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# Access to Justice in Iraq: From Baghdad to Orange County

by SHELLEY M. LIBERTO

Earlier this year I was asked to evaluate the United States Agency for International Development's (USAID) \$62 million program to support access to justice in Iraq. The program's mid-term evaluation called for an analysis of the successes, failures, and opportunities to improve USAID's method of technical assistance and its use of cash grants for legal clinics to improve delivery of legal services to Iraq's most vulnerable groups. The experience left me with two primary questions that are addressed in this article: What model does the United States government use to promote access to justice in an environment like post-war Iraq? And, what lessons can be learned from attempts to improve access to justice in Iraq that may be applied here at home and, more specifically, Orange County?

## The Post-Invasion Status of Iraqi Vulnerable Groups

When the United States deposed Saddam Hussein in 2003, it undertook the responsibility to dismantle and rebuild Iraq's government institutions. Primarily through USAID, an agency of the United States State Department, it provided and continues to

provide funding for rebuilding infrastructure and technical assistance advisors to guide the war recovery process. One of the areas of U.S. reconstruction efforts is the Iraqi justice sector. Institutions of focus have been the Iraqi Ministry of Justice, the courts, bar associations, and non-governmental organizations (NGOs) that provide legal aid.

Any attempt to improve access to justice in Iraq requires a basic understanding of the various sectarian groups, their ethnicities, and their political relationships as they have evolved from pre-invasion to this day. Saddam ruled his country as a member of Iraq's *one-third minority* Sunni population over the *two-thirds majority* Shiite population. Ethnic Kurds who currently occupy what is now the northern region of Iraq, with cross-border populations in Turkey, suffered most notoriously under Saddam as victims of mass executions and chemical weapons. Altogether, these groups with lesser minorities total approximately 38 million, roughly the population of California. While the United States aspires to relieve these groups from oppression and deliver to them freedom and democracy, their differences are historically entrenched and have endured for almost 1400 years. These sectarian differences

are now magnified in the absence of the security provided by Saddam's iron-fisted rule by tyranny, and by pressure from new geopolitical forces in the region, particularly in neighboring Syria.

At the time of my assignment in Iraq, and at the time of this writing, the Iraqi government and its justice institutions were nearly inoperable due to the urgent focus of all available resources to averting sectarian violence, controlling the movements of the population, and maintaining the political status quo. The current Al Maliki government was democratically elected by the Shiite majority and has since implemented severe tactics to preserve its grip on political power, order, and security. These include, among others, mass detentions of opposition demonstrators without process, the arrest and detention of the staff of opposing party ministry officials for "terrorism," outlawing the export of petroleum from the northern state of Kurdistan, and restricting vehicular and pedestrian traffic by a labyrinth of checkpoints in neighborhoods occupied by opposing ethnic groups. These control tactics have inflamed so much political resentment that regional political interests in Iran, Syria, and Lebanon have little difficulty in exploiting

the unstable environment to intervene and advance their own political agendas.

Meanwhile, behind this history of conflict and the current political turmoil is a backdrop of some twelve million members of the Iraqi vulnerable population who are the target of the USAID Access to Justice Program. These include approximately 1.3 million internally displaced persons (people who cannot return home and have no local identifications), 1 million widows, 1 to 3 million female heads of household, 4.5 to 5 million orphans, and 1 to 3 million persons with disabilities, many of whom became disabled as a result of war. Their needs are overwhelming—to reclaim homes that are occupied by others, to secure the meager government benefits that allow them to feed themselves and their children, to find jobs or sources of income in a society

**It would be an understatement to say that access to justice in Iraq is a much greater challenge than it is in Orange County. Nevertheless, some principles are common to both environments.**

where certain groups are advantaged at the expense of others, and to be safe from physical violence in the home, on the street, and in the workplace, to name just a few. Although Iraqi law provides rights to some sort of financial and administrative relief for these groups, those rights have not been exercised due to the lack of public awareness and the unavailability of legal services to access them.

#### **What Is “Access to Justice” and Why Does It Matter?**

United States government intervention for justice in Iraq is based on the belief that access to justice requires that individuals know and understand their rights, have the ability to prevent abuse of those rights, and



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can obtain legal remedies when their rights have been violated. When a state's system of justice fails to meet these criteria, and there is no law-based practical redress for the citizenry to remedy chronic injustices, *public support for the rule of law quickly weakens*. Therefore, according to United States strategy, ensuring access to justice in Iraq is essential to maintaining popular support for Iraq's nascent government and its continued democratic development.

