



**JUDICIAL REFORM INDEX**  
FOR  
**IRAQ:**  
**KURDISTAN SUPPLEMENT**

*October 2006*

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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**

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This report is a supplement to the Iraq JRI assessment that was conducted in July 2006 and is intended to be read in conjunction with that assessment.



## Executive Summary

### Brief Overview of the Results

The 2006 Judicial Reform Index (JRI) for Kurdistan<sup>1</sup> was conducted during October 2006 as a supplement to the existing Iraq JRI assessment implemented earlier this year, and is intended to be read in conjunction with that assessment. Despite the many remaining problems, Kurdistan has overcome immense challenges since the Kurdish revolt of 1991. It has established a separate government and a functioning judiciary in a region that enjoyed only *de facto* independence from Baghdad. Overall, Kurdistan received a positive correlation on 5 out of 30 JRI factors, a negative correlation on 13 factors, and a neutral correlation on the remaining 12 factors. The fact that there are few positive correlations can be attributed, in large part, to lack of *de jure* independence of the judiciary from the Kurdistan Ministry of Justice (MOJ) and the executive branch, neglect of the judiciary by the various regimes, and shortage of available resources necessary to develop the judiciary. However, there are positive signs for the future. Kurdistan is considering many changes to its judicial system, including adoption of a draft regional Constitution and a revised Judicial Organization Law, promising greater judicial independence and a larger role for the courts in enforcing individual rights and reviewing legislation and administrative acts. In addition, after 15 years of rivalry, Kurdistan's two dominant political parties agreed to the formation of a unified government in 2006. This will hopefully diminish the divisions within the Kurdish society, which in turn will alleviate pressures on judges to be anything but fair and impartial in their actions. Many stakeholders in the Kurdish judiciary hope that the region will be able to capitalize on its relatively stable security situation to develop a judiciary that is better resourced, more representative of the Kurdish society, and independent of external influences.

### Positive Aspects Identified in the Iraq JRI: Kurdistan Supplement

- The greatest single advantage Kurdish judges enjoy compared to their counterparts in other areas of Iraq is the ***relatively secure and stable environment***. Kurdish judges are able to live in their own homes and travel with minimum security precautions. This enables judges, enforcement officials, police, and others connected to the judicial process to perform their duties more productively. Above all, such security situation represents ***an important precondition for future improvements*** in Kurdistan's judicial system.
- As a result of recent reforms, judges in Kurdistan, as is true of judges in the rest of Iraq, ***receive a respectable salary***. This enables Kurdistan to attract well qualified judicial candidates, despite concerns that remain about the equity of the distribution to judges of non-monetary benefits, such as vehicles and real property.

### Concerns Related to Judicial Independence and Improper Influence

- Kurdistan has fallen behind the rest of Iraq in instituting reforms that would empower an independent judiciary to serve as a check on the government, although reforms are currently considered in this area. As a matter of law, ***the judiciary is completely dependent on the MOJ***, which controls the judicial budget process, hires all court employees, and performs the strategic planning for the courts. ***The MOJ also controls the Judicial Council***, playing a significant role in issues related to judicial appointments, promotions, immunity, discipline, and removal. This arrangement gives the MOJ much authority over the judiciary and the individual judges.

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<sup>1</sup> The term "Kurdistan" as used in this JRI report refers to the federal region of Kurdistan within Iraq only.

- The courts in Kurdistan are **not yet empowered to review and, if necessary, overturn laws and acts issued by the government's administrative agencies**. Kurdistan appears to be taking steps to address these concerns, however, by considering the establishment of an administrative court to consider actions by the Kurdish regional government, as well as the creation of a consultative council to consider the constitutionality of Kurdistan's regional legislation.
- As is true elsewhere in Iraq, **wasta, or favoritism, remains a serious concern**. Traditional family or religious forces in the Kurdish society still exercise great influence that undoubtedly affects decisions of Kurdish judges. Furthermore, **intense political factionalism** within Kurdistan creates the potential for influencing judges through connections or loyalties to one of the two major political parties. Finally, reports that senior judges have unfairly punished subordinate judges for decisions with which they disagreed indicate that **judges are not sufficiently independent from each other**.

### Other Major Concerns

- Although as a matter of law, there are **strict requirements to become a judge** in Kurdistan, including the successful completion of an exam, in practice it is **unclear how stringently these requirements are enforced**. The Kurdish revolt severed Kurdistan's judicial system from Baghdad, resulting in the inability of Kurdish judicial candidates to attend the Judicial Institute in Baghdad. This means that **future judges do not receive necessary training** to prepare them for the proper and effective exercise of their functions.
- Similarly, sitting **judges do not receive adequate continuing legal education training**. Kurdish judges are less likely than their counterparts elsewhere in Iraq to be offered, and to take advantage of, *ad hoc*, short-term training opportunities offered by international NGOs outside of Iraq.
- There is a **lack of adequate infrastructure** for the Kurdish courts. **Judicial buildings have not been maintained** and are in a state of disrepair. **Computers** and other advanced technology are **rarely found** in the courts. Rarer still are judges or court employees who have IT skills and can take advantage of the few available pieces of electronic office equipment. In addition, despite its relative peace and prosperity, Kurdistan continues to suffer from **electricity outages** similar to those experienced elsewhere in Iraq.
- As is the case in the rest of Iraq, there is a **lack of transparency in many aspects of court operations**. **Judicial decisions are published only selectively** and on an unofficial basis, and records related to court cases are difficult or impossible for non-parties to obtain. Non-parties do not have the right to file complaints alleging judicial misconduct and, due in part to the poor state and limited space available in court buildings, it is **difficult for non-parties to gain access to court proceedings**. There have been reports of judges ordering non-party spectators out of the courtroom without adequate reason.
- Due in large part to prevailing social norms that place a lot of emphasis on traditional family obligations of the Kurdish women, Kurdistan has **failed to attract more than three female judges to the bench** out of 156 judges (1.9%). Judicial leaders must do more to address these issues and support the nascent efforts by civil society organizations to enable women to join the judiciary.

## Kurdistan Background

The Kurdish civilization is an ancient one, stretching back, by many accounts, over 4,000 years. Today, there are significant Kurdish populations in Iran, Turkey, Syria, Armenia, and Iraq.

According to estimates by the United Nations Development Program [hereinafter UNDP] and the Iraqi Ministry of Planning, the population in the three governorates that comprise the federal region of Kurdistan in Iraq, Arbil, Sulaimaniya, and Dehuk, was estimated to be around 3.6 million in 2004. See G. Burnham et al., *Mortality After the 2003 Invasion of Iraq: A Cross-Sectional Cluster Sample Survey*, 368(9545) THE LANCET 1421-1428 (Oct. 2006). The population is overwhelmingly Kurdish, although there are also significant minorities of Turcomens, Yazidis, Christians, and Sunni and Shia Arabs, among others. The Kurdish population is overwhelmingly Sunni Muslim, although there is a tiny percentage of Shia Muslim Kurds in the region.

The region has been part of the modern Iraqi state since its founding in 1921. From 1921 through the end of the First Gulf War in 1991, Kurdistan was governed from Baghdad. During that 70-year period, Kurds in Iraq have regularly pushed for greater independence from Baghdad. After the liberation of Kuwait by the Coalition Powers in 1991, a revolt against the Baath regime took place in the south and the north of Iraq. The revolt in the south was put down savagely by the Baath regime. Hundreds of thousands of people were reportedly killed by Saddam Hussein's Republican Guards, and more than 50,000 refugees poured over the borders into Saudi Arabia, while thousands of others sought sanctuary in Iran. In the north, nearly two million people fled to the borders of Iran and Turkey. This mass exodus led the U.N. Security Council to pass a resolution condemning the repression of Iraqi civilians and calling on Iraq to end the repression. See Resolution S/RES/688, paras. 1-2, April 5, 1991.

This also paved the way for the creation by the Coalition Powers of a "safe haven," located north of the 36th parallel in Iraq, a line just south of Arbil. Iraqi aircraft were forbidden to fly in this zone, and the Baath regime called a halt to the advance of its forces. As a result, an autonomous Kurdish territory developed. In May 1992, Kurdistan held independent parliamentary elections, and in June of that year, the Kurdish National Assembly [hereinafter KNA] began its sessions in Arbil. The Constitution of Iraq adopted in 2005 recognized Kurdistan and its existing authorities as a federal "Kurdistan Territory" (*Iqlim Kurdistan*). See CONSTITUTION OF IRAQ art. 117(1) (Oct. 15, 2005) [hereinafter CONSTITUTION].

