2003.

Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

Conclusion	Correlation: Negative
<p>There are apparently no specific rules governing the assignment of cases to judges. While there seem to be informal practices that regulate the process, their objectivity may vary from court to court.</p>	

Analysis/Background:

Civil cases are assigned to judges by the president of the relevant appellate court, as he/she sees fit. JUDICIAL ORGANIZATION LAW art. 18. In criminal cases, it seems to be the practice to have two panels of judges on each court, one dealing with criminal cases occurring at the administrative center of a governorate and the other dealing with cases occurring in the other administrative units of the governorate. Once a case is assigned to a judge, or to a panel of judges, he or they deal with it until the judgment is issued, unless there is an impediment for the continuation, such as the judge having been the lawyer for one of the parties to the case or another conflict of interest. LAW OF CIVIL PROCEDURE art. 91.

It appears that there are no formal court rules of procedure governing the process of case assignment. In practice, the investigating courts send criminal cases to the misdemeanor and felony courts in the order in which they are completed. In civil courts, there appear to be two different informal methods used for case management, depending on the court. Under the first approach, the first instance court president takes the “easy cases” based on the rationale that he/she is busy with “administrative work.” More complex cases are then assigned by the court president to other judges under his/her supervision. Other judges apparently understand this rationale. Under the second method, cases are assigned sequentially to each judge in the order in which they are received. Both methods, however, are based on informal practices.

In the practice of courts, there has been no mention by the interviewees of any abuse of the case assignment process, nor is there any government control over this process. It should be noted that with the introduction of the principle of judicial independence, coupled with the separation of powers, intervention by the executive authority in the judicial function no longer appears to be occurring.

The process of recusal of judges is similar to a trial, where the judge is given the right to rebut the allegations of partiality or conflict of interests made against him/her. He/she also has the right of appeal to the Court of Cassation against the decision to disqualify him/her from hearing a particular case.

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

Conclusion	Correlation: Neutral
<p>There was no judicial association in Iraq during the Baath regime. In June 2006, a judicial association came into being. Its aim is to promote the interests of the judges and prosecutors, but it is too early to assess its activities and their effectiveness.</p>	

Analysis/Background:

There was no judicial association in Iraq during the Baath regime. However, a new judicial association was recently established, and its Council of Administration was elected on June 3, 2006. The judicial association is a non-governmental organization and is meant to be independent from interference by the executive power and the HJC. The association includes both judges and public prosecutors.

The aim of the association is to promote the interests of the judges and the judiciary. According to its bylaws, its objectives include working toward safeguarding judicial independence, ensuring the court's general jurisdiction over controversies involving natural or legal persons, and improving the salaries and living conditions of judges. Due to its very recent formation, it is too early to assess its role as an effective advocate for the interests of judges. This also applies to the issue of the Association's dissemination of information to the judges about its activities.

Membership in the association is optional and is open to all judges and prosecutors. The initial annual subscription fee is IQD 50,000 (USD 34), with subsequent membership dues of IQD 25,000 (USD 17) per year. To date, 640 judges and prosecutors, or about 68% of the 943 judges and prosecutors currently sitting, as well as some retired judges, have joined the association.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

Conclusion	Correlation: Neutral
<p>The Iraqi Constitution guarantees the independence of the judiciary, which, coupled with the permanent tenure of judges and the significant increase in judicial salaries, provides some protection for the judges from external influence. Nonetheless, given the generally strong family, ethnic, and religious loyalties prevalent in the Iraqi culture, it is difficult to measure the attempts by private interests to influence judicial decisions, and the extent to which these attempts might be successful.</p>	

Analysis/Background:

