



IRAQI WOMEN'S RIGHTS AND INTERNATIONAL LAW:

A HIGH LEVEL CONFERENCE ON GENDER RIGHTS IN TRANSITIONAL JUSTICE AND BEYOND
FOR THE JUDGES OF THE IRAQI HIGH TRIBUNAL
AND IRAQI CIVIL SOCIETY AND GOVERNMENT LEADERS

NOVEMBER 13 – 15, 2006

DEAD SEA, JORDAN

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“We are part of an international women’s movement. We have to take advantage of advances throughout the world, and we need to apply them to our own society. Right now, we face not just crimes but ignorance and backward ways of thinking which are more dangerous than the crime itself.”

Female civil society participant

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GJC President Janet Benshoof addresses the conference participants

CONFERENCE ORGANIZERS

WOMEN'S ALLIANCE FOR A DEMOCRATIC IRAQ

The Women's Alliance for a Democratic Iraq (WAFDI) is a non-partisan Iraqi women's rights organization founded in 2003 to promote equal rights for women in a free and democratic Iraq. WAFDI is a 501(c)(3) non-profit tax exempt organization registered both in the United States and Iraq. WAFDI is proud to currently have six women members in the Iraq parliament as well as one female minister. Individual members, as well as the organization as a whole, have worked tirelessly for women's rights and have sponsored projects to develop the financial independence of women in addition to training about the constitution and advocating against legislation in Iraq that discriminates against women.

GLOBAL JUSTICE CENTER

The Global Justice Center (GJC) is a unique non-governmental organization dedicated to enforcing the affirmative rights of women to political representation. The organization's mission is to leverage the power of women to be the active makers and enforcers of public policy and law and equal partners in all government and judicial bodies. The GJC is focused on giving strategic and timely advice to women leaders in developing democracies on the use of international law to enforce women's rights.

INTRODUCTION

The Women's Alliance for a Democratic Iraq (WAFDI) and the Global Justice Center (GJC) jointly organized a three-day conference on women's rights and international law November 13th – 15th at the Dead Sea, Jordan. Attendees included twenty members of the Iraqi High Tribunal (IHT) and representatives from the President's office, the Prime Minister's office, the Parliament, the Ministry of Human Rights as well as prominent members of civil society. The conference addressed a crucial subject for women in Iraq: sexual violence, as a war crime, a crime against humanity and an instrument of genocide, and its drastic impact on the victims. This issue was addressed in the context of international law and its role in the IHT, with an eye towards having the IHT address these crimes in its upcoming indictments and judgments.

CONFERENCE OVERVIEW

The conference brought together 20 Judges and Prosecutors from the Iraq High Tribunal with 15 members of government and civil society, mostly women, to discuss the fundamentals of international law on gender-based violence as well as the practical challenges of addressing sexual violence in a culture steeped in discriminatory norms. Five experts on different aspects of international law and gender crimes joined WAFDI and the GJC in conducting the conference. The success of the conference hinged on providing the Judges with access to high level experts, and they took advantage of every spare minute to ask the trainers questions, pose hypothetical questions and discuss other prescient issues. All of the trainers agreed that the participants of this conference were the most engaged and dedicated that they had ever encountered.

The civil society groups and the judges learned from each other, as the judges saw the importance of using their positions of power to help women victims and affirmatively address discriminatory laws, and the civil society leaders established their own agenda for change and came to recognize the importance of engaging the judiciary in their advocacy work. The exchange of ideas between the judges and prosecutors and women from civil society took place not just through the panels designed to facilitate such discussion, but also informally. The civil society activists ate meals with the Judges, chatted with them during coffee breaks and spoke to them in informal groups. The Judges were impressed by the sincerity and dedication of the civil society activists, who in turn were inspired by the strong commitment to the rule of law and women's rights demonstrated by the Judges.

“Iraqi jurists must be helped to be connected with the body of international laws and practices from which they have been separated for decades. We want a country to be proud of, one that is good for all its people to live in. The only way to get it and save it from terrorists, extremists and criminals is to build it brick by brick. You and your colleagues are taking part in this noble project.”

Samir Sumaida'ie, Ambassador of Iraq to the United States of America

OVERVIEW OF THE IRAQ HIGH TRIBUNAL (IHT)

The Iraq High Tribunal is charged with holding members of Saddam Hussein’s regime accountable, through domestic and international law, for crimes committed under its rule. The Tribunal has jurisdiction over four types of crimes: war crimes; crimes against humanity; genocide; and specified crimes under Iraqi law that include spoilage of natural resources and aggression against another Arab country. The IHT has temporal jurisdiction over crimes committed between July 17, 1968 and May 1, 2003. Modeled on the International Criminal Court (ICC) statute, the IHT statute requires that it look to other international criminal tribunals for legal precedents, as well as permits it to request guidance from international legal experts.

The IHT Judges were selected from the leading domestic judges in Iraq and will likely return to that role after the Tribunal is completed. They are laying the foundation for the rule of law and have the opportunity to set the first legal precedents on gender and women’s rights in the new Iraq under the new Constitution. This may include such critical issues as the application of international law to the local penal code and the application of CEDAW, which Iraq has ratified, to modify or overturn laws that discriminate against women.

SAFE SPACE FOR WOMEN

During the final lunch, the Global Justice Center honored the only two women on the tribunal—one prosecutor and one judge. These women had never met each other. For security reasons, they have had to remain anonymous in the Iraqi and international press. Their amazing efforts, and their courage in becoming part of the Tribunal, had never been publicly recognized. When they approached the podium to embrace each other, the emotion in the room was palpable, and from their remarks it was clear that this gesture of support from other women—both fellow Iraqis and the GJC trainers—was a much-needed affirmation of their commitment to the project.

CIVIL SOCIETY ORGANIZATIONS REPRESENTED AT THE CONFERENCE

AL-AMAL: WWW.IRAQI-ALAMAL.ORG

Iraqi Al-Amal Association aims at providing aid to relieve the suffering of the Iraqi people and establish just and democratic society for Arabs, Kurds and other nationalities in Iraq. The activities of the Association are directed towards improving the social conditions and the social fabric of the people. Al-Amal was established in 1992 in the midst of the horrific conditions prevailing after the Second Gulf War. The response in Iraqi Kurdistan was overwhelming and soon a variety of activities commenced throughout the region. In May 2003 Al-Amal set up its Head Office in Baghdad and extended its activities to the rest of the country.