In recent decades, Kurdistan has been dominated by two rival political parties, the Kurdish Democratic Party [hereinafter KDP] and the Patriotic Union of Kurdistan [hereinafter PUK]. During the period of autonomy from the Baath regime, each party maintained separate governments and militias. The KDP governed Arbil and Dehuk governorates, while Sulaimaniya was governed by the PUK. On January 21, 2006, however, the parties announced a Unification Agreement to merge their administrations into one unified Kurdish Regional Government [hereinafter KRG]. Under the terms of this Agreement, representatives of each party would be assigned a balanced number of Cabinet posts, with positions such as the Speaker of the KNA and the Prime Minister to be rotated between the two political parties.

There is currently great political debate within Iraq regarding the degree of autonomy that Kurdistan should have. Furthermore, Kurdistan is engaged in disputes with the central government in Baghdad over the precise borders of its territory and its right to control the economic resources in disputed areas, most notably the oil-rich area in and around the city of Kirkuk. Although there have been violent incidents in cities such as Kirkuk and Mosul, (which are among the disputed areas between the Kurds and other Iraqis), Kurdistan has largely escaped the sectarian violence and terrorist warfare that has taken place in Iraq since the fall of the Baath regime in 2003.

## Legal Context

Prior to 1991, Iraqi Kurdistan was administered centrally from Baghdad, and Iraqi laws and regulations were applicable. The legal system, as described in the JUDICIAL REFORM INDEX FOR IRAQ [hereinafter IRAQ JRI], was modeled on the Egyptian system, which in turn was modeled on the French civil law system. See IRAQ JRI at 5-6. Even though Kurdistan became autonomous in 1992, many of the same Iraqi laws remained applicable in the region. Aside from a few minor modifications, this situation remains unchanged to the present day. For example, the courts in Kurdistan still continue to hear cases pursuant to the Iraqi national Law of Civil Procedure (Law No. 831 of 1969) [hereinafter LAW OF CIVIL PROCEDURE] and Law of Criminal Procedure (Law No. 23 of 1971) [hereinafter LAW OF CRIMINAL PROCEDURE].

The Iraqi Constitution of 2005 applies throughout all Iraqi territory, including Kurdistan, and provides that any law which contradicts the Constitution is null and void. See art. 13(1)-(2). The Constitution also provides for the separation of powers (*see id.* art. 47) and for the independence of the judiciary from the executive and legislative authorities (*see id.* arts. 87-88), as well as for new political rights and liberties that are to be protected by the courts (*see id.* arts. 14-46). However, the principle of independence of the judiciary has not yet been implemented in Kurdistan at the regional level. The Judicial Organization Law, which empowers the Kurdistan Ministry of Justice [hereinafter MOJ] to exercise control over the judiciary, contradicts the principle of judicial independence as enshrined in the Iraqi Constitution. At the same time, it could be argued that these provisions are no longer valid in light of other constitutional provisions. Notwithstanding the absence of legal provisions guaranteeing judicial independence, courts in Kurdistan appear to be free from external influence in the performance of their duties. Their decisions are both well respected and, unlike elsewhere in Iraq, thoroughly and effectively implemented.

The governing structure in Kurdistan consists of the KNA, which is a democratically elected legislature led by the Speaker, as well as a popularly elected President of the KRG, who serves a four-year term. KURDISTAN PRESIDENTIAL LAW art. 3 (2005). Under the terms of the KRG Unification Agreement, the Prime Minister and his/her Deputy are confirmed by the KNA. The President of the region charges the Prime Minister and the Deputy with forming a Cabinet, under the terms of the Unification Agreement. The Prime Minister then submits the names of his/her Cabinet members to the KNA for confirmation. Both the KNA and the KRG are based in Erbil.

## History of the Judiciary

Until 1991, the judiciary in Kurdistan developed along the same lines as in the rest of Iraq. The structure of the court system was identical to that of the rest of the country. During that period, the training of Kurdish judicial candidates was conducted at the Judicial Institute in Baghdad, although due to the Baath regime's policy of favoring loyalists to the Baath party, it is likely that their number was small. Once the opportunity to train at the Judicial Institute ceased to exist after 1991, Kurdistan began the practice of selecting its judges from the ranks of practicing lawyers and officials working in the legal departments of government offices.

The only noteworthy law pertaining to the operation of the judicial system that originated in Kurdistan after 1991 was the Kurdistan Judicial Organization Law (Law No. 14 of 1992) [hereinafter JUDICIAL ORGANIZATION LAW].<sup>2</sup> In many respects, this law is similar to Iraq's Judicial Organization Law (Law No. 160 of 1979). One notable distinction lies in the extensive role of the MOJ with respect to many aspects of courts' operations, and the resultant difference in the

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<sup>2</sup> Unless otherwise noted, all references in this assessment to the Judicial Organization Law, the MOJ, and the Court of Cassation should be construed as references to, respectively, the Kurdistan Judicial Organization Law, the Kurdistan MOJ, and the Kurdistan Court of Cassation, rather than to their Iraq counterparts.

degree of judicial independence of Kurdistan's judiciary from that in the rest of Iraq. Judicial independence was declared in Iraq after the fall of the Baath regime by Order No. 35 of the Coalition Provisional Authority [hereinafter CPA], dated September 13, 2003, 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 Iraqi Ministry of Justice. *Id.* §§ 1, 6. This was followed in 2005 by the Constitution. See arts. 47, 87-88. However, the judiciary in Kurdistan still operates as part of the executive authority under the MOJ.

The assessment team has been informed that a draft constitution for Kurdistan, which would include provisions on the independence of the judiciary, is currently under preparation. In addition, a new draft Judicial Organization Law is pending before the KNA. This JRI assessment, however, will not analyze the provisions of these two drafts.

The separate government structures maintained by the KDP and the PUK during the period of Kurdistan's autonomy from Baghdad resulted in two separate MOJs and Courts of Cassation for, respectively, Arbil and Dehuk governorates and Sulaimaniya governorate. These entities were merged in July 2006 pursuant to the terms of the KRG Unification Agreement. Today there is one Court of Cassation and one MOJ for the entire region, both based in Arbil.

The development of a Kurdish judiciary independent of Baghdad during 1991-2003 was an extraordinarily difficult achievement. Kurdistan's autonomy at this time was *de facto* only; it could not easily obtain the resources necessary to establish and operate an independent government and judicial system. The fact that Kurdistan was able to develop its separate set of courts during this difficult period is a source of great pride to many in the Kurdish legal community.

## Structure of the Courts

The structure of the courts in Kurdistan is nearly identical to the structure of the courts in the rest of Iraq. See *generally* JUDICIAL ORGANIZATION LAW art. 8. It differs only in the fact that Kurdistan does not have an Administrative Court<sup>3</sup>. See IRAQ JRI at 7-10 for detailed information on the Iraqi court structure.

According to the MOJ, there are currently 156 judges in Kurdistan, including 97 in the governorates of Arbil and Dehuk, and 59 in the governorate of Sulaimaniya.

The **Kurdistan Court of Cassation** is the highest court of appeal in Kurdistan. Before July 2006, there were two Courts of Cassation in Kurdistan, in Arbil and in Sulaimaniya. As part of the unification of the two rival governments in Kurdistan, these Courts were unified into one 15-member court based in Arbil. The Kurdistan Court of Cassation is completely separate from, and has no relationship to, the Court of Cassation in Baghdad. Its judgments cannot be reviewed by the Iraqi Court of Cassation, and residents of Kurdistan are obliged to bring claims arising in Kurdistan before the Kurdish courts.

Although there is a newly-established **Federal Supreme Court** [hereinafter **FSC**] in Iraq, it does not have the authority to review or overturn Kurdish laws, but may only consider the constitutionality of national acts or laws.

The **Judicial Council of Kurdistan** is a component of the MOJ and has no connection to the HJC in Baghdad, which is independent of the Iraqi MOJ. The Judicial Council is comprised of five members: the President of the Court of Cassation; two of his/her most senior deputies or, in their

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<sup>3</sup> Although the Administrative Court in Baghdad does have nominal jurisdiction over claims originating in Kurdistan, it would be unusual for Kurds to avail themselves of this court given the security situation in Baghdad and the fact that the Kurdish judicial system has developed independently of the judicial system in the rest of Iraq during the past 15 years..

absence, two of the most senior judges of the Court of Cassation; the President of the Committee on the Supervision of Justice; and the Director-General of the MOJ. Seniority is determined when judges are appointed or promoted by the MOJ, making the above designations easily recognizable. JUDICIAL ORGANIZATION LAW art. 31(a). The Judicial Council performs the following functions: (1) discussing and commenting on the preliminary plan of the MOJ and making comments thereon; (2) studying matters referred to it by the MOJ; (3) making determinations on the promotion and transfer of judges, ascertaining their conduct and ability, and supervising the independence of the judiciary; (4) making recommendations on the appointment of judges; and (5) establishing a Committee for Judges' Affairs at the start of every year. *Id.* art. 32. As is evident from this list of functions, and notwithstanding its stated mission to supervise the independence of the judiciary, the Judicial Council is not independent in any real sense from the MOJ, which is an agency of the executive branch of government.