The Iraqi Constitution protects judges from external influences. It provides that judges are independent and that no authority, other than the law, governs their judicial functions. In addition,

no authority can interfere in the exercise of judicial function or in the affairs of justice. See CONST. art. 88. Judges are obliged to protect the dignity of the judiciary and to avoid any doubtful behavior that may reflect unfavorably on their impartiality. JUDICIAL ORGANIZATION LAW art. 7. Furthermore, under the Iraqi Penal Law, it is a crime punishable by a fine of IQD 200 (USD 0.14) or imprisonment of not more than one year, for any holder of a public office to interfere with a judge or a court, in favor of or against one of the parties to a case. See art. 233. A judge is subject to the same penalty if he/she makes an unfair decision as a result of such interference. *Id.* art. 234. In addition, similar sanctions can be imposed against anyone making a publication in the mass media that is intended to influence a judge dealing with a particular case. *Id.* art. 235. An additional safeguard is available through the work of the HJC and its Committee for the Supervision of Justice, which supervise the performance and conduct of judges (except those on the Court of Cassation) in the exercise of their judicial functions. See JUDICIAL ORGANIZATION LAW art. 55. Any judge whose conduct or performance is not compatible with his/her judicial functions is subjected to disciplinary measures and other punishments. Failure to observe these standards makes the judge liable for the disciplinary penalties provided in Article 58 of the Judicial Organization Law, as discussed in Factor 17 above.

These provisions seem designed to help protect judges from undue influence or interference from the executive power and from other sources. However, it is difficult to evaluate at this early stage in the history of the post-Baath regime whether, or to what extent, these provisions have reduced the likelihood of success of attempts to improperly influence judges in practice.

In accordance with the principle of the independence of the judiciary, neither a court president nor any government official can exercise undue influence over judges. However, given that court presidents have a role in the annual evaluation of subordinate judges, which are taken into account in the judicial advancement process, it cannot be said that there is no potential for improper influence of judges by court presidents. There is insufficient information to determine whether such an abuse of authority has occurred in practice since 2003. It is reported that under the Baath regime, such influence was often exercised, by promises or threats, by corrupt judges with close links to the Baath Party. After the fall of the regime, measures have been taken by the authorities to discourage judges from corrupt behavior. The most important of these is the implementation of a significant increase in judicial salaries, thus ensuring a comfortable standard of living for judges. Whereas economic factors might have previously induced some judges to accept bribes, this should now occur much less frequently, or not at all, in light of the new, increased salaries. In addition, the Public Integrity Commission was formed after the fall of the Baath regime in 2003 and is independent of all three branches of government. Its work would include a periodic review of the assets of judges, which should also reduce the likelihood of bribetaking.

There is no doubt that bribery has, in the past, had a negative influence on judicial decisions. Under the Baath regime, a significant number of judges accepted bribes, which undoubtedly influenced their decisions. Reportedly, since the fall of that regime, 55 judges were dismissed for having accepted bribes.

Personal interests remain a source of negative influence on judicial decisions, though it is difficult to quantify the extent of this problem. The Iraqi society, similarly to that of many other countries in the region, can be characterized as having generally strong family, tribal, ethnic, and religious loyalties. *Wasta*, an Arabic term for the use of personal friendship or family connections to influence others, is widespread. *Wasta*, unlike more universal forms of corruption, does not ordinarily involve a monetary inducement for a judge or official to be influenced improperly. For example, a judge might be asked by an intermediary with a connection to both the judge and the favor-seeker to reduce bail for the favor-seeker. Because of the connection between the judge and the intermediary, the judge would be more susceptible to acceding to that request than if a stranger made the same request. Although judges in Iraq frequently rebuff these advances, it is impossible to know the extent to which *wasta* does affect decision-making in the courts. Under the Baath regime, junior judges were not assigned to courts near their homes, in order to avoid

the risk of influence from family or tribe. Whether or not personal interests have influence on the judicial decision depends overwhelmingly on the personality and the character of the particular judge.

An additional source of interference in the judicial affairs is posed by the prevalent security situation in Iraq. This environment affects every aspect of life and every person, including judges, in the exercise of their functions. Judges may receive threats from the family or associates of the accused who is being tried. These threats could be directed against the judge himself/herself or members of his/her family. Such threats, coupled with the number of assassinated judges and their family members, may well influence judges in the exercise of their judicial functions. See Factor 13 above.

The public's understanding of the ethical standards of the judiciary is that the judge must be fair, impartial, independent, and honest. However, during the Baath regime, the public perceived the judiciary as part of the dictatorial regime and all that it entailed. This perception is now changing, with the constitutional guarantees of the separation of powers and the independence of the judiciary. The head of one of the NGOs in Iraq expressed the view that the judiciary should be impartial and should not make any distinction based on race, religion, or ethnicity, and that it is very important that the judges be courageous and decide according to the law. However, the risk of influencing the judges by interests such as political parties, religious organizations, familial and tribal connections, as well as by personal threats to the life and safety of the judges and their families, must remain a concern.