Although the term "access to justice" is readily used to describe the objectives of various programs in the United States, it has defied a single clear definition. More often than not, it is used simply to refer to legal aid for people without adequate means to afford their own legal representation. The United States Department of Justice's Access to Justice Initiative, by way of description of its use of the term, sets out three principles:

- Promoting Accessibility—eliminating barriers that prevent people from understanding and exercising their rights;
- Ensuring Fairness—delivering fair and just outcomes for all parties, including those facing financial and other disadvantages; and
- Increasing Efficiency—delivering fair and just outcomes effectively, without waste or

duplication.

To translate these principles into action, the Department of Justice program pursues strategies to leverage and better allocate justice resources to:

- Advance new statutory, policy, and practice changes that support development of quality indigent defense and civil legal aid delivery systems at the state and federal level;
- Promote less lawyer-intensive and court-intensive solutions to legal problems; and
- Expand research on innovative strategies to close the gap between the need for, and the availability of, quality legal assistance.

On a more local level, the State Bar of California's Commission on Access to Justice was established in 1997 "to pursue long-term fundamental improvements in our civil justice system so that it is truly accessible for all, regardless of income, geographical location, or language ability." The State Bar Access to Justice Center aims to increase access to justice through:

- Expanded *pro bono* efforts;
- Increased funding for legal services programs;
- Administration of the Lawyer Referral Service certification program;
- Foreclosure resources; and

- Staff support for three volunteer entities—the California Commission on Access to Justice, the Standing Committee on the Delivery of Legal Services, and the California *Pro Bono* Coordinating Committee.

An attempt to apply these fundamental principles to the aftermath of the United States' invasion in Iraq is the challenge faced by USAID and its policy makers in Iraq.

### The Tripartite Model of Legal Aid Programs

According to United States justice policy in Iraq, the Iraqi justice system must become a trusted avenue for resolving injustices if the diverse groups of Iraq are to move past historic grievances and form a united participatory democracy. USAID's theory of implementation outlines a "supply chain" of justice with three key links: (1) awareness of rights, (2) access to legal services, and (3) remedies under law. In pursuit of these objectives, the USAID project directs its efforts to legal assistance, education, and public outreach to Iraq's vulnerable. Three institutions are therefore designated as the focus of financial support and technical assistance: (1) Iraqi bar associations, (2) Iraqi law schools, and (3) NGO-based legal aid clinics.

In conducting the evaluation of the USAID program, I was assigned an evaluation team consisting of a former Iraqi judge, an Iraqi NGO expert involved in legal aid, and a team of six Iraqi data collectors who conducted surveys of over 350 beneficiaries of either financial or technical advisory assistance provided by the program. Our project was based in Baghdad. Beneficiary institutions included the Iraqi and Kurdistan Bar Associations, Baghdad and Sulamaniya Law Schools in both lower Iraq and Kurdistan respectively, and twenty-four NGO-supported legal clinics. In conducting the evaluation of the success of the USAID intervention, one key feature of Iraq's most successful legal clinics stood out: community based legal aid is strongest when it is supported by a tripartite partnership between bar associations, law schools, and non-government related legal aid organizations. I found this to be the case in other access to justice projects where I worked as implementer or evaluator in Lebanon, Uganda, and the Gambia, as well.

Through assistance provided by USAID, the Iraqi bar associations had formed alliances of cooperation with NGOs that called for reciprocal referral of clients seeking rights related to survival issues. These NGOs addressed needs such as the right to widow pensions, public assistance to the disabled,

the acquisition of national identity papers, legal and public advocacy for victims of domestic violence, representation for detained youth, and lobbying efforts for changes in laws and administrative regulations. The direct participation of the bar associations as well as individual lawyers is, as always, the driving force behind the delivery of legal aid. While the legal aid clinics themselves operate as the front-line contact with persons in need of legal advice and representation, it is the lawyers who were the gateways to legal remedies that were already in existence but out of reach to those who needed it most.

The Iraqi legal clinics I evaluated were either freestanding legal aid offices, or clinics hosted by NGO advocacy organizations dedicated to specific groups such as domestic violence shelters, women empowerment organizations, community centers, charities, ethnic support organizations, and child welfare institutions. They deliver legal advice and intervention by on-site volunteer lawyers and by referral to the local bar. The law schools, on the other hand, guide the education and training of lawyers in the special needs and issues of

## ON POINT

USAID Access to Justice Program targets 1.3 million internally displaced persons, 1 million widows, 1 to 3 million female heads of household, 4.5 to 5 million orphans, and 1 to 3 million persons with disabilities (many of whom were disabled as a result of war).