There are two entities of note within the Kurdistan judiciary, the **Committee for Judges' Affairs** [hereinafter **CJA**], and the **Commission on the Supervision of Justice** [hereinafter **CSJ**]. The CJA is established by the Judicial Council at the beginning of every year from within the ranks of the Judicial Council and deals with disciplinary matters concerning judges. *Id.* art. 32(5). On the other hand, the CSJ is one of the organs of the MOJ, which carries out supervisory functions, such as reporting to the MOJ on the work of the judges. KURDISTAN MINISTRY OF JUSTICE LAW art. 5 (Law No. 12 of 1992); JUDICIAL ORGANIZATION LAW arts. 38(2), 39(3), 39(5), 52(1)(b).

## Conditions of Service

### Qualifications

To qualify for appointment as a judge in Kurdistan, a candidate must have a degree in law from a recognized law school, be an Iraqi citizen with a good command of the Kurdish language, and be at least 30 years old. He/she must have at least 10 years of experience in legal practice, either as a practicing lawyer, a court official, or as an official in the legal department of any government office. The legal practice requirement is reduced to 5 years for candidates holding a masters degree in law, and to 3 years for those holding a Ph.D. degree in law. Each candidate must have appeared before the courts in at least five cases per year. Unlike in other parts of Iraq, graduation from the Judicial Institute is not required for future Kurdish judges. JUDICIAL ORGANIZATION LAW art. 33.

### Appointment and Tenure

Kurdish lawyers who meet the above criteria may apply for judicial posts to the MOJ. The Ministry provides the full list of candidates to the Judicial Council, accompanied by a report on each applicant's services, conduct, and ability. The Judicial Council makes its selections from this list based on criteria outlined in the Judicial Organization Law, and returns its selections to the MOJ, which then forwards them to the President of the region for a *pro forma* presidential decree. Judges are appointed for a permanent tenure until the retirement age of 63, unless removed for disciplinary reasons in accordance with the law. JUDICIAL ORGANIZATION LAW art. 44(3). There is no probationary period.

### Training

As in the rest of Iraq, active judges in Kurdistan are not required to participate in continuing legal education courses. While in recent years Iraqi judges have been offered *ad hoc* training opportunities by international NGOs on human rights, ethics and judicial independence, among other topics, judges in Kurdistan have had limited opportunities to participate in such programs.

## Iraq JRI 2006: Kurdistan Supplement 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
<b>I. Quality, Education, and Diversity</b>		
Factor 1	Judicial Qualification and Preparation	Neutral
Factor 2	Selection/Appointment Process	Neutral
Factor 3	Continuing Legal Education	Negative
Factor 4	Minority and Gender Representation	Neutral
<b>II. Judicial Powers</b>		
Factor 5	Judicial Review of Legislation	Negative
Factor 6	Judicial Oversight of Administrative Practice	Neutral
Factor 7	Judicial Jurisdiction over Civil Liberties	Neutral
Factor 8	System of Appellate Review	Positive
Factor 9	Contempt/Subpoena/Enforcement	Positive
<b>III. Financial Resources</b>		
Factor 10	Budgetary Input	Negative
Factor 11	Adequacy of Judicial Salaries	Positive
Factor 12	Judicial Buildings	Negative
Factor 13	Judicial Security	Positive
<b>IV. Structural Safeguards</b>		
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	Negative
<b>V. Accountability and Transparency</b>		
Factor 20	Judicial Decisions and Improper Influence	Negative
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
<b>VI. Efficiency</b>		
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.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>All judges in Kurdistan are required to have a university degree in law and no less than ten years of experience as practicing lawyers, court officials, or officials in legal departments of any government office. They must have appeared before the courts in at least five cases per year. There is currently no judicial training institute in Kurdistan.</p>	

#### Analysis/Background:

The required qualifications for judges in Kurdistan are to: (1) be a qualified lawyer, i.e., hold a degree in law from a recognized law school; (2) be an Iraqi citizen, with good command of the Kurdish language; (3) be at least 30 years old, physically fit, and married; (4) be of good character, impartial and honest; (5) not have been imprisoned for a non-political offense; (6) have passed a written or oral exam, as determined by the Judicial Council; and (7) have at least 10 years of experience as a practicing lawyer, a court official, or an official of a legal department of a government office, who has appeared before the courts in at least five cases per year. The practice requirement can be reduced to five years if the candidate holds a masters degree in law, and to 3 years if he/she holds a Ph.D. degree in law. JUDICIAL ORGANIZATION LAW art. 33. There are no lay judges in Kurdistan.

There is currently no judicial training institute in Kurdistan. Until 1990, training of Kurdish judicial candidates was conducted at the Judicial Institute in Baghdad, although due to the Baath regime's policy of favoring loyalists to the Baath party, it is likely that their number was small. See IRAQ JRI at 14-15 for a description of the Judicial Institute. Because the Judicial Institute was no longer available to Kurdish candidates after 1991, a unique system of judicial qualification and preparation developed. Nonetheless, it is interesting to note that most of the judges interviewed by the assessment team were themselves graduates of the Judicial Institute in Baghdad.

The majority of interviewees were in favor of establishing a judicial training institute for Kurdistan. Many indicated that it could train not only judges, but other court personnel, thus enhancing the capacity of many officials. However, a small number of interviewees stated their opinion that the need for judges in Kurdistan was limited, and therefore the establishment of such an institute was not justified. The assessment team was informed that a draft law has been submitted to the KNA recommending the establishment of a judicial institute in Kurdistan.

As is the case in the rest of Iraq, judges in Kurdistan are initially selected without reference to a specialization. However, as their careers proceed, judges tend to focus in a particular area, and are later selected for more senior posts on the basis of this specialty. Judges in rural or outlying courts may be required to have more than one specialization.



## 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***

Judges in Kurdistan are selected by the MOJ and the Judicial Council and appointed by the President of the region on the basis of their legal qualifications, competence, honesty, impartiality, good character, good professional conduct, and good reputation.

### **Analysis/Background:**

The process for selecting judges in Kurdistan is different from that used in the rest of Iraq, where judges are appointed by the HJC. See IRAQ JRI, Factor 2. Applications for judicial posts in Kurdistan are submitted to the MOJ, which conducts initial interviews and drafts a report on each applicant describing his/her conduct and ability. The applications with accompanying reports are then sent on to the Judicial Council for consideration. The Judicial Council makes its selections from this pool of applicants. The criteria applied to candidates include qualifications, competence, honesty, impartiality, good character, good professional conduct, and good reputation. JUDICIAL ORGANIZATION LAW art. 33. Interviewees clarified that, with respect to the requirements for fairness and impartiality, judicial candidates are assessed on the information contained in their personnel files and through interviews with their supervisors. In addition, candidates must pass a written or an oral exam before the Judicial Council. *Id.*

The applications selected by the Judicial Council are returned to the Minister of Justice, who forwards them to the President of the region for a *pro forma* regional presidential decree on their appointment. JUDICIAL ORGANIZATION LAW art. 34. Selected applicants begin performing their judicial functions after swearing an oath of office. *Id.*

The role of the Judicial Council in the judicial selection process is regarded by many as a guarantee that the process is impartial. On the other hand, some interviewees expressed concern about the requirement that applications for judgeships be initially submitted to the MOJ. This concern lies in the fact that, in making the initial selections, the MOJ does not apply the criteria outlined above or any other set criteria. For instance, the assessment team was informed that, prior to the unification of the two governments in Kurdistan in 2006, several judges were appointed who lacked some of the qualifications listed above, even though this was contrary to the existing law.

According to interviewees, the required written or oral exam also contributes to the impartiality of the selection process. It is impossible to say whether, or to what extent, subjective considerations play a role in the examination and grading processes. Although the perception of many interviewees was that the process is satisfactory, some respondents expressed the opinion that, until recently, judicial candidates had been accepted for judicial posts even though they had been unable to successfully pass the written examination.

The assessment team learned about a recent process that resulted in the appointment of eight judges in Kurdistan. The MOJ advertised eight judicial vacancies, for which 26 individuals applied, and 24 of them appeared for an interview with the MOJ. The MOJ eliminated some of the candidates, and sent the remaining 13 applications to the Judicial Council; those candidates were offered the opportunity to take a written exam. The candidates were then ranked according to

their exam grades. Following the exam, the names of eight candidates were returned to the MOJ to be forwarded to the President of the KRG for appointment.

### 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 that inform them of changes and developments in the law.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>There is no required continuing legal education [hereinafter CLE] for judges in Kurdistan, which may hinder them from keeping up with developments in the law. In addition, Kurdish judges are less likely than other Iraqi judges to participate in <i>ad hoc</i> training outside of Iraq, for reasons that include logistical difficulties.</p>	

#### Analysis/Background:

Judges in Kurdistan, as in the rest of Iraq, are not required to take CLE courses, although most of the interviewees considered it important for judges to keep up with legal developments.

