

7 Study Tour

In August 2008, the World Bank’s Middle East and North Africa Region (funder), the United States Institute of Peace (initiator), the World Bank’s Legal Vice Presidency, the World Bank Institute’s Parliamentary Strengthening Program, and the Swiss Ministry of Foreign Affairs (host) organized in Switzerland a week-long seminar on the Iraqi judiciary system and the second chamber of parliament. The visiting Iraqi delegation consisted of 13 key members of the Iraq Council of Representatives, most of them members of the Constitutional Review Committee, and 7 of the highest ranking officials of the federal Iraqi and the regional Kurdish judiciary systems.

The study tour was geared around visits to Switzerland’s judicial and legislative institutions and meetings with international practitioners from eight countries. The aim of the event was to allow the participants to become familiar with a range of different parliamentarian and judicial systems to develop and redefine concrete recommendations, which they would then present to the Iraqi National Parliament. To illustrate the learning process of the study tour, we single out the judiciary portion of the program and describe it in detail according to the eight stages of the Learning Spiral.

7.1 2005 Iraqi Constitution—Conceptualization Stage

In late 2006 the parliament of Iraq established a Constitutional Review Committee with the mandate to propose a slate of amendments to the 2005 Constitution of Iraq. This special amendment process was intended to make critical changes to the Constitution that would increase support for the political and legal framework among all of Iraq’s national communities. Since its inception, the Constitutional Review Committee has made considerable progress in formulating critical amendments that cover an array of fundamental political and legal issues. However, a large number of these issues were still left open and needed special attention. Among them were questions particularly related to the Iraqi judiciary system, such as how the regional and national judiciaries should

be effectively structured and coordinated; whether regional courts should hear cases arising from national law, and if so, what the court of last appeal should be; whether courts should have subpoena power in other jurisdictions; whether there should be one set of civil and criminal procedures; whether lawyers should be admitted to practice in all courts; and what the jurisdiction and competencies of each of the federal courts were.

To learn about different judiciary models, which could each answer these questions in various ways, a customized study program was designed and conducted by an organizing team. This team had five staff members who represented the governmental and international institutions that were involved in the event organization. The individual staff members also moderated the different event sessions.

The idea of setting up the event as a study tour was based on the belief that the relevance and impact of the event could be increased significantly through face-to-face exchanges among peers. It also gave the delegates the opportunity to meet their international colleagues in their personal work environment. Thus, they got very real and first-hand testimony about the judicial practice and everyday life in the judiciary systems they visited. This type of learning event also allowed the international practitioners to get involved in the dialogue with the delegates in their search for new solutions about the Iraqi judicial system. Furthermore, it was intended to take the participants away from their daily routines and give them a safe space to debate about different issues and challenges.

7.2 Four Judiciary Systems—Triangulation Stage

In a comprehensive analysis, four judicial models were identified as particularly relevant for the Iraqi context. These models covered the whole spectrum between centralized systems, like the one in India, and decentralized models, such as the one in Switzerland. As examples for intermediate models, the systems from Nigeria and Brazil were selected. Accordingly, the chief justices of Brazil (acting), India (former), Nigeria (former), and Switzerland (acting) were invited to participate in the event (see Photo 16). Furthermore, to learn about the mechanisms of legal and organizational coordination between national and subnational courts, the delegates visited the Federal Ministry of Justice, as well as two different subnational courts in Switzerland.

To ensure the success of the study tour, it was critical that the delegates represent all relevant powers and interest groups in the Iraqi judicial system. Thus it was expected that the newly developed solutions would mirror the different political and legal positions in Iraq and therefore have a real chance to be accepted by the various communities and the parliament. By involving some of the most important stakeholders in the learning process, it was further hoped that once the delegation returned home it would be able to build up political momentum strong enough to allow the envisaged legislative process to be carried out.¹

Photo 16 Content Triangulation



(From left to right) A. M. Ahmadi, Former Chief Justice of India; Medhat Al Mahmoud, Chief Justice of Iraq; Ellen Gracie Northfleet, Former Chief Justice from Brazil; and Muhammadu Lawal Uwais, Former Chief Justice of Nigeria.

7.3 Study Tour Program—Accommodation Stage

Because the study tour was organized for a hand-picked group of participants, the organizing team involved the Iraqi delegation from the beginning in planning the program. The participants were directly involved in the selection of the questions to be discussed as well as the design of the event procedures, which created an exceptional high sense of ownership among the delegates about the event itself. This close consultation between the organizing team and the participants continued during the event, where the two parties discussed potential changes in the ongoing learning process.

The structure of the study tour followed a given pattern that sequenced the various event parts in a particular manner: Field trips always occurred in the afternoon, so whenever it appeared necessary the dialogue could

1. Among the selected participants were the Chair of the Constitutional Review Committee, the Chief Justice of the Federal Supreme Court, the Minister of Justice for the Kurdistan Region, senior judges from the federal and regional judiciaries, the dean of the Baghdad law school, and the president of the Iraqi Bar Association.

extend till after dinner. This measure further allowed the participants to reflect on their experiences of the field trips overnight before sharing them in the next morning's reflection meetings. This pattern of consecutive field trips and reflection meetings was followed by two half-day *transformation* sessions, one in the middle and one at the end of the study tour, as well as an evaluation session at the closure of the event.