ASUDA: WWW.ASUDA.ORG

ASUDA Organization for Combating Violence Against Women was founded in 2000 and registered in May 2001 in Sulaymaniyah with the Ministry of Humanitarian Assistance and Cooperation in Iraqi Kurdistan. ASUDA is dedicated to combating violence against women through an institutional and systematic approach in order to enhance the status of women and strengthen civil society through participation of women.

HATAW

Hataw is an Iraqi NGO, with its main office in Sulaymaniyah, in Iraqi Kurdistan. Hataw has projects and activities in different parts of Iraq according to the needs of the target groups and was established in 2004. Hataw works for empowering women and youth through raising awareness of their rights and educating them about democracy.

IRAQ FOUNDATION: WWW.IRAQFOUNDATION.ORG

The Iraq Foundation is a non-profit, non-partisan, non-governmental organization working for democracy and human rights in Iraq, and for a better international understanding of Iraq's potential as a contributor to political stability and economic progress in the Middle East. The Foundation was established in 1991 by Iraqi expatriates with the purpose of working with Iraqis and non-Iraqis in promoting its vision. The Foundation is non-partisan, non-sectarian and non-ethnic, and is not affiliated with any other organization or political party.

IRAQ WOMEN'S NETWORK

Iraqi Women Network is an umbrella organization of over 80 women NGO's members, viewed as an independent civil democratic movement; not subordinated to any political body. It has developmental humanitarian goals and it is opened to all intellectual currents which believe that the advancement of woman is the actual measure for the progress of the society. Its aims at coordinating the woman NGOs to build democracy, law enforcement, human rights and work to eliminate violence and all forms of discrimination against women in the new Iraq.

IRAQIYAT STUDIES CENTER

ISC was established in 2005 by Iraqi researchers and women activists, who have remarkable achievements in the social and humanitarian fields. The group began its work stemming from its members experiences as social, media and Human Rights activists and set out to publish reports on the situation of women in Iraq. ISC also holds workshops for training groups of women on specific issues such as women rights, media monitoring, conflict resolution and peace building.

KURDISH WOMEN'S ACTION AGAINST HONOR KILLINGS: WWW.KWAHK.ORG

Kurdish Women Action Against Honour killing (KWAHK) is a network of Kurdish and non-Kurdish activists, lawyers and academic researchers. KWAHK aims to raise national and international awareness about the issue of violence against women in the Kurdish communities, in particular honor killing, both in Kurdistan and in the Kurdish diaspora.

CONFERENCE AGENDA

DAY 1

GENDER CRIMES IN THE IHT STATUTE: HOW THE GLOBAL PRECEDENTS APPLY IN IRAQ AND THEIR INTERNATIONAL LEGAL RECOGNITION AS CRITICAL TO ACCESS TO JUSTICE

Dr. Kelly Askin, Senior Legal Officer, International Justice, Soros Open Society Institute
Janet Benshoof, President, Global Justice Center

VOICES OF IRAQI WOMEN: RECOGNIZING THE CRITICAL ROLE OF THE TRIBUNAL IN BRINGING GLOBAL RIGHTS HOME

Hanaa Edwar, Founder and General Secretary, Al-Amal; Iraqi Women's Network

Shuruk Abdulhameed, Iraq Foundation; Iraqi Women's Network

Dr. Kazhan Kadir, Board Member, Hataw

Nasreen Naji, Iraqi Women's Network

Salma D. Jabou, Adviser to the President on Women's Issues

GROUP DISCUSSIONS:

Group A: Joint Criminal Enterprise

Group B: Prosecuting Crimes of Sexual Violence

Group C: Setting a Civil Society Agenda

IMPACT OF HONOUR KILLINGS – MOVIE AND DISCUSSION

HONOR KILLING FILM, “IN THE MORNING” 2005. DANIELLE LURIE, DIRECTOR, KATIE MUSTARD, PRODUCER

Mahabad Qaradaghi, Adviser to Prime Minister, Kurdish Regional Parliament and Member, Kurdish Women Against Honour Killings

Dr. Kazhan Kadir, Board Member, Hataw

DAY 2

PHYSICAL AND PSYCHOLOGICAL EFFECTS OF RAPE AND CULTURAL EXACERBATION OF HARMS

Marijana Senjak, Psychologist and Psychotherapist, Programme director of Women's Therapy Center Medica, Zenica, Bosnia-Herzegovina
and Founder of Center for Psychological Help in the War

INTERACTIVE DISCUSSION ON WOMEN IN SOCIETY AND THE LAW

Shuruk Abdulhameed, Iraq Foundation; Iraqi Women's Network

Dr. Kazhan Kadir, Board Member, Hataw

Salma D. Jabou, Adviser to the President on Women's Issues

INVESTIGATING, PROSECUTING AND TRYING CRIMES OF SEXUAL VIOLENCE – LEGAL AND OUTREACH CHALLENGES

Dr. Kelly Askin, Senior Legal Officer, International Justice, Soros Open Society Institute

Simone Monasebian, Former Prosecutor, U.N. International Criminal Tribunal for Rwanda

Judge Mary Davis, Former Judge, New York State Supreme Court

JUDGES AND THEIR IMPRINT ON NATIONAL JURISPRUDENCE

Monica Roa, Programmes Director, Women's Link Worldwide

DAY 3

APPLYING “INTERNATIONAL LAW”

Judge Mary Davis, Former Judge, NY State Supreme Court

OUTREACH: CIVIL SOCIETY AND THE IHT

Dr. Kelly Askin, Senior Legal Officer, International Justice, Soros Open Society Institute

Simone Monasebian, Former Prosecutor, U.N. International Criminal Tribunal for Rwanda

CONFERENCE HIGHLIGHTS

THE LEGAL AND CULTURAL CHALLENGES IN INVESTIGATING, PROSECUTING AND TRYING CRIMES OF SEXUAL VIOLENCE

Throughout the conference the legal experts presented on the challenges and issues raised in investigating, prosecuting and trying crimes of sexual violence to the judges, prosecutors and civil society leaders. This included a review of the jurisprudence coming from the other International criminal tribunals that the IHT is bound by its statute to follow as well as an exploration of the more complex challenges involved in applying the law.