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>At the time of the JRI interviews, there was no code of judicial ethics in Iraq, although a new code of judicial ethics has been subsequently developed. Many ethical issues have been incorporated into the legal system as binding provisions, which the judges have to observe and apply in the performance of their functions.</p>	

Analysis/Background:

At the time of the JRI interviews, no code of judicial ethics as such existed in Iraq.⁶ There are provisions in the Constitution, the Judicial Organization Law, and the Law of Civil Procedure that govern the conduct of judges in the performance of their functions. These provisions appear to be fairly comprehensive. The Constitution prohibits judges from joining any political party or organization and from engaging in any political activity. See art. 98(2). The Judicial Organization Law covers issues such as confidentiality, impartiality, and ex parte communication. Thus, the judge is obliged to behave in a dignified manner and to conduct himself/herself in such a way that does not arouse suspicion about his/her impartiality; to keep the confidentiality of documents and information which came to his/her knowledge during his/her judicial function; and not to engage in

⁶ While the assessment team was not, at that time, aware of any efforts to draft a code of judicial ethics, it has been reported that, as this JRI report was being finalized, such a code has been developed and distributed to judges; however, the assessment team was unable to ascertain the content of the new code. It should also be noted that it is still premature to evaluate the practical impact of this new code.

trade or any other work incompatible with the judicial function. See art. 7. If the judge violates these provisions, he/she will be subjected to the disciplinary measures provided for in Article 58 of the Judicial Organization Law, as described in Factor 17 above. The Law of Civil Procedure addresses the issue of conflicts of interest. The judge is not allowed to sit in any case where one of the parties is his/her spouse, child or parent, or where he/she has been an agent of one of the parties to the case; or where he/she has been a witness in the case. See art. 91. The violation of any of these provisions renders the judge liable for disciplinary sanctions or other punishment. If the Judicial Affairs Committee, acting under Article 61 of the Judicial Organization Law, determines that the accusation against the judge constitutes a misdemeanor or a felony, it refers the case to the competent court, after the waiver of the immunity of the judge by the HJC. See Factor 16 above.

There is no ethics training *per se* provided to judges, either before taking office or during their tenure. Nevertheless, during the training at the Judicial Institute, judicial candidates receive instruction on the abovementioned legal provisions related to judicial ethics, as part of their training on constitutional law, the structure of the judiciary, and civil procedure. Groups of judges that have received training outside of Iraq in recent years have also been trained on judicial ethics and the components of judicial independence.

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

Conclusion	Correlation: Negative
<p>There is a formal procedure for parties to a case to file a complaint against judicial misconduct with the President of the HJC or its Committee for the Supervision of Justice. Such complaints are thoroughly investigated, and due process principles are followed. Non-parties, including other judges, lawyers, and the public, appear to have no right to file a complaint against a judge who is alleged to have violated judicial conduct standards.</p>	

Analysis/Background:

It is possible for any party in any case to lodge a complaint against a judge with the appeal court to which the judge belongs, the Court of Cassation, the HJC's Committee for the Supervision of Justice, or directly with the President of the HJC (the Chief Justice). LAW OF CIVIL PROCEDURE arts. 286, 287(1). Such a complaint must be based on legally specified grounds, such as fraud or serious error in the exercise of a judge's functions. *Id.* art. 286. For example, a party to a civil case may allege that the judge has committed fraud or serious error during the trial of the case, contrary to the law, or that the judge has changed the statements of witnesses during the trial. A complaint can be made on any of these grounds against the trial judge. See *also* Factor 16 above. It must be submitted in writing to any of the relevant judicial bodies mentioned above. Interviewees indicate that the complaints are thoroughly investigated, and the accused judge has the right to rebut the accusations, as well as the right to appeal any decision against him/her to the Court of Cassation. *Id.* arts. 290, 292. The time limit for filing such an appeal by a judge is 30 days. CPA Order No. 35 § 5(2).