To ensure a safe and trustworthy learning environment, high priority was given to the delegate's physical security and privacy during the study tour. Whereas the security issues were taken care of by the Swiss authorities, confidentiality was secured by a strict enforcement of the Chatham House rules by the moderators.² The event organizer also made sure that the delegation was protected from any public interference. All sessions were held behind closed doors, and with the exception of a few interviews with selected journalists at the end of the event, no further exposure to the media was allowed. To facilitate the dialogue with external peers, all sessions had simultaneous translation.

7.4 Field Trips—Internalization Stage

A key element of the study tour was the field trips³ as well as the case presentations about the different national judiciary systems from Brazil, India, Nigeria, and Switzerland (see Photos 17 and 18). In these sessions the presenters were asked first to introduce the delegates to their administrative and/or judicial system, and second, to deliver a preliminary answer to the prepared questions that were sent in by the delegates before the event.

The third part of the meetings was reserved for an extensive dialogue, where critical questions were asked about the presented models as well as their possible implications for the Iraqi judiciary system. In these peer-to-peer exchanges the presenters were encouraged to share their opinions about what they thought works well, as well as what should be improved in their own system. By doing this, they inspired the delegates to follow their example and to think about their own worries and reservations about the status quo of the Iraqi system.

2. For the definition of the Chatham House rules, see subsection 5.3.

3. Among the trips were the State Chancellery of the Canton of Berne, the Swiss Federal Supreme Court in Lausanne, and the Cantonal Administrative Court of Geneva.

Photos 17 and 18 Field Trips to Federal and Cantonal Courtstables



(From left to right) The Swiss Federal Supreme Court in Lausanne, and the Cantonal Administrative Court of Geneva.

7.5 Reflection Sessions—Externalization Stage

Following the field trips the delegates met the next morning in reflection sessions (see Photos 19 and 20). The meeting room itself was set up with a closed circle of tables with no podium and no designated sitting order. In this arrangement the moderators facilitated sessions, and the participants exchanged in a first phase their individual reflections about their impressions of the field visit. In a second phase, participants searched for similarities and differences between the presented and the Iraqi system and determined to what extent these foreign models may be relevant for the Iraqi situation.

7.6 Vision of Iraqi Judiciary System—Reconceptualization Stage

As a result of the preceding dialogues with peers and the Supreme Court judges from four different countries, and the discussions among the participants during the reflection sessions, the delegates developed a shared vision for how the Iraqi federal and regional judiciary system may be improved.⁴ This growing, common understanding evolved and hardened further in numerous informal conversations; many such conversations

4. For a description of this vision, see the personal testimony of the Chief Justice of Iraq in Box 4.

were held during the lengthy bus drives to the field trip locations, which in turn gave these travels a particular didactical purpose.



Meeting room for reflection sessions. On left, translation booth for simultaneous translations.

7.7 Political Roadmap—Transformation Stage

The emerging vision of how to further develop Iraq's judiciary system became the basis of the answers for many of the questions raised at the beginning of the event. Thus the abstract understanding was made operational and relevant for the current political context in Iraq. This was done in the transformation sessions in the middle and at the end of the event.

In particular, in the second session the participants began setting up concrete roadmaps for how to redirect the political debate back home toward the newly developed vision. There was an emerging expectation that the new ideas about the Iraqi federal and regional judiciary system could find a broader acceptance among the different national communities and could therefore be approved by the Iraqi parliament later.

7.8 CD-ROM—Configuration Stage

All presentations and recorded materials produced during the study tour were collected on a CD-ROM and made available to the participants. The materials were put together with the intention that the delegates would use these reference documents for their political and legislative work to persuade others about the developed vision. This new knowledge became thus the background material for an upcoming learning

process, which would consider an extended group of Iraqi politicians and other societal stakeholders who were not involved in the process.

7.9 Final Comments and Evaluation

As documented by a Level One evaluation, the participants received this study tour very well. Ninety percent rated the overall usefulness of the activity and the quality of the event design either as good or very good, and 94 percent considered the moderation excellent. Written feedback from a selected participant, drafted one and a half years after the event, shows that the study tour contributed to a greater consensus and understanding among the delegates about the key aspects on the topic (see Box 4).

Despite the different political affiliations and regional and cultural backgrounds, the participants developed a solid and long-lasting network. With the support of the United States Institute of Peace, this network was able to move the legislative agenda effectively forward toward an expected introduction of a modern and widely accepted new judiciary system in Iraq. It was further noted by the organizers that new collaborations were initiated between individual delegates and their international peers. These collaborations covered a broad range of issues, many of them dealing with very different topics than were discussed during the study tour. In this sense, the newly created national network was expanded to an international set of peer contacts dealing with a variety of topics to improve democratic governance.

