

# The Long Road

## An Examination



BY JOHN HOOMAN DONBOLI

**T**he legal system under Saddam Hussein was a far cry from the legal code set forth by Hammurabi during the Amorite Dynasty of Old Babylon—a remarkably revolutionary and contemporary legal system for its time. During Saddam Hussein's regime, the Iraqi legal profession and legal system were subverted by the Ministry of Justice, which granted security forces broad authority to enforce Saddam's will.

The initial task for Iraqi reconstruction efforts is the establishment of an interim government to oversee the creation of an Iraqi constitution. The Iraqi legal system is currently composed of an archaic system of civil and penal codes that was interpreted by a judiciary loyal to Saddam. Legal organizations, such as the American Bar Association and the International Center for Transitional Justice, are diligently working to design a model to help overhaul the Iraqi legal system. However, the United States and legal organizations face a Herculean task in setting up a democratic government in Iraq.

Thomas Carothers, director of the Democracy and Rule of Law Project at the Carnegie Endowment for International Peace, recently said that given Iraq's demographics—a divided society composed of different ethnic and religious groups—it would be extremely difficult for Iraq to be governed in a Western democratic manner. Carothers also points

# to Democracy

## of Democratization Efforts in Iraq

*“An unjust law is no law at all.” —St. Augustine*

out that Iraq’s location in “an undemocratic neighborhood” with centralized oil economies makes the task even more complicated.

Carothers explains that the “judicial culture of a country is something that runs very deep.” He adds, “If it has been corrupted or ruined by politicians, it is not rebuilt quickly. Judicial independence, respect for the judiciary, knowing how judges should behave—it’s not something you do overnight,” he says. Moreover, he added that “very sensitive issues” are at play in terms of creating a new legal system. “Lots of Arab countries are having trouble figuring out the role of Islam in family law, for example. Why should it be any easier in Iraq than in Egypt? We shouldn’t expect that in three years there will be a shiny Iraqi judiciary handing out lots of new opinions.”

Given the dynamic pluralities that exist in Iraq, the key to any successful legal system must be an Iraqi bill of rights. In such a dynamic and pluralistic society, protecting the rights of minorities should be of the utmost importance. In many regions of Iraq, especially the northern city of Kirkuk, the need for a bill of rights is abundantly clear. For example, under Saddam’s regime it was common for ethnic minorities to be rooted out of their historic villages and hamlets by the introduction of Arab families into those neighborhoods. After the fall of Saddam’s regime, Kirkuk’s Kurdish residents began evicting Arab residents who were relocated to Kirkuk under Saddam. A bill of rights is a fundamental first step to any democratic and free society; it should be incorporated into the eventual Iraqi constitution to govern the people’s rights to vote, voice dissent and form political parties.

Iraq’s current judiciary system, which is based on the French model introduced during Ottoman rule, consists of

courts supervised by the Ministry of Justice and other tribunals affiliated with other executive agencies. The Ministry of Justice is divided into three departments: (1) civil courts; (2) courts of personal status, governing Muslims’ marriage, family and inheritance law; and (3) criminal courts (which have no juries). Each court has its own trial court (court of “first instance”), appellate court and a supreme court (the “Court of Cassation”).

One problem with any overhaul of Iraq’s current legal system, including the judiciary, is that the Iraqi legal tradition predates Saddam’s regime, which began in 1979. It will be difficult to completely replace such a longstanding legal system overnight. A more gradual solution may be advisable.

One possible solution is to leave the Iraqi judicial system in place and simply amend the archaic legal codes that the judiciary interpreted during Saddam’s regime. The new Iraqi government should gradually amend the legal code as needed. At a minimum, however, any legal code that violates human rights on its face should be eliminated.

Iraq’s reconstruction is planned to take place in three steps: (1) stabilizing the country and creating an infrastructure to support humanitarian efforts, (2) transitioning to a democratic framework and (3) effecting the final transformation of the legal system and adopting a new constitution. It will be a long and difficult road for the Iraqi people. However, establishing a legal framework composed of a constitution and an Iraqi bill of rights is the critical first step to laying the foundations of democratization in Iraq. ■

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