Non-parties do not appear to have a stated right to file a complaint against a judge for judicial misconduct, and there is no formalized process for public complaints against judges. It has been reported that the general public is typically unaware of the legal provisions regarding filing a complaint concerning judicial misconduct.

There are no official statistics available regarding the average number of complaints lodged per year with the HJC, but some of the interviewees indicated that very few such complaints are filed in practice.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

Conclusion	Correlation: Neutral
<p>While courtroom proceedings are usually open to the public and media, in practice some courts lack the necessary courtroom space to accommodate the public and the media.</p>	

Analysis/Background:

Court proceedings in Iraq are generally open to the public, in theory and in practice. However, courtroom space constraints or a decision of the judge may prevent the trial from being open to the public. In general, in criminal trials, it would appear that there are adequate courtrooms for the public to attend the proceedings. By contrast, in civil cases, judges frequently conduct the trials in their offices, with the result that the public cannot be admitted because of lack of space.

Additionally, a judge may decide to have the proceedings closed in a particular case, in the public interest, in the interest of public morality or for the protection of the family. JUDICIAL ORGANIZATION LAW art. 5; LAW OF CIVIL PROCEDURE art. 61(1); LAW OF CRIMINAL PROCEDURE art. 152. Although judgments are read in public (see JUDICIAL ORGANIZATION LAW art. 5), non-parties cannot access these judgments without the permission of the trial judge. LAW OF CIVIL PROCEDURE art. 163(2).

The media in Iraq are permitted to access and cover cases before the courts. They are allowed to attend trials and report about them. However, the media are not allowed to mention the name of the accused in criminal cases. Furthermore, it was reported that a television team is allowed to photograph the trial, provided that the face of the accused is masked so that he/she cannot be identified.

Under Iraqi law, judges can give interviews and write articles. However, the assessment team was informed that, in practice, before a judge can give an interview where his/her statement is likely to be recorded and he/she is likely to be photographed (such as a television interview), the judge has to first obtain the approval from the HJC. This measure is likely intended to protect the judge from adverse publicity. Furthermore, judges are expected not to write articles about cases pending before them or before other judges of the same court or any other court.

It should be noted that high-publicity cases are treated in the same way as other cases, according to the views of all the interviewees who commented on the subject. Nevertheless, some very special cases, like the trial of Saddam Hussein, which is ongoing as of the date of this JRI and is the first of its kind in Iraq and the Arab world, are treated differently. In this case, a special court has been created for the trial of Saddam Hussein and his associates, with special features including the televising of its proceedings and the presence of foreign lawyers on the defense team.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

Conclusion	Correlation: Negative
<p>Judicial decisions in Iraq are not regularly published, and there is no legal obligation on courts to publish their decisions. Previously, there was a legal periodical that published some important decisions of the Court of Cassation, but its publication has ceased.</p>	

Analysis/Background:

Presently, judicial decisions in Iraq are not published in any regular or centralized manner. In the past, some important judgments of the Court of Cassation were published in a periodical called the JUSTICE MAGAZINE, issued under the auspices of the MOJ. This publication was discontinued, however, in the 1990s. Today, decisions of the Court of Cassation are primarily handed out at the court.

It would be very useful to judges, lawyers, and academics if the judicial decisions of, at least, the Court of Cassation and the FSC were published. There seems to be no official way of circulating court decisions to judges; instead, it is left for each judge to acquaint himself/herself with judicial decisions from any available legal periodical or publication. On a positive note, it appears that the FSC is planning to begin publication of its decisions on a website, <http://www.iraqijudicature.org>. However, as of the time of this JRI, the FSC has not uploaded any of its decisions to this new website.

Judges are dependent on secondary legal publications that might only on occasion reference selected Court of Cassation decisions. Otherwise, they must personally attempt to obtain copies of decisions through the HJC, or through their contacts at the Court of Cassation or the FSC. For example, a judge outside of Baghdad might hear about a decision from his/her colleagues or lawyers, or might see a brief reference to the case in newspapers. He/she would then have to call someone at the Court of Cassation or the FSC in order to obtain a copy of that decision.