There are a number of challenges specific to trying crimes of sexual violence. Crimes of a sexual nature are treated differently from other crimes in every country and thus must be understood in that context. Women's place in society has a direct impact on their access to justice; men are allowed to make their own decisions about their bodies, whereas women are regularly denied this autonomy. There is a universal discomfort in discussing crimes of sexual violence, and often investigators indicate to victims (even if unintentionally) that they don't want to hear about these crimes. In addition, the physical evidence of sexual violence is often not preserved, making it harder to prosecute.

In Iraq there are additional challenges in addressing crimes of a sexual nature. In many parts of the country when a woman or girl loses her "sexual purity" she could be defamed and subject to imprisonment or even death if she cannot prove, often with the testimony of four male witnesses, that the sexual incident was, in fact, rape. In some circumstances, even rape is considered to defile the woman making her "impure" and she can be the victim of an "honor killing" (see below). The conference participants and trainers discussed their experiences in addressing these crimes and how to make women's experiences with courts better. Where tribunals have a "Victims and Witnesses Unit" it usually works with the prosecution to improve the experience of cooperating with the court. When there is no independent unit, such as in Iraq, then the prosecution must do some of the work traditionally done by a victim and witnesses in order to ensure access to justice for victims.

It became clear that despite the limitations imposed by scarce resources, security risks and the lack of a gender office, the prosecutors office of the IHT had created a well thought out and advanced procedure for preparing women victims and witnesses for trial. The IHT's only woman prosecutor stated that she and others on the Tribunal understand that coming to the court room and breaking the barrier of fear is not easy to do, and that the Prosecutor's office has taken many steps to assist women with this difficult process. She emphasized that

“...we need to break the barrier of silence.”

- Female prosecutor and women's rights activist for over 20 years

KEY CONFERENCE TOPICS

1. Rape can be tried as variety of international crimes, specifically as a crime against humanity, war crime or instrument of genocide, and in the IHT needs to be specially attuned to the different elements required for each.
2. Clarification on the distinction between different categories of international law:
 - a. International humanitarian law
 - b. International human rights law
 - c. International criminal law
3. International law, treaties, customary law, and conventions need to be incorporated into Iraqi domestic laws.
 - a. Difficulties arose over the term “customary international law,” specifically the word “customary” itself. Some participants understood this to mean social customs (specifically Arab cultural customs), and the trainers tried to correct this misunderstanding.
4. The relationship between the IHT statute and the 1969 Penal Code, how inconsistencies between the two should be addressed and whether the IHT invalidated inconsistent provisions in the 1969 Code.
5. The need for better outreach on the part of the IHT, both to the media and to NGOs.
 - a. An court spokesman should be appointed
 - b. The IHT website should be used as an outreach tool and updates regularly
6. Victims and Witness protection
 - a. The court must view honor killings as a potential obstruction of justice issue as well as a type of witness interference.
 - b. The court must proactively support victims of sexual violence to encourage testimony of these crimes

“In addition to the important discussions and debates, we decided to continue our meetings in Baghdad, the Judges and the Women activists. Moreover, many of the judges expressed that they were so impressed by the conference issues that they will adopt women’s rights in their work much more than before.”

Shirouk Al-Abayachi, director of the Iraq Foundation

role of the Public Prosecutor must start at the very beginning of the investigation in order to ensure continuity for victims and witnesses. Witnesses are taken into the court room and shown how the court functions and the prosecutor explains what usually happens during testimony and tries to prepare the women psychologically for the experience.

PSYCHOLOGICAL IMPACT OF SEXUAL VIOLENCE

The discussion of how the trauma of sexual violence impacts a trial was greatly augmented by a detailed presentation by psychologist Marijana Senjak, who founded and continues to run a clinic for victims of rape during the conflict in the Former Yugoslavia. Her presentation on the immediate and long-term impacts of rape during war drew directly on the experiences and responses of women who had come to her clinic. She highlighted the dramatically different and long-term effects that sexual violence can have on the victim, tying in how it impacts their ability to speak with an investigator or testify in court.

Dr. Senjak also spoke about the impact of culture on women's experiences as victims of sexual violence and the role religious leaders can have in addressing issues such as honor killing. In Bosnia Herzegovina, where the victims, as in Iraq, were predominantly Muslim, a respected Imam, or religious leader, issued a Fatwa, or decree, saying that women who were victims of rape should not be held responsible for the crime and instead should be supported by the community. Ms. Senjak shared the language of this Fatwa with the judges, prosecutors and civil society members.

OUTREACH BY THE IRAQ HIGH TRIBUNAL

The unique combination of judges and prosecutors with civil society and government leaders enabled an important discussion about the role of outreach in the Tribunal's work. The international experts discussed the ways in which NGOs can help the Tribunal reach out to ensure women's participation in its processes and better communicate with the Iraqi public generally about the work of the Tribunal. The experts gave advice based on their experiences with other tribunals. They emphasized that justice for the victims could be pursued both through supporting the Tribunal as well as in other legal venues. For example, women from Rwanda brought a lawsuit in a United States Court against Jean Bosco Barayagwiza, a convicted war criminal who was not initially brought to justice by the Tribunal. After he was found liable for a civil claim in the US court, the ICTR took action and he was prosecuted and convicted there as well.

There was also discussion of the Tribunal's role in reaching out to NGOs. In Sierra Leone, for example, where Simone Monasebian, a conference trainer, led the office of the defense counsel at the Special Court, she and the head of prosecution would meet every month with the director of the Tribunal, who would bring in about 30 human rights NGOs, who would ask the Tribunal leadership questions. Other outreach ideas for the IHT included: Town Hall meetings; Annual Reports; Monthly Meetings; and a better Website with links to the other tribunals. Ms. Monasebian stressed to the judges and prosecutors that it is not enough for them to strive towards achieving justice, but that they must work equally hard to make sure that the Iraqi people perceive justice to have been done. This was a new idea for many in attendance and addressed many concerns that they have about their perceived legitimacy.