While *ad hoc* educational opportunities, offered on a limited scale, have been available to Iraqi judges through various organizations, including the European and International Unions of Lawyers, the International Legal Assistance Consortium, and the American Bar Association [hereinafter ABA], the assessment team was informed that judges in Kurdistan have rarely participated in such training programs. Interviewees stated that very often Kurdish judges either were not invited or the invitation to such meetings or workshops arrived too late to enable them to participate.

### 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.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The Iraqi Constitution of 2005, which applies in Kurdistan, guarantees equal opportunities to all Iraqis, and current Iraqi law prohibits discrimination or prejudice in the judicial field on the basis of minority status or gender. While the ethnic composition of the judiciary appears to be relatively balanced, there are only three women judges in Kurdistan at the present time.</p>	

#### Analysis/Background:

Both the Judicial Organization Law, which specifies criteria for the appointment of judges, and the Iraqi Constitution of 2005 prohibit discrimination of judicial candidates on the basis of gender or ethnic origin. See CONSTITUTION art. 16; JUDICIAL ORGANIZATION LAW art. 33. Any Iraqi with the proper qualifications, whatever his/her gender, ethnic origin, or social background, can apply for admission to become a judge. *Id.* art. 34(1). Nonetheless, the assessment team was informed that, due in large part to social norms, the number of female judges is extremely low. There are

currently only three women judges throughout Kurdistan, out of a total of 156 judges (1.9%). None of them are judges at the appeals or higher levels of the judiciary. Interviewees expressed the view that a significant portion of Kurdish society is not prepared to accept women as judges.

On the other hand, the assessment team was informed that female lawyers in Kurdistan apparently prefer to join the office of the Prosecutor General rather than the judiciary. There are many women working in the Prosecutor General's office, and the Prosecutor General in Sulaimaniya governorate is a woman. The proffered reason for this situation is that the responsibilities of judges are thought to be significant for women with family obligations, whereas the duties of prosecutors are easier to reconcile with Kurdish women's traditional family obligations. For example, prosecutors, unlike investigation judges, do not serve night duty.

Although the situation is bleak now, some interviewees stated that civil society organizations are beginning to promote women's rights in Kurdistan. These organizations are working to address and advance women's rights, tackling such issues as the right of women to enter into the judiciary.

No interviewees expressed concerns regarding the ethnic composition of the judiciary in Kurdistan. Interviewees reported that ethnic minorities are represented in the Kurdish judiciary.<sup>4</sup> Precise figures on the ethnic composition of the Kurdish judiciary were unavailable, but Kurdish judges work alongside their Turcomen, Christian, and Yazidi colleagues.

## 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.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>The Office of Codification within the MOJ is entrusted with determining the compatibility of draft legislation with existing legislation in Kurdistan. While it may only recommend the annulment or amendment of draft legislation, its recommendations are highly respected. There is no court at the Kurdish or national level competent to consider the constitutionality of Kurdish legislation. The FSC, based in Baghdad, only has the authority to review the constitutionality of federal legislation.</p>	

#### Analysis/Background:

The Office of Codification (*Diwan Altadween Alqanouni*) [hereinafter OC], which is part of the MOJ, examines draft legislation in order to assess its compatibility with existing laws applicable in Kurdistan. It is similar to the State Consultative Council [hereinafter SCC] in Baghdad, although with more limited powers. See IRAQ JRI at 18 for a more detailed description of the SCC. When a new law is being prepared, the OC provides a legal opinion on the compatibility of the draft law with current laws, and can recommend amendments. Although the OC 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.

<sup>4</sup> The population is overwhelmingly Kurdish, although there are also significant minorities of Turcomens, Yazidis, Christians, and Sunni and Shia Arabs, among others.

According to interviewees, it is impossible for an individual in Kurdistan to challenge the constitutionality of any Kurdish legislation, as no constitutional court exists in Kurdistan. Further, the new FSC, based in Baghdad, does not have the authority to review Kurdish legislation or determine its constitutionality, as its jurisdiction is limited to deciding on the constitutionality of national legislation. See IRAQ JRI at 19 for more information on the functions and jurisdiction of the FSC. Ordinary courts in Kurdistan provide a limited forum for the protection of political and civil rights for concerned individuals, although they cannot overturn or challenge the constitutionality of regional legislation.

The assessment team learned that a plan exists to establish a constitutional court for Kurdistan, and that a draft law for the establishment of a Consultative Council for Kurdistan (*Majlis Shoura Iqleem Kurdistan AlIraq*) has been submitted to the KNA.

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>Administrative matters in Kurdistan can be challenged before the ordinary courts. There is no separate Administrative Court in Kurdistan. Although, as a matter of law, individuals residing in Kurdistan may bring claims against administrative actions to the Administrative Court in Baghdad, in practice it would be unusual for them to do so.</p>	

### Analysis/Background:

Residents of Kurdistan whose rights have been violated by administrative measures can challenge these actions before ordinary courts. In principle, a regular first instance court could annul administrative acts and award damages to injured parties. In practice, however, this rarely occurs.

As a matter of law, it is also possible for a party injured by administrative actions taken in Kurdistan to bring a claim before the Administrative Court in Baghdad, requesting an annulment of the act or decision in question and a compensation of material and moral damages. LAW OF THE STATE CONSULTATIVE COUNCIL art. 7(2)(d) (Law No. 65 of 1979). Decisions of the Administrative Court are binding vis-à-vis all administrative authorities in the country, and are subject to review by the FSC. LAW OF THE FEDERAL SUPREME COURT art. 4(3) (Law No. 30 of 2005). However, due in part to the prevailing security situation in Baghdad and the fact that the Kurdish judicial system developed independently of Baghdad in all respects after 1991, it is unlikely that a resident of Kurdistan would consider filing a claim the Administrative Court. See IRAQ JRI at 20 for a more complete description of the competence of the Administrative Court.

At the present time, there is no separate Administrative Court in Kurdistan. However, the draft law for the establishment of a Consultative Council for Kurdistan, which is currently before the KNA, contains a recommendation to establish such a court. The fact that such a recommendation has been put forth is a likely indication that the current system of judicial oversight of administrative actions is insufficient.

## Factor 7: Judicial Jurisdiction over Civil Liberties

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

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
<p>The courts in Kurdistan have jurisdiction over all cases concerning human rights and liberties guaranteed by the Iraqi Constitution, and are competent to adjudicate disputes relating to these rights.</p>	

### Analysis/Background:

The courts in Kurdistan have civil jurisdiction over all persons, be they natural or juridical, including the Kurdish government, and over all disputes, including those concerning civil rights and liberties, except those removed by special provisions of the law. 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. LAW OF CIVIL PROCEDURE art. 30.

As noted in the Iraq JRI, the Iraqi Constitution, which applies to Kurdistan, enumerates protected civil rights and liberties. See IRAQ JRI at 21. In addition, international treaties containing standards for civil rights and liberties may be enacted by national legislation in Iraq. CONSTITUTION art. 61(4).

The jurisdiction of each court, be it a court of first instance or a court of appeal, is defined by the Laws of Civil Procedure and Criminal Procedure. According to interviewees, judicial supervision of criminal cases exists at every stage from investigation through the ultimate decision of the Court of Cassation.

Nonetheless, human rights abuses are a concern in Kurdistan. For example, the U.S. Department of State has reported that during 2005, Kurdish security forces detained individuals in undisclosed locations without providing them an opportunity for due process. See UNITED STATES DEPARTMENT OF STATE, *Iraq, in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2005* (March 8, 2006). Throughout August 2006, there were also reports of unlawful detentions by Kurdish security forces of an attorney who participated in demonstrations against the KRG, and of seven journalists who were covering the demonstrations. An investigative judge later ordered the release of the attorney, while the journalists were released on bail. See UN ASSISTANCE MISSION TO IRAQ [hereinafter UNAMI], HUMAN RIGHTS REPORT, 1 JULY-31 AUGUST 2006 §§ 28, 35.

Although interviewees believed that ordinary courts are prepared to address issues concerning civil rights and liberties, some Kurdish judges and lawyers, like their counterparts in other parts of Iraq, may be unfamiliar with concepts concerning constitutional civil rights and liberties, and their roles in upholding these rights and liberties.

Although military courts were abolished by the CPA after the fall of the Baath regime in 2003, there are presently military and security courts in Kurdistan. These courts are likely operating under the Law of Military Procedure (Law No. 44 of 1941, *as amended*). According to some interviewees, these courts are competent to deal only with offenses of a military nature or cases that involve at least one member of the Kurdistan militia (*Pesh Merga*). There are also special courts established to try Kurdistan security personnel.