Access to unpublished judicial decisions is available through the court that issued the decision and is limited to the parties to the case and other judges. Therefore, a non-party may only obtain a copy of the judgment upon a written request that must be approved by the trial judge. LAW OF CIVIL PROCEDURE art. 163(2). Furthermore, there is no legal obligation imposed on courts to publish their decisions, let alone doing so within a specified timeframe. In theory, courts can make their decisions publicly available, if they choose to do so, but this does not happen in practice. The publication of such decisions, according to some interviewees, depends upon the available facilities in the country and the political situation. For example, if there are adequate funds and manpower in the country, this encourages the publication of court decisions. But if the country were in a state of war, or under UN sanctions, such activities will likely come to an end.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>Transcripts of court proceedings are maintained in Iraq for 15 years after the end of the trial. They are generally accurate and are accessible to the parties, but are not available to the general public.</p>	

Analysis/Background:

Transcripts of court proceedings are generally accurate. However, the degree of their accuracy depends on the trial judge, according to the opinions of some of the interviewees. They contain the verbatim statements of the parties to the case, as dictated by the judge to his/her clerk during the trial. The transcripts must be signed by the trial judge, his/her clerk, and the parties to the case or their legal representatives, and are kept in the case file. LAW OF CIVIL PROCEDURE art. 60(2). Judges rely on these transcripts in the preparation of their judgments in the cases before them. The transcription process does not seem to be susceptible to corruption, for it is done openly during the trial under the judge’s supervision and in the presence of the parties and their lawyers. The parties have to sign the transcript and can object to any parts thereof, if it does not accurately reflect the proceedings. Moreover, any of the parties to the case can request that the judge read out the transcript during the trial. *Id.* Thus, the parties can ascertain what statements have been made and by whom, and how accurately they are reflected in the transcripts of the court’s proceedings, with the implied right of objection to the incorrect or inaccurate portions.

It was reported to the assessment team that transcripts of court proceedings are maintained for 15 years from the completion of court proceedings and the effective date of the decision in a given case. After that, they are destroyed according to the provisions of the law on the destruction of official papers in the country. Only the parties to a case have the right to access trial transcripts, and they are not available to the general public. However, the decision of the court can be obtained by a non-party to the case upon filing a written application addressed to the relevant trial judge. LAW OF CIVIL PROCEDURE art. 163(2). It should be noted that, even if court records were open to the public, it would probably be difficult to provide facilities for the public to review them, given the state of the Iraqi courthouses.

VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

<i>Conclusion</i>	<i>Correlation: Negative</i>
<p>Most judges in Iraq have some support staff, and the sufficiency of this support depends on the seniority of the judge. However, there is a general agreement among the interviewees that all court staff needs training and development in many areas, be it administrative, legal, or technical.</p>	

Analysis/Background:

No official statistics on the number of support personnel in the Iraqi courts was made available to the assessment team. The question of whether judges have the necessary support staff generally received two conflicting answers from the interviewees. Some responded in the negative, although the predominant view was that support was adequate. This difference in opinion may be explained by the fact that those answering in the positive were senior judges, who probably have adequate support staff, whereas those who felt that support is insufficient were generally less senior. On the whole, it would seem that a large number of senior judges have adequate support staff. However, even where sufficient support staff is available, they apparently still need training on new skills and technology, such as the use of computers. Even if trained staff is available in the market, judges have no authority to hire needed additional staff on their own, as all court staff are appointed by the HJC.

Outside of the issue of computers and new technology, court support personnel appear to be generally competent. However, in the view of some of the interviewees, staff requires additional training in the legal field. One interviewee even suggested the training of some court staff in the use of, and drafting in, their mother tongue, Arabic. ABA/ILDP has provided out-of-country training to court managers on leadership, ethics, and case and court management.

Whether or not court staff is susceptible to corruption depends, in part, upon the moral standards of the person concerned and the economic situation in the jurisdiction. In some instances, it is likely that there is a tradition of small bribe payments to court employees in order to expedite services, such as the delivery of a file or the service of process. Such information is anecdotal, however. The extent of such instances of petty corruption is impossible to measure. It is worth noting that the salaries of court employees have increased considerably since the fall of the Baath regime, which should provide a disincentive to acts of petty monetary corruption.