HONOR KILLINGS AS AN IMPEDIMENT TO ACCESS TO JUSTICE

One of the central themes of the conference was the barriers existing between women and meaningful access to justice, whether through the IHT or the domestic court system. The main barrier focused on was honor killings. An 'honor killing' is the murder of a woman, typically committed by a male relative in order to "cleanse" the honor of their family, after some sort of sexual transgression has occurred. The incident leading to the honor killing could be anything ranging from a marriage to a man the family does not approve of, to a woman being seen in public with a man who is not a relative, or in the case most pertinent to this conference, if she is the victim of rape.

CHIEF JUDGE OF IHT ON HONOR KILLINGS

A truly groundbreaking moment of the training was when the Chief Justice of the IHT stood up and spoke about his view of honor killings, and most notably, the woman's hymen. He said that rape victims should be protected, and that men should be harshly punished for such crimes. He also went on to discuss the cultural importance of marrying virgins, and the desire in Iraq for legislation that allows women to be killed if they do not have an intact hymen. In the words of the judge, "this is wrong—most men don't understand the biological reality." His discussion of how some women simply are not born with a hymen, and some women's hymens break from things other than intercourse, was truly an ice-breaker. Until then people felt uncomfortable using sexual terms in front of the judges, but this opened the door to a very candid discussion of the issues. Nasreen Naji, Iraqi Women's Network remarked, "I Would like to thank Judge X. I was hesitant to raise certain issues, but he paved the way for me...".

“[O]ne of the most important things I learned was about honor killings. Honor killing has a strong connection with culture. The legislator should start using legal language and start dealing with this issue in society – find legal-specific words, especially in punishment, and say this is not permitted legally.”

Judge Mohammed Uraibi Al-Khaleefa, Presiding Judge, Trial Chamber 2, Al-Anfal Trial

IRAQI LAW CONDONING HONOR KILLING

Revolutionary Command Council Order Number 6 of 2001:
Considering the killing of one's wife or a close female relative (muḥaram) for honor reasons a mitigating factor under law.

Subject to the conditions of clause (1) of Article 42 of the Constitution, the Revolutionary Command Council decided the following:

First: For the purpose of implementing Article 130 of the Penal Code Number 111 of 1969, it shall be a mitigating factor if a man kills his wife or muḥaram for honor reasons, or if one of the relatives of the deceased woman killed the one who imputed dishonor to any of them by making reference to her disgraceful deed, which she was killed for.

Second: Anyone who intentionally and for the purposes of revenge of the deceased kills the killer specified in the first clause shall be punished by execution. No legal excuse or mitigating factors shall apply to him, and he will not be entitled to any partial or general pardon.

Third: Anyone who, in accordance with tribal procedures, issues a ruling or attempts to issue a ruling in relation to the crimes referred to in the first and second clauses of this decision shall be imprisoned for not more than seven 7 years and not less than three 3 years.

Iraq Penal Code of 1969 - Paragraph 128 - (1) Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honorable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse.

The Turkish short film “In the Morning” was shown to the judges dramatizing the murder, ordered by male family members, of a young woman by her thirteen year old brother because she had been raped and became pregnant. The film was followed by a discussion of the impact of honor killings on women by Mahabad Qaradaghi, from Kurdish Women Against Honor Killings and Dr. Kazhan Kadir, of Hataw (see descriptions of groups represented).

The discussion of honor killing soon became framed as a discussion on the mutuality of the influence cultural norms have on the law and the role judges can play in influencing culture. The judges discussed the impact that decades of violence under Saddam have had on Iraqi society and the challenges in addressing issues such as honor killings. As one judge stated, “Saddam is not the ruler, but his impact is still felt in the laws and social issues.” Iraqi society, one participant pointed out, is still tribal, although the tribal aspects are not as strong as they were a few decades ago. Still, today if a man finds his wife or sister doing something taboo he may kill her in order to “cleanse” his honor, and “clean up” the potential scandal.

The question was raised if Iraqi society, with its history of violence and tribalism, is ready to remove mitigated sentences for honor killings. This opened the door for the international experts to discuss the role of judges in shaping and changing culture. Simone Monasebian stressed that courts can not wait until they think a society is ‘ready’ for change. She gave the example of desegregation in the United States and how the U.S. Supreme Court blazed ahead of what society was ‘ready’ for, and in doing so affected radical social change. She urged the judges to think in this model and to lead the Iraqi people toward women’s rights.

HONOR KILLINGS IN IRAQI LAW

Until women are not blamed for sexual violence and women’s ‘purity’ is not a part of family honor, women will not be free to control their own bodies or their lives. The conference was groundbreaking in bringing together powerful Iraqi judges with women civil society leaders to discuss these issues and having the judges hear first hand the impact of discriminatory laws that provide for mitigated sentences for honor killings. All agreed that, in order for the statutes to change, there would need to be a shift in both law and culture, and the judges began to see that they have a role to play in bringing about that change.

INTERNATIONAL COORDINATION FOR GENDER JUSTICE IN IRAQ (ICGJI); CONFERENCE FOLLOW-UP IN LONDON

Following the conference in Jordan, the GJC organized a series of awareness-raising events in London from November 21-24th as a part of SCR 1325 week in the UK. One of the highlights of the London meetings was a briefing about our work with the Tribunal to the All Party Group on SCR 1325 and Women, Peace and Security, hosted by Joan Ruddock, an MP in the House of Commons. The presentation was very well attended by members of parliament, civil society, the human rights community and Iraqis and sparked a heated Q & A from the members of the group.

Other key meetings included a roundtable on gender justice in Iraq at the House of Lords, hosted by Baroness Uddin, the only Muslim Parliamentarian in the UK, a private meeting with the Attorney General of England, Peter Goldsmith, to discuss our work with the tribunal and particularly, the problem of access to justice for women in the Middle East. The GJC also held a meeting with representatives from the Iraq Policy Unit at the Foreign Commonwealth Office (FCO) who had provided funding to women civil society leaders in Iraq to be able to participate in the Jordan training, and discussions with the Amnesty International (AI) directors of the Middle East and North Africa Programs, and the AI Gender Department.