The overall positive outcome of the study tour also had a strong and long-lasting impact at the organizing institutions, which committed to continuing their support for Iraq's legal and political development. An example of such collaboration was the organization of another study tour set up in partnership between the World Bank and the Swiss government one year later, which was based on the same organizational procedures.⁵

5. The study tour was about the Iraqi Kurdistan's Regional Government Civil Service Reform and was held May 24–30, 2009.

Box 4 Reflections from the Chief Justice of the Federal Supreme Court and President of the Higher Judicial Council of Iraq

We had a pressing interest in examining the experience of the countries that have preceded Iraq in choosing and implementing a federal system as a form of government. How is such a system administered; how does it fulfill its responsibilities; is there a centralized judicial institution that administers the judicial system in all the constituent units, and if so, to what extent, or is the regional judiciary in each state run separately without central supervision?

These questions were going through my mind as I set forth, as the head of the Iraqi judicial delegation, to the roundtable. This event offered the Iraqi delegation a golden opportunity to obtain answers to the aforementioned queries through detailed discussions with eminent Swiss politicians, civil servants, and judges from the cantonal (state) and federal level, scholars, as well as three Supreme Court chief justices from Brazil, India, and Nigeria.

We learned in particular about how the Swiss judiciary fulfills its duties in the pursuit of justice and guarantees private and public rights. We visited the courts of several cantons, where we were informed about the laws being applied, particularly the penal and civil procedures as well as the evidence act. We noted there are some differences between the cantons because of differences in culture, traditions, and history, but we also noted a partial or full similarity with regard to certain laws. During our discussions, we found out that there was a shared desire to unify the laws of civil and penal procedures and the evidence act in the federal judicial system and that efforts were being made in this regard.

We realized that although there are some common rules for selecting and promoting judges, some disparities remain in other facets of the judicial systems in the cantons, because of traditions and heritage and the extent of people's attachment to them, as well as the fear of change, which is usually associated with transitional periods. We also examined the role of the federal Supreme Court and its jurisdiction within the federal judicial system. What we found suggests that there is a means to unify jurisprudence and deal with certain rulings issued by the regional judiciary.

I became aware of obvious differences between the Swiss, Brazilian, Indian, and Nigerian judicial systems. These differences can be attributed to several factors, such as the judicial systems of the constituent units, as well as politi-

Box 4 (continued)

cal viewpoints or theories in a country, the concept of the federal state, and the jurisdiction of the central authority and the regions, which may vary.

During the roundtable I also reviewed the judicial system in Iraq, which in 2003 adopted a federal political system of government, and examined the repercussions of this new political system on the judicial organization, as well as the future perspectives of the judiciary in Iraq. It is well known that before 2003 the judiciary in Iraq was centrally administered by the Ministry of Justice through a Council of Justice. The Council was presided over by the Minister of Justice, who, of course, was part of the executive authority, which continuously tried to interfere with the independence of the judicial decisions. Following the political changes, the Higher Judicial Council was formed and entrusted with the task of administering the judiciary independently of the Ministry of Justice. The judiciary was then recognized as an independent power, as are the legislative and executive powers.

So what would the role of the federal judiciary be with respect to the regional judiciaries that were formed in accordance with the 2005 Iraqi constitution? Will the regional judiciary remain completely independent from the federal judiciary, and will it continue to be administered autonomously as an independent regional judicial authority, with no supervision whatsoever from the federal judiciary? And if the federal judiciary were to supervise the judiciary in the provinces, what form would such supervision take, and what would be its extent?

After examining the experience of the judiciaries of the Swiss, Brazilian, Indian, and Nigerian federations, I can say that we can benefit from these experiences and use some of their rules when forming the federal and regional judiciary in Iraq. Basically, there will be a judicial authority in each region, which will administer all fields of the region's judiciary, including all matters pertaining to the judges and to the safeguarding of their independence. The federal and regional judiciary shall complement each other and coordinate their work through the membership of the regional judicial authorities' presidents in the Higher Judicial Council. They will draw up the judicial policy in the federal states, set the rules that will guarantee the independence of the judiciary, unify the judicial code of conduct and the rules governing the appointment of judges, ensure compliance with the provisions of the constitution and with the international standards stipulated in international charters and treaties, unify the laws of procedure and

(Box continues on the following page.)

Box 4 (continued)

the evidence acts in both the civil and penal field, form federal courts in the regions that would dispose of disputes arising from the federal government's exercise of its exclusive powers or other powers stipulated by the constitution and by federal laws, and form regional courts to dispose of disputes arising from the regional governments' exercise of their non-exclusive powers.

This is a summary of our vision of the federal and regional judiciary in Iraq based on the actual Iraqi situation and our examination made during the roundtable.

Medhat Al Mahmoud, Baghdad, Iraq, May 4, 2009