## Factor 8: System of Appellate Review

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

<b>Conclusion</b>	<b>Correlation: Positive</b>
<p>Under Iraqi procedural legislation, which applies in Kurdistan, judicial decisions can only be reversed through the judicial appellate processes. This principle is upheld in practice by the Kurdish courts.</p>	

### Analysis/Background:

In accordance with the Iraqi Laws of Civil Procedure and Criminal Procedure, the appellate structure for civil cases consists of appeals from a lower court to an intermediate appellate court, followed by an appeal to the Court of Cassation. The right of appeal applies to both civil and criminal cases. The same structure applies in Kurdistan, with the final appeal going to the Kurdish Court of Cassation in Arbil, a separate and distinct court from the Court of Cassation in Baghdad, which covers the rest of Iraq. An appellant in Kurdistan does not have recourse to the Baghdad Court of Cassation, and neither of the Courts of Cassation has the authority to review or modify a decision of the other Court of Cassation, as the jurisdiction of each is limited to the geographic areas they cover. Appeals courts in Kurdistan have identical authority to that granted to courts in other parts of Iraq in civil and criminal matters. See IRAQ JRI at 22-23 for more details.

Decisions of military courts cannot be challenged before civil courts, unless one of the parties is a civilian. There is a military court of appeal in Kurdistan, competent to hear such appeals according to the Law of Military Procedure. Decisions of the special courts established to try Kurdistan security personnel can be appealed to the Court of Cassation.

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. Previously, under the Baath regime, there were instances of the executive authority annulling court decisions. In the post-Baath era, there have been no such instances of non-judicial reversals in Kurdistan.

## 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.*

<b>Conclusion</b>	<b>Correlation: Positive</b>
<p>As a matter of law, judges in Kurdistan have adequate subpoena and contempt powers. Responsibility for the enforcement of judgments is entrusted to the MOJ. The relatively sound security situation in Kurdistan makes the issuance of subpoenas and the enforcement of decisions easier than in other areas of Iraq.</p>	

### Analysis/Background:

The authority of Kurdistan's courts to issue subpoenas and enforce judgments stems from Iraq's Laws of Civil Procedure and Criminal Procedure, as well as Iraq's Penal Law. The procedure is

identical to that used in other parts of Iraq. See IRAQ JRI at 24 for a more detailed discussion of these issues.

When it comes to issuing subpoenas and enforcing judgments, Kurdistan benefits from the relatively sound security situation. Police and enforcement officials have the ability to perform their duties in Kurdistan without a significant fear of violence. There also appears to be better coordination between the police, the MOJ, and the courts.

The MOJ is responsible for the enforcement of judgments in Kurdistan. See *generally* ENFORCEMENT LAW (Law No. 45 of 1980). Unfortunately, no statistics are available concerning the issuance of subpoenas, contempt orders, or enforcement of judgments. However, interviewees did not raise any issues relating to the enforcement of court decisions in either criminal or civil matters. It appears that there are adequate resources to ensure that judicial decisions, both interim and final, are respected, as interviewees reported no gap between powers granted and powers exercised by judges in enforcement. However, some interviewees did feel that officials charged with enforcement of judgments were underpaid, resulting at times in a lack of interest in their work.

### 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.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
As part of the MOJ, the judiciary in Kurdistan does not have its own budget. The MOJ determines the financial needs of the judiciary.	

#### Analysis/Background:

The judiciary in Kurdistan has no independent budget. The budget is approved by the Kurdistan Ministry of Finance. The MOJ is responsible for all aspects of the administration of the judiciary, including financial and budgetary affairs. It determines all needs of the judiciary and pays the salaries of the judges and other court staff. According to some of the interviewees, the new draft Judicial Organization Law envisages an independent budget for the judiciary.

Although courts in Kurdistan charge fees for their services, these fees are collected by the Ministry of Finance, which assigns the resources to the Kurdistan budget. It is unknown whether there is a correlation between the fees collected by the Kurdish courts and the amount of funds provided to the courts by the Ministry of Finance, via the MOJ.

There were complaints from the interviewees concerning the adequacy of the budgetary allocations to the judiciary, although no statistics were made available to the assessment team in this regard. Interviewees complained that some allowances granted to the judges in the rest of Iraq, specifically the risk allowance, were not paid to judges in Kurdistan at the same level. This is likely due, in large part, to the relatively stable security situation in Kurdistan versus other areas of Iraq. See *also* Factor 11 below for more information.

## 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**

Since the fall of the Baath regime, judicial salaries have been increased considerably, thus affording the judges and their families the dignity and comfort commensurate with their status and decreasing the risk of corruption.

### Analysis/Background:

The base salaries for judges in Kurdistan are identical to those of judges in the rest of Iraq. See IRAQ JRI at 26-27. The difference lies in the risk allowance. Interviewees reported that, in addition to their salary, they receive a risk allowance equal to 30% of their salary. In other areas of Iraq, judges are paid a risk allowance that is 50% of their salary. Some interviewees complained that they were not receiving the full 30% due to budgetary limitations.

The following table shows the current total monthly compensation paid to judges in Kurdistan (basic salary plus risk allowance):

**JUDICIAL COMPENSATION IN KURDISTAN**

Category	Salary (IQD)	Risk Allowance (IQD)	Total (IQD)	Total (USD equivalent) <sup>5</sup>
One	1,750,000	525,000	2,275,000	1,548
Two	1,500,000	450,000	1,950,000	1,327
Three	1,250,000	375,000	1,625,000	1,105
Four	1,000,000	300,000	1,300,000	884

As is true elsewhere in Iraq, in addition to the risk allowance, judges in Kurdistan are entitled to a location allowance, which varies between 70% and 100% of the judge's salary. The allowance is smaller in the centers of governorates and higher in small towns and administrative units. See JUDICIAL ORGANIZATION LAW art. 37(4). Some of the interviewees mentioned that judges were also entitled to a car from the government and a plot of land for a house, although in practice these benefits seem to be restricted to very senior judges.

Salary reform is a positive factor in the improvement of the recruitment of judges in Kurdistan, as the scale of judicial salaries can now support dignified standards of living. It is, therefore, possible to attract accomplished lawyers in private practice and other legal professionals to join the judiciary.

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, such as delaying a promotion, can be used against a judge who has committed an inappropriate act. *Id.* art. 55.

The Iraqi Constitution stipulates that judges cannot have other jobs or earn outside income. Specifically, judges are not allowed to become members of parliament or officials with the executive authority. See art. 98(1); see also JUDICIAL ORGANIZATION LAW art. 50.

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



## 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**

Most court buildings in Kurdistan are not adequate to provide a professional office environment or to convey the respect deserved by the judiciary. Almost all offices are old, need repairs, and lack adequate infrastructure. Although efforts are being made to repair and modernize old buildings and to build new ones, this effort will take a significant amount of time to complete.

### Analysis/Background:

The current state of disrepair of court buildings in Kurdistan does not promote a respectable impression of the judiciary. Generally, court buildings are old and suffer from neglect by the former regime and, after 1991, a lack of means by the autonomous authorities to make necessary improvements. Buildings initially built for purposes other than courthouses have been modified, out of necessity, for use as courts and, in most if not all cases, appear to be unsuitable for use as courthouses.

Many courthouses in Kurdistan lack adequate heating, air-conditioning, and plumbing systems. One interviewee even informed the assessment team that there were no restrooms in his court building. Furthermore, a steady supply of electricity remains a problem in Kurdistan, as in the rest of Iraq.

Court buildings in Kurdistan do not have adequate space for all purposes. Generally speaking, criminal trials are held in the courtrooms; however, many judges, particularly in rural areas, hold civil trials in their offices. Furthermore, it is not unusual for 6 or 7 court employees to share one small office. In addition, there is no adequate space for keeping records and archives in court buildings. Such spaces, where they exist, tend to be narrow, with case files stacked on top of each other. Furthermore, unlike elsewhere in Iraq, there are no information kiosks in court buildings, where citizens and lawyers are provided with information on the status of their cases.

As is the case in the rest of Iraq, each court building in Kurdistan contains a special room for practicing lawyers to meet with each other and with their clients. However, such rooms are not suitable for conducting confidential meetings. As observed by the assessment team in one courthouse, the room designated for this purpose was packed with lawyers and others, making it difficult to even enter and pass through. In practice, attorney-client meetings are usually held at the offices of the lawyers, as space allocated for this purpose inside the courts is not suitable.

There is a severe need for an increased number and a better quality of courthouses with modern facilities. The interviewees reported that a new Court of Cassation building, which will be part of a larger compound, is under construction in Arbil, and that another court building is under construction in Sulaimaniya. The assessment team was also informed that several court buildings and houses for judges have been built in some of the small towns of Kurdistan.

### Factor 13: Judicial Security

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

<b><i>Conclusion</i></b>	<b><i>Correlation: Positive</i></b>
Judges in Kurdistan operate under a relatively stable security situation, unlike their colleagues in the rest of Iraq, who are under constant threat of assassination.	