Another central goal of the London meetings was to gather opinions, authors, and signers of an *amicus curiae* brief that will be submitted to the IHT this spring, before they are expected to make their first gender crimes indictments. The judges have little experience bringing charges or writing opinions on crimes of sexual violence, yet they are eager to try. The GJC was successful in recruiting various members of the British legal community to help in preparing the brief, and we hope to have a number of top human rights organizations as signatories.

The closing event of the week was the launch of International Coordination for Gender Justice in Iraq (ICGJI) at Amnesty International. The ICGJI was conceived of after a June meeting in London, called by the GJC and WAFDI, during which members of the Iraqi community, human rights groups, and women's groups discussed their role in ensuring gender justice at the IHT and determining the future role of women in Iraq. Working closely with WAFDI and the GJC, this UK-based group will prove to be critical in raising international awareness about obstacles to justice for Iraqi women.



Hanaa Edwar, President of Al-Amal Association (LAA), an NGO dedicated to improving the socioeconomic conditions of the Iraqi people, and a leading advocate for Iraqi women's rights since 1952

“In addition to the important discussions and debates, we decided to continue our meetings in Baghdad, the Judges and the Women activists. Moreover, many of the Judges expressed that they were impressed by the conference issues that they will adopt the women rights in their work more than before.”

E-mail from a female Civil Society Leader to GJC on November 29, 2006.

NEXT STEPS

There was general agreement that this conference opened up discussion on many important topics that merit follow-up. The civil society leaders and the judges are continuing to meet in Baghdad and WAFDI and the GJC have continuous contact with both groups as we continue to answer both legal and other questions as well as provide guidance. Suggestions for future discussion or conferences that were raised in sessions or in participant evaluations include:

JUDGES

1. How the IHT can apply CEDAW and UN SC resolution 1325 and in what ways can they be binding international law
2. A session on the development of customary law and how it applies to gender crimes and the IHT
3. The difference between 'ordinary' rape and rape as an international crime
4. What a judges role can be in changing the law and the culture around issues such as honor killings
5. Additional hands-on practice in analyzing crimes of sexual violence and applying the law, such as case studies

CIVIL SOCIETY

1. How women can effectively influence the Constitution Drafting process for both the national as well as state constitutions
2. Develop a strategy for increasing the number of women in the judiciary as well as working with the judiciary as a strategy for advancing women's rights
3. Domestic law reform and how Iraq can bring it's laws up to the international standards, including how they can use international mechanisms to support domestic law reform
4. Involving the Human Rights and Women's Affairs ministry at a great level
5. More in-depth training on how civil society members can overcome the societal barriers and assist women in prosecuting their attackers
6. How to bring about change in culture that can prevent honor killings and similar crimes
7. How civil society can better reach out to rural women
8. How civil society can provide support for victims within the current climate and lack of security

“I just participated in [the Global Justice Center’s] momentous conference on women’s rights and international law for the judges of the IHT last month in Jordan—and boy, are they ready to hear your good stuff. We have prepared them well on the law—and you should have experienced the energy in the room when a dozen or so Iraqi women’s rights activists peppered the judges (only one woman, a Kurd!) with real-world messages on the needs and rights of women. It was one of the most exciting and lively conferences which I have ever participated in.”

- Judge Mary Davis to Christine Chinkin, renowned professor of international law and participant in preparing the amicus brief for the IHT in the Anfal case

CONCLUSION

The Global Justice Center would like to conclude by thanking the experts for their dedication to this historic conference, and the donors who shared our vision. The goals of the training—to educate the judges and civil society members on gender and international law, and to hopefully inspire legal reform in Iraq—were certainly accomplished, and the Global Justice Center is committed to ongoing interaction with the judges and the civil society women to ensure the greatest degree of impact from this training. Additionally, the GJC believes that this training was an investment in the human capital in Iraq, and that the training of the judges themselves is important for Iraq’s future.

The judges were given a rare chance to consider their current influential status as a platform from which to advocate for the advancement of women, and many of them had never before critically discussed issues such as honor killings or rape in conflict. These dialogues have the potential to transform both individuals—the judges as well as the Iraqi women civil society participants—and the institutions, laws and precedents that currently govern the way that rape is prosecuted, and even thought about, in Iraq.

Furthermore, the conference also has the potential to transform the way this kind of human rights work is done in the future. By bringing together different groups for this training and by encouraging dialogue and open speech, every participant learned that there are many ways to pursue legal reform. The conference affirmed the need for more trainings like this, and for more interactions between lawmakers and the women effected by the law, in order for our shared vision of global justice to become a reality.

ADDENDUM: THE FUTURE OF THE TRIBUNAL

HOW DID THE EXECUTION OF SADDAM AND THE OTHER DUJAIL CONVICTS EFFECT THE WORK GJC IS DOING WITH THE IHT?

It is clear that the IHT's reputation has suffered in the public eye partly due to the inhumane circumstances under which Saddam Hussein and his co-defendants were executed. The GJC has found that according to the information currently available, the IHT is not to blame for the unfortunate circumstances of the execution and that the court followed Iraqi law in processing the appeal and issuing the death sentences. The over 300 page decision of the trial chamber in the Dujail Case has been universally recognized as a comprehensive and legally sound judgment. The death penalty alone cannot make the Tribunal "illegitimate" any more than it would the 38 states in the U.S. that have the death penalty. The GJC strongly opposes the death penalty in all cases, but we believe it does not reflect on the court's legitimacy. We see the botched executions in Iraq as an example of one of the many areas in which the Iraqi legal system is failing, but these factors, however unfortunate, do not weaken our resolve to seek justice for the women victims of Saddam's regime.

WHAT ABOUT THE UNCERTAIN FUTURE OF THE IHT?

