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January 2005

D. Peter

Following our discussion at the Ministerial meeting on Iraq on 9 December, I thought you might be interested in an update on DFID's support to the Iraqi justice sector.

DFID's bilateral assistance has focused on a project implemented by the International Legal Assistance Consortium. To date, 93 judges have been trained at CEELI (Central Eastern and European Law Initiative) on the independence of the judiciary and 263 judges, prosecutors and lawyers have been trained by the International Bar Association in International Human Rights Law. From these practitioners, 13 participants have been trained as trainers. Cascade training is reported to have been conducted for between 100 and 200 lawyers in Iraq.

The Southern Iraq Prison Programme, funded by the Global Conflict Prevention Pool (GCPP) and led by the FCO, is also progressing well. The project aims to encourage adherence to international standards for the minimum treatment of prisoners and to establish an Iraqi monitoring capacity. A Criminal Justice Conference, bringing together the judiciary and police, took place in Basra this month. Separate police mentoring and training programmes in both southern Iraq and in Baghdad are providing more specific training in investigative and forensic techniques.

A new programme to build management capacity in the Ministry of Interior, led by DFID under the GCPP, has completed its initial phase and further work will be taken forward in 2005. This project is responding to the need to underpin the strengthening of the Iraqi Police Service with sound administration and policy capacity for effective civilian oversight. Activities will include problem-solving workshops and developing an in-house change management team.

All of this has been carried out against the backdrop of the very difficult security environment in Iraq. Decisions on any meetings or activities involving UK staff outside the International Zone in Baghdad are taken on a case-by-case basis. Following the tragic death in a car bomb of two members of the UK team in May last year, the Embassy has taken care not to establish patterns to movements, further limiting visits to any one location. Some locations are assessed as more dangerous

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than others. I understand that the Iraqi Minister of Justice and Chief Justice are particularly concerned about the location of the Judicial Training Institute. Security concerns have inevitably delayed some of ILAC's work, including a study tour for the leadership of the Iraqi Bar Association, which was postponed when Baghdad Airport was closed at short notice.

ILAC has been able to continue its programme of work by holding training events outside Iraq. We had also planned to deploy an ILAC adviser to Baghdad to facilitate this work and to further develop links with the Iraqi authorities. However, following a request from the British Embassy to limit the number of DFID advisers in anticipation of the down-turn in security during Ramadan and after operations in Fallujah, we were unable to proceed with several planned deployments, including the justice sector adviser. With the continuing security constraints we do not expect to be able to increase our staffing until after the January elections.

Looking ahead, DFID will continue to support justice sector projects funded by the Global Conflict Prevention Pool. The funding for ILAC's Justice Sector Support will continue for a second year as planned. DFID will review the programme later this month, security permitting. We plan to press forward with the development of the curriculum of the Judicial Training Institute and the study tour for the Iraqi Bar Association. We hope to carry out some of the training programme inside Iraq. We are also encouraging a better co-ordinated international approach, led by the Iraqis. Our initial aim is agreement on a joint framework for support, to ensure that the key constraints to the justice sector are addressed, both in southern Iraq and nationally.

A summary of our analysis of the sector and of wider donor support is in the attached note. I understand that Jack will be writing to you separately about the Iraqi Special Tribunal, on which FCO leads.

I am copying this to Jack Straw, Geoff Hoon and to Ann Clwyd.

A handwritten signature in black ink, appearing to be 'Hilary Benn', written in a cursive style.

HILARY BENN

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IRAQ: Update on donor support to the Justice Sector

Key points

- We now have a better understanding of the key problems and constraints affecting access to justice in Iraq.
- DFID and Global Conflict Prevention Pool (GCPP) programmes continue to move forward. There has been good progress on the DFID-funded Justice Sector Support programme, implemented by the International Legal Assistance Consortium (ILAC). There are a number of challenging issues to consider during the review of the programme in January 2005.
- The best impact on the justice sector will be obtained through a co-ordinated international approach led by the Iraqis. DFID has encouraged a first donor-co-ordination meeting, which is taking place on 18 January.

Background

Problems and constraints in the Iraqi Justice Sector

1. There is currently low public confidence in the formal justice system. People are reluctant to resort to it or give evidence if requested. It isn't fully trusted to deliver or be fair. Access to justice is highly variable, as capacity, practice and procedures vary between provinces and, often, individual practitioners. The traditional justice system plays a significant role, but donors have little information and experience of this.
2. It is difficult to assess the impact of weak judicial administration on the current level of insecurity. However, weaknesses in applying the rule of law and the reported inability of the police and courts to arrest, prosecute and sentence will provide a sense of immunity rather than deterrence. Lack of confidence in the civil and commercial justice systems will contribute to a difficult environment for private sector investment.

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3. There is weak integration and coordination between the police, courts and prisons. The police are distrustful of judges and vice versa. This can often distort the way that procedures are implemented and impact on human rights. For example, access to a lawyer whilst in prison can be difficult.
4. Some court procedures require review. Cases are processed in a timely fashion but the quality of the proceedings is a concern. The lack of continuity and scrutiny has implications for due process and human rights enforcement. Court administration is now the responsibility of the Judicial Council, which lacks the structures and capacity to manage procedural improvements.
5. Sentencing can be irregular. Legal reform, clear sentencing guidance and attention to training and professional standards are necessary. There is weak evidence preparation and investigation. Prosecutors and lawyers rarely directly examine the case. The Chief Justice is keen to address the need for improved investigative procedures but it will be difficult to do so without the engagement of the Ministry of Interior. Public lawyers are very poorly qualified, and more marginalized than prosecutors in court proceedings. There is scope to clarify roles between prosecutors and lawyers.
6. The impact of these constraints on citizens' access to justice is not fully understood. Addressing any of these issues in a sustainable way requires improving the skills and capabilities of practitioners, but also strengthening administrative, management and policy capacity within and across institutions: the Judicial Council and Ministries of Justice, Interior, and Human Rights. Little international effort has so far been focused on their capacity building. DFID's GCPP project with the Ministry of Interior will contribute.
7. A recent independent assessment of the justice system in southern Iraq provided a detailed portrait of the practice of law and a range of detailed

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recommendations. DFID will consider these when reviewing the ILAC programme in January 2005.