Iraq's vulnerable groups as well as providing direct assistance through law school community legal clinics. Law school legal clinics operate with the dual purpose of providing both legal services to the community, and practical training of law students.

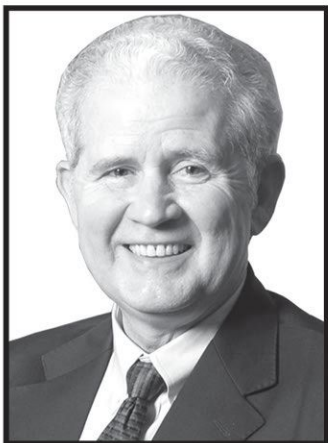
Although the nature of USAID assistance to these organizations is almost entirely financial in the form of cash grants, technical advisory assistance is substantial. This involves expert technical advice on operating legal clinics, structuring outreach programs, assisting bar associations in networking with the clientele community, and improving the quality of legal representation through lawyer training programs such as the Jessup International Moot Court Competition. Taken as a whole, the fusing of a single cooperative relationship among the bar, law schools, and legal aid organizations is not unlike that which has operated with success in Orange County.

### Bringing Lessons Home

It would be an understatement to say that access to justice in Iraq is a much greater



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challenge than it is in Orange County. Nevertheless, some principles are common to both environments. Orange County's analogous "vulnerable population" may not be comprised of the casualties of war, but they face some of the same every day survival issues as do post-war Iraqis.

The target groups of Orange County's *pro bono* legal aid include the homeless and nearly homeless families, mentally ill, displaced and undocumented immigrants, victims of domestic violence, children and the NGOs that support them. While these groups may be living below the poverty line, access-to-justice issues in Orange County have reached across that line to persons of moderate means who, although not entirely impoverished, are denied justice because they cannot afford the high cost of a privately engaged lawyer. The immense wealth in Orange County has brought with it an immensely expensive market for legal services that, for example, has caused over seventy percent of all family law litigants to choose self-representation. The surge in *pro per* litigants who find themselves battling for financial survival in both state and federal court, bankruptcy court, and on appeal present a real access-to-justice problem that is actively addressed by our own

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local tripartite partnership of the bar, non-governmental legal services organizations, and law schools.

Our two major freestanding legal aid organizations are the Public Law Center (PLC) and the Legal Aid Society of Orange County (LASOC). They serve many types of clients through their offices, and also operate referral services to volunteer members of the bar. Both provide legal advice clinics on various topics such as bankruptcy, immigration, and family law. PLC also provides court-annexed *pro bono* services to litigants in the federal and bankruptcy courts regardless of a client's financial means. Both of these organizations work in collaboration with the Orange County Bar Association (OCBA). PLC also operates the Community Organization Legal Assistance Project which provides legal support to community-based NGOs that serve low-income or underrepresented clients.

In addition to these formal legal aid organizations, the OCBA itself operates the Lawyer Referral and Information Service (LRIS) which, for a nominal fee, provides clients a free consultation from a panel of vetted specialized attorneys. Although these referrals might conclude in the retention of services for a fee, the vast majority of cases

do not, and initial legal advice is made *pro bono*. The LRIS administers a modest means program that matches low-income clients with seasoned attorneys who are willing to provide services well below market rate.

The four ABA-accredited law schools in Orange County likewise contribute to alleviate the local access-to-justice problem both independently and in cooperation with PLC and LASOC. Chapman University School of Law, UC Irvine School of Law, Western State College of Law, and Whittier Law School maintain on-campus legal clinics wherein both the community clientele and law students benefit from the delivery of legal services in many areas of law, including elder law, entertainment law, consumer law, domestic violence, tax law, children's advocacy, environmental law, international human rights, and immigration. Some law students also participate in *pro bono* programs throughout Orange County in cooperation with the courts or legal services organizations.

## Conclusion

It may be illusory to conclude that there is a single universal template for providing access to justice throughout the world. The

model used in Iraq is, after all, imported from our own system. Best international practices, however, from my own experience in Iraq and other countries throughout the Middle East and Africa, seem to validate the tripartite cooperative among bar associations, non-profit legal services organizations, and law schools as a formula for success. It is certainly in operation in Orange County, whether by design or spontaneous development. As is always the case, the model relies most heavily on the commitment of the front-line providers of legal services, the attorneys themselves. As long as members of the Orange County bar continue to avail themselves of the vast array of *pro bono* opportunities available to them, broad public support for the rule of law will likely prevail longterm notwithstanding the dire social and economic adversities that we face here at home in Orange County.



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