#### Analysis/Background:

The Judicial Police, which are directed by the Kurdistan Ministry of Interior, is responsible for judicial security in Kurdistan. Each judge is assigned two policemen responsible for his/her safety. The Judicial Police are also responsible for the protection of court facilities. Any person entering a courthouse is subject to a body search and a search of his/her property to ensure the absence of any weapons or other criminal material. There also are cement blocks outside of the court buildings.

On the whole, judges in Kurdistan do not suffer from threats of violence or assassination, which their colleagues in Baghdad experience routinely. No cases of judicial assassinations have been reported, nor do litigants in Kurdistan feel threatened when they are in court facilities. Overall, the security situation in Kurdistan is relatively stable, a fact which has a positive effect on the work of the judiciary.

## 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.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Positive</i></b>
Judges in Kurdistan are appointed on a permanent basis until they reach the prescribed retirement age of 70 years.	

#### Analysis/Background:

There is no probationary period for judges in Kurdistan, unlike for their counterparts working in other parts of Iraq. Judges are appointed for a permanent tenure until the prescribed retirement age. The Judicial Organization Law was amended in 2004, raising this age from 63 to 70 years. See JUDICIAL ORGANIZATION LAW art. 44(1). Prior to reaching this age, judicial tenure may only be terminated for specified official misconduct, as explained in Factor 17 below. Judges may, however, be granted retirement prior to the age of 70, upon their own request. *Id.* art. 44(3).

The assessment team was informed that a proposed law currently before the KNA would lower the maximum age through which a judge may serve to 65 years, with the possibility of extension up to 68 years upon a decision of the Prime Minister.

## 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.***

### ***Conclusion***

***Correlation: Neutral***

Judges are promoted in Kurdistan on the basis of objective criteria, which take into account, *inter alia*, their professional performance, conduct, and length of service. The decision to promote a judge is taken by the Judicial Council, although the MOJ has a significant role in the process.

### **Analysis/Background:**

There are four categories of judges in Kurdistan, levels one to four, with one being the highest and four the lowest. Judges must serve in one category for a term of five years before they are eligible for promotion to the next category. JUDICIAL ORGANIZATION LAW art. 38(1). Judges must apply to the MOJ for promotion. The Ministry seeks the opinion of the Court of Cassation, the relevant Appeals Court, and the CSJ with respect to the judge's ability and suitability for promotion. *Id.* art. 39(2)-(3). The pre-screened applications are then forwarded to the Judicial Council, which makes a final decision on promotion. *Id.* art. 39(2).

Several criteria are used by the Judicial Council to determine the suitability of each judge for promotion. They include: length of service in a particular category; reports of supervising judges regarding professional ability; and decisions made by the judge that demonstrate sound arguments. *Id.* art. 39(5). If applied properly, these are adequate, serious, and reasonable criteria to use for determining the advancement of judges.

Although the Judicial Council is nominally the competent body to make decisions regarding the promotion of judges, it must be noted that the prominent role of the MOJ in this process permits the opportunity of unwarranted executive branch interference in judicial affairs. It is also apparently possible for senior judges to exercise influence in the process. The assessment team learned of situations in which judges allegedly were demoted at the instigation of more senior judges, apparently due to the fact that the junior judges made decisions with which the senior judges did not agree. Specifically, an appeals court judge allegedly caused two labor court judges to be demoted, not due to misconduct, but in response to decisions they had rendered.

The Judicial Council selects candidates for senior posts from among highly competent judges who sit on a particular circuit. *Id.* art. 40. Presidents of all courts are selected by the Judicial Council on the basis of their competence and specialization. One of the concerns expressed in this regard is that senior positions in the judiciary are not advertised, nor are they subject to competition. In addition, key leadership positions in the judiciary are not subject to rotation after a fixed period of time or term limitations. Nevertheless, as is the case in the rest of Iraq, judges in these positions do not remain with the same court for a very long period of time, in order to avoid the establishment of personal relations with the local citizens and lawyers, which might affect impartiality.

## Factor 16: Judicial Immunity for Official Actions

*Judges have immunity for actions taken in their official capacity.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>In Kurdistan, as is the case in the rest of Iraq, judges are assured immunity from criminal prosecution, 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:

The legal provisions on judicial immunity in Kurdistan are similar to those in the rest of Iraq, the exception being that in Kurdistan, the MOJ possesses the power to waive judicial immunity in specific instances, whereas only the HJC has the power to do so elsewhere in Iraq. JUDICIAL ORGANIZATION LAW art. 61.

Judicial immunity does not extend to a judge's civil transactions outside his/her duties, for example, the purchase of a car. In such cases, the judge is subject to the law as any other citizen. However, a judge cannot be arrested, nor can any other criminal measure be taken against him/her, without the approval of the Minister of Justice, unless the judge is caught in the act of committing a crime. *Id.*

While no case can be brought against a judge who erred in the exercise of his/her judicial function in criminal cases, proceedings can be instituted against a judge in civil cases as provided by the Law of Civil Procedure. See IRAQ JRI at 31-32 for additional details.

The Minister of Justice may grant a waiver of immunity to a judge facing criminal charges. JUDICIAL ORGANIZATION LAW art. 58(1). Such a matter would be reviewed by the CSJ. If, following the investigation of the judge's action, the CSJ determines that this action constitutes a felony or a misdemeanor, it will obtain a waiver of the judge's immunity from the Minister of Justice and then refer the case to the competent court. It should be noted that the MOJ is not required to waive immunity even if the CSJ determines the judge's actions are improper. *Id.*

In practice, judicial immunity appears to be respected. None of the interviewees were aware of any case where the immunity of a judge was waived, nor did any interviewees mention 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.*

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>The law in Kurdistan provides for disciplinary measures against judges who commit professional misconduct. The applicable procedures afford judges the right of defense and the right to submit evidence to rebut accusations against them. Judges can only be removed from office in accordance with the law, and only in limited situations.</p>	

### Analysis/Background:

Judges in Kurdistan are subject to disciplinary measures in cases of professional misconduct, as described in the Judicial Organization Law and the Law of Civil Procedure. Misconduct includes any act by a judge that creates doubt about his/her honesty or impartiality. JUDICIAL ORGANIZATION LAW art. 50.

In such cases, the matter is referred to the CJA. *Id.* art. 55. If the accused judge is found guilty of professional misconduct, he/she will be subject to one of the following measures: (1) a delay of six months of the judge's promotion or location allowance; (2) a delay of one to three years of the judge's promotion or location allowance; or (3) dismissal of the judge if he/she is found either guilty by a competent court of an act incompatible with the dignity of judicial functions or unfit to continue his/her functions. *Id.* 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.

As is the case in the rest of Iraq, the conduct of judges in disciplinary cases is evaluated by considering the nature of the accusation, the good faith of the complainant, and the nature and value of the evidence submitted. The principle of due process is always respected, and the accused judge has the right to defend himself/herself and rebut the accusation. JUDICIAL ORGANIZATION LAW art. 57(2). Furthermore, the judge, the Minister of Justice, and the Attorney-General have the right of appeal to the Court of Cassation the disciplinary decision of the CJA. *Id.* art. 59.

Results of judicial disciplinary investigations are not completely confidential. Interested parties, such as the accused judge or a party in a civil case, may have access to the CJA's records. However, they are not made available for public scrutiny. The rationale, according to some interviewees, is the desire to protect the integrity and reputation of the accused judges.

It was reported that disciplinary bodies have sufficient resources and preparation to investigate alleged improprieties by judges. However, while no statistics were made available to the assessment team, it appears that this process has been very rarely invoked. In one example given to the assessment team, two judges were reportedly removed temporarily for disciplinary reasons, but were later reinstated. In another example, a judge was allegedly removed from the bench before reaching the mandatory retirement age for failing to report to the Judicial Council that he had an incurable illness.

### **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.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
As in other areas of Iraq, there are no specific rules governing the assignment of cases to judges in Kurdistan. While there seem to be informal practices that regulate the process, the objectivity of such practices may vary from court to court.	

### Analysis/Background:

There are no formal or legally binding court rules of procedure governing the process of case assignment. At the appellate court level, civil cases are assigned to judges by the president of the relevant court, as he/she sees fit. If there is more than one judge on a court of first instance, the

president of that court assigns the cases to his/her junior colleagues. JUDICIAL ORGANIZATION LAW art. 15. In criminal cases, as is true elsewhere in Iraq, two panels of judges are established at each court, one dealing with criminal cases occurring at the administrative center of a governorate, and the other dealing with cases occurring in other administrative units of the governorate. Once a case is assigned to a judge or to a panel of judges, he/she is responsible for the case until the judgment is issued, unless there is an impediment to continuation, such as a conflict of interest. LAW OF CIVIL PROCEDURE art. 91.

In practice, at lower-level courts, the investigating court sends criminal cases to the misdemeanor and felony courts in the order in which they are completed. In civil courts, there are two different informal methods used for case assignment by the court president. Under the first method, the first instance court president distributes the cases in equal quantities among his/her colleagues. The court president will sometimes use an “odd and even” method of distributing cases, assigning one judge the odd numbered and the other the even numbered cases. This approach is distinct from that described in the Iraq JRI, where the court president often takes the “easier” cases, due to his/her heavier administrative workload. See IRAQ JRI at 33. Under the second method, cases are assigned sequentially to each judge in the order in which they are received.