ILAC programme review

8. A number of issues will be considered during the review of the ILAC programme, including the fit between programme objectives, problems and constraints in the sector, recommendations identified in the southern Iraq justice assessment and other donor activities; whether resources should be reallocated within the project; and the implications of the political process and security environment for the programme during 2005. We will consider the feasibility of training being carried out in Iraq during 2005; changes to the curriculum and moving forward support to the Judicial Training Institute and Iraqi Bar Association. Following agreement on objectives for the second year of operation, the effectiveness of ILAC project management arrangements, including whether an in-country presence is required, will be reviewed.

Other Donors

9. Some donors are already engaged in seeking to address the problems and constraints outlined above:
 - The EU has proposed an Integrated Police and Rule of Law Operation for Iraq. This will work with the key institutions in support of a coordinated approach as well as providing specific police training.
 - The UN has supported legal archiving in preparation for legal reform.
 - The US (USAID, US State, US Department of Justice, the US Army and Office of Transition Initiatives) is supporting various training, capacity building and building reconstruction activities for the Iraqi Bar Association, Council of Judges and Judicial Training Institute.

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- The Danish Ministry of Foreign Affairs is supporting 'rule of law' activities in the south.
- The Swedish Ministry of Foreign Affairs is supporting out of country training for judges, lawyers and prosecutors in international humanitarian law.

10. However, some major issues continue to receive little attention. The strengthening of management capacity in the Judicial Council and Ministry of Justice has only recently begun to be addressed. The lessons learnt and experience gained in the south and elsewhere in Iraq will be able to inform change at the national level.

11. Donor activity would benefit from a more coordinated and strategic approach, under the guidance of the Iraqi Minister of Justice and Chief Justice. DFID has encouraged a first donor coordination meeting in early 2005, which has now been agreed.

Summary of donor support for the Iraqi Justice Sector

Donor and implementing partner	Status, description and Iraqi counterpart
DFID (International Legal Assistance Consortium)	Underway: Training for judges on judicial independence, training for judges, lawyers and prosecutors on international human rights law, improved curriculum of the judicial training institute, strengthening of professional standards in the Iraqi Bar Association (Council of Judges, Iraqi Bar Association, Minister of Justice)
IRFFI "Trust Fund" (UNDP)	Underway: Legal archiving (Ministry of Justice) Proposed: Increased access to legal assistance (Iraqi Bar Association and Council of Judges)
EU	Proposed: Integrated police and rule of law operation: training and advisory activities (Council of Judges, Ministry of Justice, Iraqi Bar Association, Ministry of Interior)
Swedish Ministry for Foreign Affairs (ILAC)	Underway: Training for judges, lawyers and prosecutors in international humanitarian law
Danish Ministry for Foreign Affairs	Underway: Provision of police adviser in Basra Planned: Further support to police and prison work in

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	Basra and possible engagement in Baghdad.
UK GCPP (DFID lead, implementer to be identified)	Planned: Building management and policy capacity in the Ministry of Interior.
UK GCPP (FCO lead, HMG secondments)	Underway: Building capacity for due process and monitoring in southern Iraqi prisons.
UK GCPP (FCO lead, Armorgroup and HMG secondments) and broad range of international partners	Underway: Police training and mentoring in CPATT (Baghdad), the rest of Iraq south and Amman.
USAID (Bearing Point)	Underway: Local Governance Programme (advice and capacity building of Iraqi Bar Association in Southern Iraq) Proposed: Commercial law reform
USAID (Office of Transitional Initiatives and Department of Judge Advocate's General)	Underway: Rehabilitation Iraqi Bar Association HQ in Baghdad (computers, computer training and other equipment). Underway: Rehabilitation of lawyers facilities in court houses (Iraqi Bar Association and Council of Judges) Underway: Skills retraining - weekly training sessions for Iraqi Bar Association lawyers.
US Army (First Cavalry)	Underway: Minor Rehabilitation of Iraqi Bar Association buildings.
USAID (Office of Transitional Initiatives and De Paul University College of Law, USA)	Underway: Legal education reform of Iraqi Bar Association and Iraqi University Law Schools and establishment of Human Rights Institute at Baghdad University
USAID (American Bar Association)	Early implementation (recruiting staff): Capacity building of civil society groups for constitutional drafting
US State (American Bar Association)	Early implementation (recruiting staff): Capacity building and mentoring for strengthening judicial integrity (Council of Judges and Judicial Training Institute)
USAID (US Department of Justice)	Underway: "Defence attorney" and human rights training (Iraqi Bar Association and Young Lawyers Committee)
US Department of Justice (US lawyer and army attorney)	Underway: Drafting Legal Aid Rules, training for young lawyers (Iraqi Bar Association and Council of Judges)
US State and Department of Justice (Federal Marshals)	Underway: Ad hoc training of court security personnel and reconstruction of court buildings

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