The future of ad hoc tribunals is often uncertain, but this uncertainty should not deter international human rights groups from assisting these courts as long as they are, in fact, functioning. Currently the courts in East Timor and Cambodia remain especially precarious, yet international advisors persist in assisting these courts. The GJC holds the position that as long as the IHT is hearing cases it should include women in the legal process and that protections for victims and witnesses should be provided. Should the IHT close, the progress we have made will not be lost: the judges will take their new knowledge with them as they embark on future legal endeavors, and Iraqi women will know that in the future they can and should fight to be heard. Should the IHT close, the civil society leaders that we have worked with will continue to pursue other avenues of justice for Iraqi women, and we will continue to assist them in any way we can. Should the Iraqi government fall, we have been told that every effort will be made by the international community to preserve the IHT and possibly move it outside of Iraq or up into Kurdistan, which is functioning as an autonomous region and would likely continue to do so even if the government in Baghdad fell. Several of the IHT Judges are Kurdish as well as many of the women who attended the conference. The GJC plans to continue work with our new partners in Iraqi Kurdistan regardless of the situation in greater Iraq.

“...we are not just remembering the past, but talking about the past so these atrocities will not happen in the future. Unfortunately we are still living with the mentality of the past by thinking of ourselves as victims.”

- member of WAFDI, Women's Alliance for a Democratic Iraq

QUESTION AND ANSWER ON THE GJC'S WORK WITH THE IRAQI HIGH TRIBUNAL

Why is the Iraq War Crimes Tribunal critical to the future of Iraqi women's legal rights?

The Iraq High Tribunal (IHT) is critical to establishing the rule of law in Iraq and will be critical to the future enforceability of women's rights. The Tribunal Judges, for the first time in their careers are charged with enforcing international law. The 2005 Iraq Tribunal statute is modeled after the Rome Treaty that established the ICC and includes the ICC gender crimes provisions. The IHT is now part of Iraq domestic law, coexisting with the 1969 Penal Code (hereinafter “the Penal Code”) provisions which govern the same (non war time) criminal behavior. Because the IHT guarantees of “gender justice” stand in such stark contrast to the discriminatory Penal Code, the Tribunal will inevitably be faced with trying to reconcile them, particularly since the IHT refers to the Penal Code for penalties for rape and mitigations of sentences for honor killings. As one Tribunal Judge acknowledged, “...we are aware that our pronouncements on human rights principles in our decisions will influence domestic Iraqi law.”

If the Tribunal Judges assiduously enforces the human rights treaties and other international laws applicable to Iraq, they will establish a legal framework for enforcing Iraq women's rights. Besides the IHT statute, other laws which apply include the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW), and the International Convention on Civil and Political Rights (ICCPR). Together or individually, these treaties invalidate the domestic laws which discriminate against women by perpetuating inequity and denying access to justice.

Why is it important that the Iraq Tribunal specifically prosecute crimes against women defined in the IHT statute?

The fact that Saddam Hussein and others were tried and convicted of crimes against humanity (and others are being tried for genocide and war crime) is a milestone in international justice, particularly since the Mideast has no regional human rights adjudicatory body and has never before held war crimes trials. Because a key purpose of any war crimes tribunal is to construct a record of historic accountability, it is essential that the IHT specifically prosecute the crimes committed against women. No group of criminals should escape accountability for their crimes because an entire group of victims (women) feel “ashamed” or afraid to report the crime due to its sexual nature. International law contains strong anti-discrimination and equality mandates, which require the Tribunal to take all affirmative steps necessary to prosecute perpetrators of rape and other gender crimes.

Further, 1325, passed in 2000 as part of other equality mandates, requires that war crimes tribunals address gender-based violence. The Secretary-General pointed to the recent advances in gender crimes law by the ad hoc tribunals as examples and noted that it is critical that these achievements be maintained and further expanded.

The Tribunal has scheduled 12 separate trials for various high level perpetrators of crimes from 1968-2003 under thematic groupings such as the Dujail massacres trial, which was decided in November 2006, and the Anfal trial, currently in progress. The Judges have heard testimony from about 7 women on rapes committed during the Anfal attacks, but it remains to be seen whether rape will be included in the indictment. Experience both with the IHT and other tribunals make it clear that gender crimes prosecutions do not happen without advocacy efforts by victims groups and the international human rights community. Despite the groundbreaking nature of this Tribunal, up until the GJC and WAFDI sponsored training in November 2006, there has been no formal advocacy on women's rights or gender crimes from the international community.

In what ways could the IHT decisions advance the legal rights of Iraqi women?

Some of the most significant advances for women's human rights in the past decade have come out of the decisions of the various war crimes tribunals and the IHT can advance women's rights both by adopting the prior precedents and by setting new ones. For example, the Akayesu decision from the International Criminal Tribunal for Rwanda (ICTR) was the first conviction of rape as a crime against humanity and the first decision finding rape equivalent to torture. The Akayesu precedent then led to multiple convictions of rape, outrages upon personal dignity and torture by means of rape at the International Criminal Tribunal for the Former Yugoslavia (ICTY). This culminated with the codification of a progressive definition of rape as a war crime and other gender crimes in the Rome Treaty establishing the ICC.

The sixty plus Tribunal Judges have the opportunity to add to this body of international law by citing to CEDAW, 1325, and the ICCPR as support for affirmative actions regarding prosecutions of gender crimes. After the Tribunal ends, the Tribunal Judges will hopefully continue as influential Iraq jurists, which increases the potential for the Tribunal to begin the integration of international human rights jurisprudence into Iraq law.

How do the gender crimes in the IHT statute differ from those in the Iraq penal code?

The IHT Statute defines the gender crimes under its jurisdiction (regime crimes between 1968-2003) expansively and includes "women-sensitive" procedural protections such as not requiring corroboration or allowing a consent defense. Under the IHT Statute, rape and other crimes of sexual violence are treated with equal gravity as other war crimes and crimes against humanity. The IHT Statute also codifies as crimes "sexual slavery, forcible prostitution, forced pregnancy, or any other form of sexual violence of comparable gravity." Under the IHT Statute, rape is a "sex-neutral" crime, meaning both men and women can be victims (or perpetrators). Ironically this very progressive Iraq law exists side by side with the most repressive sections of the Penal Code, those that cover rape and sex crimes. The Penal Code does not consider rape as a violent assault, and the 1971 amended criminal procedure law clearly states that rape prosecutions can only be initiated by the rape victim or someone in her place, because rape is a "private" offence, as opposed to a public offense, meaning that the government cannot prosecute the perpetrator unless a victim comes forward. The Penal Code limits rape prosecutions to those which occur within the country (except with permission of the justice minister) and excludes gender crimes committed by the regime outside Iraq such as in Kuwait or Iran (which is covered by the IHT). The Penal Code defines rape as only against women, only by conventional sexual intercourse and only "serious enough" for compensation if the woman proves that she was a virgin. (The hymen of women, dead or alive, is checked as part of routine forensic examinations when such charges are brought.)