There have been reports of deficiencies in the number of court personnel overall, leading to inefficiencies in the court system and hastiness in judicial work and decision-making. For example, there is a severe lack of judicial investigators, who assist investigative judges in the investigations process, an overall deficiency in the number of administrative and financial staff, and a shortage of prosecutors. The latter, at times, results in police officers conducting initial investigations. This, in turn, can lead to errors or abuses of the investigatory process, since police officers usually do not have legal education or background.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

<i>Conclusion</i>	<i>Correlation: Neutral</i>
<p>New judicial positions are created by the HJC according to the needs of the courts. The HJC carries out this function when preparing the judicial budget. At the present time, the HJC is in the process of appointing new judges to meet the needs of the courts. The same considerations are also applied in the transfer of judges between the courts.</p>	

Analysis/Background:

New judicial positions are created according to the needs of the courts, as estimated according to the requests made by the relevant court presidents or upon determination of such needs by the HJC. According to interviewees, they are created by the HJC at the time when the judicial budget is prepared. When the budget is approved by the Council of Representatives, the resources

become available for the new posts, thus enabling the HJC to select candidates for these positions.

The sufficiency of resources to support new judicial positions depends on the economic situation and the available budgetary resources. Nonetheless, according to interviewees, despite the present difficult economic situation in Iraq, the tendency is to appoint more judges to meet the needs of the courts in the country.

The total number of judges in Iraq is currently 738. There is a widespread opinion among the legal system stakeholders that there is a need for more judges in the country. This need was neglected by the Baath regime, and the HJC is attempting to remedy the situation.

In general, judges are able to keep up with their current caseloads, although they are constantly under pressure. However, particularly in the first instance courts, judges occasionally must finish their work at home after hours. There is currently a backlog of cases, which is due to several factors, including the automatic right of appeal, even in very insignificant cases, which can go all the way to the Court of Cassation; the slow response times from state offices regarding requests for necessary information; and the system that includes frequent remands to lower courts by appeal courts and the Cassation Court, resulting in greater workload for first instance judges. Appointing additional judges could help alleviate this backlog, and this task should not be difficult to accomplish. Apparently, the number of applicants to judicial positions exceeds the number of existing vacancies. The assessment team was informed that there were more than 1,300 applications for admission to the Judicial Institute, while the Institute only had room for 75-100 candidates. It appears that after the fall of the Baath regime, the judiciary has become an attractive job, in light of the very high increase in the salaries of the judges.

The HJC has authority to transfer judges to other courts, according to the needs of the courts in the country. CPA ORDER NO. 35 § 3(1)(d). These needs are determined on the basis of requests from the court presidents, as well as the overall assessment of the situation in the country by the HJC, which receives reports and information about the courts from various parts of the country. As was reported to the assessment team, such transfers may take place even without the consent of the judge concerned, if it is in the public interest to do so. *Id.* § 3(e); see *also* JUDICIAL ORGANIZATION LAW art. 51.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion	Correlation: Negative
<p>All courts presently use manual systems for the purpose of filing and tracking cases. Many of these manual systems were disrupted during the fall of the Baath regime and the intervention of the coalition forces in 2003.</p>	

Analysis/Background:

The case filing and tracking systems in Iraqi courts are manual and old-fashioned. Generally, there is no uniform procedure for filing information. One common procedure involves every file notation being entered by handwriting into a large ledger, which is usually thick with case related records. Files are generally kept by a judicial assistant at the courthouse until the conclusion of the case. Transcripts of courts proceedings are kept for 15 years from the date of the final decision in the case. See Factor 25 above.

Most case filing and tracking systems are not computerized and are susceptible to decay and loss of information. For example, during the intervention by coalition forces in 2003, many court files, books, and office equipment were destroyed or stolen, thus causing significant damage and disruption to the work of the courts throughout the country. Case files are generally kept in storage in the court buildings. ABA/ILDP is working to develop a court automation project with a pilot court in Baghdad that intends, in part, to systematize case tracking.