Interviewees also noted that, in reality, it is often the court clerk rather than the court president who assigns the cases to judges, and that the competence of a clerk to perform this duty is at times an issue of concern.

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

**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.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
<p>There is no judicial association in Kurdistan at the present time. Although there is a plan for the establishment of such an association, it is not known when this plan may be implemented.</p>	

Analysis/Background:

There is currently no judicial association in Kurdistan, although the assessment team was informed that a plan exists to establish such an association in the near future. This plan is currently before the KNA for its approval. It is not certain what authority, if any, other branches of government might have over the creation and operation of a judicial association in Kurdistan. Some respondents indicated that the new association will be required to obtain a license from the Kurdistan Ministry of Interior, and that a law must be passed to enable it to do so. However, respondents did not believe that the government would have the authority to oversee the activities of the new association once it is established.

Interviewees reported that when this association is established it will be open to judges only. Prosecutors will not be permitted to join the association.

An Iraqi Judiciary Association was formed in Baghdad in June 2006, and is open to both judges and prosecutors. See IRAQ JRI at 34 for more details. However, at the present time, its membership has not been extended to Kurdistan-based judges or prosecutors.

## 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: Negative**

The Judicial Organization Law and the Iraqi Constitution guarantee the principle of judicial independence. In practice, however, judicial independence in Kurdistan is compromised because the judiciary is part of the MOJ. In addition, strong family, ethnic, religious, and political loyalties are prevalent in Kurdistan, although it is difficult to measure the effect of attempts to influence judicial decisions through such means.

#### Analysis/Background:

The Iraqi Constitution provides that judges are independent; that no authority, other than the law, governs their judicial functions; and that no outside authority can interfere in their decisions. See CONSTITUTION art. 88; see *also* JUDICIAL ORGANIZATION LAW art. 1. Furthermore, under the Iraqi Penal Law, which is applicable in Kurdistan, it is a crime punishable by a fine of IQD 200 (USD 0.14) or imprisonment of not more than one year, for anyone in 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. Judges are subject to the same penalty if they make an unfair decision as a result of such interference. *Id.* art. 234. Similar sanctions can be imposed against anyone publishing anything in the mass media intended to influence a judge dealing with a particular case. *Id.* art. 235.

Judges are also subject to scrutiny by the CSJ, which supervises the performance and conduct of judges (except those on the Court of Cassation, who are supervised by the Court's President) in the exercise of their judicial functions. See JUDICIAL ORGANIZATION LAW art. 52(1)(b)-(c). Any judge whose conduct or performance is not compatible with his/her judicial functions is subject to the disciplinary penalties under Article 55 of the Judicial Organization Law, as discussed in Factor 17 above. These provisions are designed to help protect judges from undue influence or interference from the executive power and from other sources.

As is the case in the rest of Iraq, court presidents participate in the annual evaluation of subordinate judges, which are taken into account in the judicial advancement process. Although this creates a potential for court presidents to improperly influence judges in the exercise of their duties, there is insufficient information to determine whether such an abuse of authority has occurred in practice in Kurdistan.

Personal interests in the form of family, tribal, ethnic, religious, or political loyalties may also influence judicial decisions. Although judges in Kurdistan, as elsewhere in Iraq, frequently rebuff these improper influences, it is difficult to quantify the extent of such interference. See IRAQ JRI at 35-36 for a discussion of *wasta* in the Iraqi society.

Unlike in the rest of Iraq, however, a substantial potential risk remains that judges may be influenced by the executive branch through the MOJ. The fact that the judiciary remains part of the MOJ compromises judicial independence. Furthermore, given the strength and the predominance of the KDP and the PUK within Kurdistan, and the historic rivalry between these two political parties, it is likely that judges who have connections to these parties are susceptible to political pressure by these parties.

The assessment team has been informed that a draft constitution for Kurdistan is currently under discussion, and that a draft new Judicial Organization Law is currently pending before the KNA. These two acts will, reportedly, guarantee judicial independence at the regional constitutional level, although the details remain unknown. It could be argued that the provisions of the current Judicial Organization Law that empower the MOJ to control the judiciary violate the Iraqi Constitution and are therefore no longer valid, since any law that contradicts the Constitution is null and void. See CONSTITUTION art. 13(2).

## 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.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>There is no code of judicial ethics in Kurdistan. However, many ethical concepts 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:

No code of judicial ethics exists in Kurdistan, and the assessment team is not aware of any current efforts to draft one.<sup>6</sup> However, there are provisions in the Iraqi Constitution, the Kurdistan Judicial Organization Law, and the Law of Civil Procedure that govern the conduct of judges in the performance of their functions. These provisions are fairly comprehensive. The Constitution prohibits judges from joining any political party or organization and from engaging in any political activity. See art. 98(2); see also JUDICIAL ORGANIZATION LAW art. 50(2). Judges must conduct themselves in an honest, dignified, and impartial manner; preserve confidentiality of documents and information that they are exposed to through their judicial function; and may not engage in trade or any other work incompatible with judicial functions. JUDICIAL ORGANIZATION LAW art. 50(1). They are also prohibited from holding other employment. CONSTITUTION art. 98(1). Judges who violate these provisions are subject to the disciplinary measures outlined in Article 55 of the Judicial Organization Law, as described in Factor 17 above.

The Law of Civil Procedure addresses the issue of conflict of interest. See IRAQ JRI at 36-37 for a more detailed description of these provisions.

Judges in Kurdistan do not receive any special training on ethics issues, either before taking office or during their tenure.

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<sup>6</sup> As reported in the Iraq JRI, the HJC has recently developed a code of judicial ethics, although it is unclear whether it would apply to judges in Kurdistan. See IRAQ JRI at 36.



## 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***

A formal procedure exists for parties to a case to file a complaint alleging judicial misconduct. Such complaints are thoroughly investigated, and due process principles are applied. Non-parties, however, including other judges, lawyers, and the public, have no right to file a complaint against a judge who is alleged to have violated judicial ethics provisions in any case.

### **Analysis/Background:**

The governing law throughout Iraq states that any party in a civil or criminal case can lodge a complaint against the judge presiding in that case. The complaint can be lodged 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. LAW OF CIVIL PROCEDURE arts. 286, 287(1). As there is no post of the President of the HJC in Kurdistan, the Minister of Justice assumes these responsibilities. Complaints must be based on legally specified grounds, such as fraud or serious error in the exercise of a judge's functions. *Id.* art. 286. The accused judge has the right to rebut the accusations, as well as the right to appeal any decision issued against him/her to the Court of Cassation. *Id.* arts. 290, 292. The time limit for judges to file such an appeal is 30 days. *Id.* art. 204.

Non-parties do not have the right to file complaints against judges for judicial misconduct. As is the case elsewhere in Iraq, it has been reported that the general public is typically unaware of the legal provisions regarding a party's right to file a complaint alleging judicial misconduct.

There are no official statistics available regarding the average number of complaints lodged per year, but 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***

While courtroom proceedings are usually open to the public and the media, in practice some courts lack the necessary courtroom space to accommodate those wishing to observe a trial.

### **Analysis/Background:**

As a matter of law, court proceedings in Kurdistan, as elsewhere in Iraq, are generally open to the public. JUDICIAL ORGANIZATION LAW art. 6. Access to court proceedings and the rules governing access and closure of proceedings are identical in Kurdistan and the rest of Iraq. See IRAQ JRI at 38 for a full analysis of this issue. The only noteworthy difference relates to media publicity. Judges in Kurdistan must obtain permission from the MOJ to write articles or grant media interviews, while their counterparts in the rest of Iraq must obtain such permission from the HJC.

As is the case in the rest of Iraq, even though the rules allow public and media access to trials, courthouses in Kurdistan often lack the space necessary to accommodate those wishing to observe proceedings. As noted in Factor 12 above, judges hearing civil cases are sometimes forced to conduct trials in their offices, where space constraints make public access difficult or impossible. In addition, it was reported to the assessment team that it is not unusual for a judge to ask members of the public to leave a courtroom if they are not a party or an attorney in the case at issue.

## **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.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Judicial decisions in Kurdistan are not regularly published, and the courts do not have a legal obligation to publish their decisions.	

### Analysis/Background:

Judicial decisions in Kurdistan, as in the rest of Iraq, are not published in any regular or centralized manner, although the Bar Association of Kurdistan publishes selected decisions in its publication, THE LAWYER'S MAGAZINE, and the Union of Lawyers of Kurdistan publishes some decisions of the Court of Cassation in its publication, BALANCE MAGAZINE. Aside from those two publications, judicial decisions are not officially published. As in the rest of Iraq, individuals must attempt to acquaint themselves with judicial decisions from any available source.