Under the Penal Code, if the accused marries the victim, "any action becomes void and any investigation or other procedure is discontinued, and if a sentence has already been passed in respect of such action, then the sentence will be quashed." The accused, the public prosecutor, or the victim (even a minor) can make a motion for marriage to take advantage of Article 39. Proponents of this Article argue that it enhances victims' rights since it reinstates the victim's honor after the incident of sexual violence. In reality, this law merely heightens the shame of rape by making the victim forever connected to her perpetrator. It effectively compounds the devastating impact of rape on a victim.

How do rape laws and honor killings in Iraq impede women's access to justice?

Honor crimes are acts of violence or abuse perpetuated against individuals, usually women, by male members of their community in defense of their family's honor. The stigma against reporting any form of sex crime in Iraq is exacerbated and perpetuated by Iraq laws which condone the killing of rape victims by their own families. The cultural and historic

shame associated with sex crimes, which puts the victims in danger from their own families, was legitimized by the Penal Code provisions that mitigate sentences for honor killings. These were supplemented by Saddam Hussein's Revolutionary Command Council Order Number 6 of 2001 which reads: "Considering the killing of one's wife or a close female relative (muharam) for honor reasons a mitigating factor under law," the reduced penalty is one year, or even only six months, imprisonment. Such proclamations account for why women are reluctant to come to the Tribunal about gender crimes.

The UN Special Rapporteur for Violence against Women reported that more than 4,000 women have been victims of so-called "honor killings" since 1991, when Saddam Hussein introduced Article 128 of Law 111 of the Penal Code. Article 128 reads: "...The commission of an offence with honorable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse." Under the Penal Code, the normal penalty for murder is life imprisonment or the death penalty, but in cases where the perpetrator murders his wife or female relative upon catching her in the act of adultery, the penalty is a maximum of three years. In theory this is a "heat of passion" defense, but in practice this penal code provision can be used to reduce sentences for perpetrators of honour killings.

Why haven't other human rights organizations been more active with the tribunal and how is this changing?

A number of the major international human rights organizations have chosen not to proactively support the Tribunal in Iraq, opting instead to criticize the Tribunal's shortcomings. An obvious concern for many human rights organizations is the Tribunal's ability to impose the death penalty. Other concerns include doubts as to the fairness and legitimacy of the adjudicatory process, as well as a fear that support of the Tribunal may be viewed as approval or support for the U.S. invasion of Iraq. These concerns, however legitimate, were not weighed against the Tribunal's potential to legitimize and enforce women's rights in Iraq and to set persuasive legal precedent for future tribunals. Given the challenges posed in creating positive legal reform aimed at protecting the rights of women, it is clear that a broad-based coalition of Iraqi groups and NGOs and members of the international community must cooperate to encourage Tribunal Judges to adopt a progressive approach to the way gender crimes are tried during the war crimes proceedings and after. An effort by the international community to utilize the Tribunal as an avenue of justice for Iraqi women has recently emerged.

Why is the Global Justice Center working with the IHT?

Although we understand the serious concerns about the Iraq Tribunal, the GJC is committed to advocating for the enforceability of Iraqi women's legal rights on all fronts. The Tribunal is open to this gender advocacy and the Court itself has requested gender and international law training as well as input from Iraqi women's organizations. The unique and difficult circumstances surrounding the Tribunal and the Judges trying these crimes increases the pressure placed on them. Their desire to promote justice and the rights of Iraqi women must be strengthened by support from the international community.

The judiciary can play a key role in promoting equality. Whatever rights Iraqi women have been given by the new Iraqi government and in the Tribunal authorizing statute, those rights will have no effect unless they are enforceable. It is in this regard that the Tribunal is invaluable; by giving effect to these rights, the Tribunal has the power to change the political, cultural and legal norms that currently govern the lives of Iraqi women. The Tribunal is also an avenue for creating a new public dialogue, both in Iraq and throughout the region on the crimes of violence perpetrated against women and the impunity granted to perpetrators, both under the Saddam regime and into the present day. The Global Justice Center takes a calculated approach to the judiciary: the GJC approaches the issue of the enforcement of women's rights not as a purely political question, but as a means of providing tools for women leaders (not only lawyers), promoting cross-fertilization among regions and disciplines, and devising innovative and strategic ways to enforce women's rights through the judiciary.

TRAINERS AND LEGAL EXPERTS

DR. KELLY DAWN ASKIN, BS, JD, PHD (LAW) currently serves as Senior Legal Officer, International Justice, with Open Society Justice Initiative. She is also a 2004-2005 Fulbright New Century Scholar on the Global Empowerment of Women and Fellow, Yale Law School. She served as Executive Director of the International Criminal Justice Institute and American University's War Crimes Research Office. Kelly has served as an expert consultant, legal advisor, or international law trainer to prosecutors, judges, and registry at the ICTY, the ICTR, the Serious Crimes Unit in East Timor, the ICC, and the Special Court for Sierra Leone. She has published extensively in international criminal law, international humanitarian law, and gender justice, including her book *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (1997) and the three volume treatise *Women and International Human Rights Law* (1999, 2001, 2002, co-editor). She serves on the board of several organizations, including the Executive Board of the American Branch of the International Law Association, the International Judicial Academy and the International Journal of Criminal Law.

JANET BENSHOOF, PRESIDENT GLOBAL JUSTICE CENTER, works with women leaders in transitional democracies to enforce the international legal guarantees for women's political and legal rights. She was the Director of the ACLU Reproductive Freedom Project from 1977-1992. She is the founder and past President of the Center for Reproductive Rights (CRR). In its first ten years, CRR obtained consultative status to the UN, established legal projects in over 40 countries, and won major constitutional cases in the United States Supreme Court. Ms. Benshoof has taught international human rights law and gender at Bard College and Harvard Law School, as well as in Burma and Thailand. She is the senior legal advisor to WAFDI and she has conducted legal trainings on international rights for women in Baghdad. She is the chair of the Gender Justice Advisory Board, and a trustee of Women's Link Worldwide, an international legal organization focusing on women's international human rights litigation.