As explained in Factor 29 below, very few courts have computers or staff that has adequate training on how to use them. It is also worth noting that the lack of reliable electricity remains a serious problem in parts of Iraq. Therefore, an electronic case management system in courts is not a practical proposition at the present time in many parts of the country.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	Correlation: Negative
<p>There is a huge need for computers and other office equipment in most courts in Iraq. Such equipment is necessary for the efficient operation of the courts and the fulfillment of judicial functions.</p>	

Analysis/Background:

Only a few courts in Iraq have computers, typewriters, and other office equipment necessary for handling their caseloads in an efficient manner. Regarding the origins of the existing computers, the Korean Government donated a large number of computers to the Iraqi judiciary in 2004. In the past, the HJC has also purchased additional computers for court use. Those few computers that are found in courts appear to be adequately maintained. This computer equipment, however, often lies unused, or is used by some of the staff for non-work-related purposes, such as to play computer games. It is also unclear to what extent these computers might have been stolen or improperly removed from the courthouses for personal use.

Since 2003, judges and other court employees have received some sporadic training on computer literacy. However, there has not usually been follow-up training. Further, because of frequent electricity outages, among other reasons, judges did not have an adequate opportunity to practice what they had learned. As a result, many judges have lost much of even the limited computer skills they may have acquired.

The higher courts, such as the Court of Cassation or the FSC, tend to have more computers available to them than do the judges on the lower courts.

The lack of office equipment in courts in Iraq is one of the legacies of the Baath regime, which neglected the judiciary's needs for a long period.

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

Conclusion	Correlation: Negative
<p>The Official Gazette, in which new laws and legislative changes are published, is distributed free of charge to all judges. There is no electronic database of laws in Iraq, or any nationally recognized system for identifying and organizing changes in the law.</p>	

Analysis/Background:

New laws and changes in the existing laws in Iraq are published in the Official Gazette (*Al-Waqai Al-Iraqiya*), which is distributed free of charge to each individual judge. Publication in the Official Gazette is a legal requirement for the legislation to enter into force. The cost of subscriptions for judges is paid for by the relevant court and the HJC. In theory, the Official Gazette is a monthly publication, but in practice this is not always the case. When the Official Gazette is published, it is likely to be distributed to the judges in Baghdad in a timely manner. However, judges in the other governorates have to wait for some time before they can receive their copies. Practicing lawyers and others interested in the law may subscribe to the Official Gazette on their own. The subscription fee is reasonable, varying between IQD 750-2,000 (USD 0.51-1.36) per issue, depending on the size of the issue.

There is no system for identifying and indexing changes in the law. Some private citizens, have in the past attempted to develop such a system, but these efforts resulted in a one-time publication only. Furthermore, newly appointed judges are not provided with copies of the laws then in force. They either have to buy the laws themselves or borrow them from the court's library, if there is one.

There is no computerized index or database of laws in Iraq at the present time. The United Nations Development Program (UNDP) is currently preparing a computerized collection of Iraqi laws and regulations, but this collection will not include a system for identifying and organizing changes in the law. When completed, this database will be made available to all Iraqi courts, in order to make it easy for the judges to refer to any relevant statute or regulation. According to information from the UNDP, it is expected that the database will be developed within the next few months, but courts will need to have computers in order to use the system.

Secondary legal materials (such as legal periodicals other than the Official Gazette, books, commentaries, and treatises) are not distributed to the judges or court libraries in Iraq. Judges have to buy these materials at their own cost.

Furthermore, only very few courts in Iraq, such as the Court of Cassation, have operating libraries. Most of the law libraries in Baghdad were burnt or destroyed after the fall of the Baath regime. Similarly, law libraries in many courts in southern Iraq were destroyed by post-invasion looting. In general, there are no comprehensive law libraries in many of the Iraqi courthouses.

List of Acronyms

ABA/ILDP	American Bar Association's Iraq Legal Development Project
CCCI	Central Criminal Court of Iraq
CLE	Continuing Legal Education
CPA	Coalition Provisional Authority
FSC	Federal Supreme Court
HJC	Higher Judicial Council
JRI	Judicial Reform Index
IQD	Iraqi Dinar
MOJ	Ministry of Justice
RCC	Revolutionary Command Council
SCC	State Consultative Council
UNDP	United Nations Development Program