Judges are often dependent on information from secondary legal publications, which only occasionally reference selected Court of Cassation decisions. Judges verbally share information with each other regarding recent decisions, personally attempting to obtain copies of decisions through contacts they might have at the Court of Cassation.

Access to decisions is limited to parties to a case and to other judges. Non-parties may only obtain copies of judgments upon a written request that must be approved by the relevant trial judge. LAW OF CIVIL PROCEDURE art. 163(2). No legal obligation is imposed on courts to publish their decisions. In theory, courts can make their decisions publicly available if they choose to do so, but this does not happen in practice.

## **Factor 25: Maintenance of Trial Records**

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>
As is the case in the rest of Iraq, transcripts of court proceedings are maintained in Kurdistan 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.	

Analysis/Background:

The Iraqi Law of Civil Procedure governs the production, maintenance, and accessibility of trial transcripts and other court records. The system in Kurdistan is identical to that of the rest of Iraq. See IRAQ JRI at 40 for more information. Since Iraqi law requires parties to review and sign the transcript before it becomes official (see LAW OF CIVIL PROCEDURE art. 60(2)), transcripts are generally considered to be accurate. Interviewees in Kurdistan indicated that, as is true in the rest of Iraq, transcripts are maintained for 15 years after a decision was rendered. Only parties may access transcripts and other court records; the general public does not have the right to do so.

**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.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Most judges in Kurdistan have sufficient support staff, although the quality of this support often depends on the seniority of the judge. There is general agreement among interviewees that existing court staff need training in administrative, legal, and technical skills.</p>	

Analysis/Background:

Many interviewees believed that judges in Kurdistan have adequate quantity of support staff. Indeed, according to data provided by the MOJ, there are a total of 806 court employees in Arbil and Dehuk governorates, for a ratio of approximately 8 court staff per each judge. The MOJ did not provide figures for the total number of court personnel in Sulaimaniya governorate. Judges and courts have no authority to hire needed additional staff on their own, as only the Minister of Justice can appoint court staff.

On the other hand, interviewees disagreed on the quality of court support staff, with many describing court staff as incompetent or only moderately competent. There was widespread agreement among the interviewees that all court staff need training on IT skills, such as the use of computers, as well as on administrative, management, and legal skills.

The issue of court staff corruption in Kurdistan is similar to the rest of Iraq. Whether court staff are susceptible to corruption depends on individual moral standards and the economic situation in the area. Similarly to other areas of Iraq, there is a tradition in some areas of Kurdistan of paying small bribes to court employees in order to expedite services, but such information is anecdotal. The extent to which such instances take place is impossible to measure.

It is worth noting that the salaries of court employees in Kurdistan have increased considerably since the fall of the Baath regime. According to the MOJ, their salaries now range from the equivalent of USD 100 per month to USD 550 per month. Nonetheless, some interviewees thought the salaries were still not adequate and should be increased.

## Factor 27: Judicial Positions

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

<b>Conclusion</b>	<b>Correlation: Neutral</b>
<p>New judicial positions are created by the MOJ in accordance with the needs of the courts. The MOJ determines how judges are transferred.</p>	

### Analysis/Background:

New judicial positions are created by the MOJ in accordance with the needs of the courts. In general, the MOJ determines these needs by considering the deaths or retirements of judges, requests for new judges by the presidents of courts that are experiencing heavy caseloads, and as part of the MOJ's overall assessment of needs.

When the MOJ determines that new judicial positions are necessary, they are budgeted for, and the positions are filled when the resources become available. Resources to support new judicial positions depend on the amounts assigned to Kurdistan from the national budget. The KRG receives a general allocation from the Iraqi national government, which it is then free to allocate within Kurdistan as it sees fit.

According to the MOJ, there are currently 156 judges in Kurdistan, including 97 in the governorates of Arbil and Dehuk, and 59 in the governorate of Sulaimaniya. There was a clear split between the interviewees on the issue of whether this number is sufficient. Some felt that there were already a sufficient number of judges, and that creating new positions that would be filled by inexperienced judges would affect the quality of the judiciary overall. Others cited the heavy workloads faced by judges and asserted that additional judges were needed.

The Minister of Justice also has the authority to transfer judges to other courts, in accordance with their needs as determined by the MOJ. The Minister suggests candidates, and transfer is effected upon the agreement of the Judicial Council. JUDICIAL ORGANIZATION LAW art. 49.

In practice, transfers take place without the consent of the judge concerned, if it is in the public interest to do so. It should be noted that the authority of the MOJ in this area could potentially be used as a means of punishing or rewarding certain judges, in violation of the principle of judicial independence.

## 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.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>All courts in Kurdistan presently use inadequate, manual systems for the purpose of filing and tracking cases.</p>	

Analysis/Background:

As in other areas of Iraq, case filing and tracking systems in Kurdistan courts are manual. Documents are not preserved electronically, and are susceptible to decay and loss of information. There is no uniform procedure for filing information. File notations are commonly entered by hand into a large ledger containing all case records.

Case files are generally held by a judicial assistant at the courthouse until the conclusion of the trial, after which they are packed for storage at the courthouse. Transcripts of courts proceedings are kept for 15 years from the date of the final decision in the case. See Factor 25 above.

**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.*

<b>Conclusion</b>	<b>Correlation: Negative</b>
There is an extensive need for computers and other office equipment in most courts in Kurdistan, as is true in the rest of Iraq.	

Analysis/Background:

Very few courts in Kurdistan have computers, typewriters, and other office equipment necessary for efficiently handling modern caseloads. Higher courts, such as the Court of Cassation, tend to have more computers available to them than do the lower courts, although interviewees suggested that most judges and court staff are not adequately trained to use the computers that exist. Those few computers that are found in courts appear to be adequately maintained.

Interviewees reported that, as in other parts of Iraq, the electricity supply remains sporadic at best, thus hampering the use of the few available computers or other pieces of electronic office equipment.

**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.*

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

Analysis/Background:

New laws and changes in existing laws in Kurdistan are published in both Kurdish and Arabic in the OFFICIAL GAZETTE OF KURDISTAN (*Wehqaii Kurdistan*) [hereinafter OGK], which is distributed

free of charge to every Kurdistan judge. The OGK is distinct from the Official Gazette published in Baghdad, which contains only new national laws and amendments to them.

In order for the new legislation to enter into force, it must first be published in the OGK. In theory, the OGK is a monthly publication, but in practice this is not always the case. When the OGK is published, it is usually distributed to judges in the main cities in Kurdistan in a timely manner. However, judges located outside these urban areas must wait for some time before receiving their copies. Practicing lawyers and others interested in the law may buy their own OGK. The MOJ now maintains a website that includes links to copies of the OGK (<http://www.dad4kurdistan.com>). However, given the severe shortage of computers, the lack of relevant training, and the sporadic electricity supply that were described in Factor 29 above, it is unlikely that many judges and court personnel have the opportunity to access this website on a regular basis.

Newly appointed judges are not provided with copies of the laws in force at the time they are appointed. New judges are forced to either purchase the laws themselves or borrow them from the court libraries where they exist. Only a few courts in Kurdistan, such as the Court of Cassation, have operating libraries. This is due to a lack of will or means by the past governing authorities to fund such libraries, rather than to damage caused by war and internal strife.

There is presently no system for identifying and indexing changes in the law in Kurdistan, nor is there a computerized index or database of laws, as is also the case in the rest of Iraq. The UNDP is currently preparing a computerized collection of Iraqi laws and regulations. See IRAQ JRI at 44. However, it is unknown whether this database will include the laws of Kurdistan.

Secondary legal materials (such as legal periodicals other than the OGK, books, commentaries, and treatises) are not distributed to judges or court libraries in Kurdistan. Judges must purchase these materials at their own expense.

## List of Acronyms

<b>ABA/ILD</b> P	American Bar Association's Iraq Legal Development Project
<b>CJA</b>	Committee for Judges' Affairs
<b>CLE</b>	Continuing Legal Education
<b>CPA</b>	Coalition Provisional Authority
<b>CSJ</b>	Commission on the Supervision of Justice
<b>FSC</b>	Federal Supreme Court
<b>HJC</b>	Higher Judicial Council of Iraq
<b>IQD</b>	Iraqi Dinar
<b>JRI</b>	Judicial Reform Index
<b>KDP</b>	Kurdish Democratic Party
<b>KNA</b>	Kurdish National Assembly
<b>KRG</b>	Kurdish Regional Government
<b>MOJ</b>	Kurdistan Ministry of Justice
<b>OC</b>	Office of Codification
<b>OGK</b>	Official Gazette of Kurdistan
<b>PUK</b>	Patriotic Union of Kurdistan
<b>SCC</b>	State Consultative Council of Iraq
<b>UNAMI</b>	UN Assistance Mission to Iraq
<b>UNDP</b>	United Nations Development Program