JUDGE MARY MCGOWAN DAVIS served as an Acting Justice of the Supreme Court of the State of New York from 1986-1998. In 2004-2005 she worked in Afghanistan's first full-service public defender office, where she mentored Afghan lawyers representing detainees in local prisons. While in Kabul, she participated in workshops designed to educate lawyers and judges about the new Afghan Constitution and Interim Code of Criminal Procedure. Judge Davis has traveled to Sierra Leone, Cambodia and Rwanda in connection with projects related to the establishment of special courts to try war criminals in those countries, and she has been a frequent visitor to the International Criminal Tribunal for Rwanda, as a consultant and as a participant in trial advocacy training programs for Tribunal prosecutors. She continues her association (1999-present) as a Senior Visiting Attorney at Legal Momentum – Advancing Women's Rights (formerly the NOW Legal Defense & Education Fund) in New York City.

SIMONE MONASEBIAN has successfully prosecuted war criminals at the ICTR, and served as Principal Defender of the Special Court for Sierra Leone. She is also an Adjunct Professor of International Criminal Law at the American University in Cairo, through Seton Hall University Law School, and CourtTV's legal analyst on war crimes trials. Ms. Monasebian has trained diverse groups of lawyers, diplomats, and investigators on both procedural and substantive matters concerning war crimes tribunals, and trafficking of women and children.

MÓNICA ROA is Programmes Director at Women’s Link Worldwide, an international NGO promoting gender equality through the strategic implementation of international human rights. She started her work at Women’s Link developing a global comparative project on the role of the judiciary in the promotion of women’s rights. On May 2006, the Constitutional Court of Colombia liberalized the country’s extreme ban on abortion by responding to a challenge of unconstitutionality she filed in April 2005 as part of the LAICIA project (High impact litigation in Colombia, the unconstitutionality of abortion by its name in Spanish). Previously, she worked with the Center for Reproductive Rights in New York and the Center for Socio-juridical Studies of Los Andes University in Bogotá.

MARIJANA SENJAK is the Program Director of the Medica Zenica Women’s Therapy Center in Bosnia-Herzegovina. She also founded the Center for Psychological Help in the War. Ms Senjak completed postgraduate studies in Psychological Sciences at the University of Zagreb, Trauma Psychology at the University of Sarajevo, Post-trauma Therapy at the University of Sarajevo medical school, and participated in the International Trauma Studies Program at New York University. She lectured on the role and needs of witnesses at the ICTY and at the ICC. She has also lectured about the social and economic rights of the survivors of rape during war in post-conflict Bosnian society at an International Conference on Transitional Justice in Belfast. Ms. Senjak and the Woman’s Therapy Center has successfully advocated for the status of both the victims of war, and of the survivors of rape during the war in Bosnia and Herzegovina. This status was adopted by the Bosnia-Herzegovina Government in February 2005. In 2005, she was nominated for the Nobel Peace Prize, and in 1994, her Center for Women’s Therapy was awarded the “Woman in Black” Prize for Peace in Jerusalem.



IHT Presiding Judge (currently bearing Al-Anfal) Mohammed Al-Oraibi Al-Khalifa with Iraqi women activists

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(Names withheld for security purposes)

20 JUDGES FROM THE IHT

4 Appellate Judges
Chief Prosecutor
5 Prosecutors
Chief Investigative Judge
5 Investigative Judges
Presiding Judge, Trial Chamber 2 (Anfal)
Deputy Presiding Judge, Trial Chamber 2 (Anfal)
2 Trial Judges, Trial Chamber 1 (Dujail)

GOVERNMENT OFFICIALS

Adviser to the President
Adviser to the Prime Minister
Adviser to the Ministry of Human Rights
Chief Judge, Commission Public Integrity
Regional Judge

CIVIL SOCIETY

11 women and one man from inside Iraq

WAFDI

Basma Fakri, President
Tamara Quinn, Vice President of Administration
Carole Basri, Executive Vice President
Muna Al Saffar, Member

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ACKNOWLEDGMENTS

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SPECIAL THANKS TO:

Judge Raed Johi,
Chief Investigative Judge of the IHT
Judge Aref Al-Shaheen,
Chief Judge of the IHT
Ambassador Samir Al-Sumaidaie
Iraqi Ambassador to the United States
Regime Crimes Liaison Office, Baghdad
Abda Sharif and Simon Smart, *FCO*
ARa'ed Halawa, Eyad Al-Jamal
And the staff of the Jordan Valley Marriot Resort
Judge Aref Al-Shaheen,
Chief Judge of the IHT
Hanaa Edwar
Zakia Hakki

SPECIAL THANKS TO THE
FOLLOWING GENEROUS FUNDERS

Anonymous

United Kingdom Foreign and Commonwealth Office (FCO)

United States State Department

Hunt Alternatives Fund

Henry J. Kaiser Family Foundation

Nathan Cummings Foundation

Moriah Fund

Open Society Institute

Urgent Action Fund

“[T]his is the first such exchange we at the Tribunal have had with Iraqi women and the first legal training specifically focused on women’s rights to redress for gender crimes in Iraq.”

*Letter to the GJC from Judge Ra’id Jobi, Chief Investigative Judge of the IHT
(June 27, 2006, after a preliminary training in Baghdad in March 2006)*



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OUR MISSION

The Global Justice Center equips leaders in developing democracies with the legal tools to enforce women’s rights to equality in political representation and transitional justice.

OUR LOGO

Our logo represents the inequality between the percentage of women in the world’s population and their corresponding representation in governments worldwide. The right side is 51% blue, indicating the percentage of women in the world’s population. The global average for women in government, however, is a mere 16% , illustrated by the percentage of blue on the left. Our goal is to one day eliminate this gap by enabling women to take their rightful places in government bodies worldwide. Only then will we have true representative democracy, and only then will women be able to fully exercise their human rights.