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### Iraqi Voices

#### *Report Provides Insight on Iraqi Attitudes and Recommendations for Justice and Social Reconstruction*

**NEW YORK, May 19, 2004**—The U.S.-led Coalition Provisional Authority (CPA) should suspend a number of its justice and social reconstruction programs in Iraq, pending review and further consultation with a broader section of Iraqi society, urges a report issued today by the International Center for Transitional Justice (ICTJ) and the Human Rights Center (HRC) at the University of California, Berkeley.

The 74-page report, entitled “Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction,” is based on a survey undertaken in mid-2003 that consulted a broad cross-section of the Iraqi population. Providing a portrait of the nuanced and often sophisticated perspectives of ordinary Iraqis as well as concrete recommendations for moving forward, the report offers a sound basis for both Iraqi and international policymakers as they grapple with the country’s past and seek to establish a society where the rule of law and human rights are respected. (See Executive Summary below for a full listing of findings and recommendations.)

“Past justice and social reconstruction processes have been flawed and mistakes have been made based on unjustified assumptions about Iraqi needs and demands, and poor advice from a very limited number of people,” said Hanny Megally, director of the Middle East and North Africa Program at the ICTJ. “The upcoming June 30 handover provides an opportunity to change this dynamic. Steps should be taken to educate Iraqis about the range of options and processes should be initiated to ensure wider consultation among Iraqis before policies are formulated and programs implemented.”

The report reveals much about Iraqi sentiments on several key issues: past human rights abuses, justice and accountability, truth-seeking, de-Ba’athification, reparations, and social reconstruction and reconciliation. Perhaps most important, the findings show that Iraqis, as the victims of Saddam Hussein’s regime, are eager to be consulted and have strong views about what should happen in their country, particularly on issues related to justice, human rights, and social reconstruction.

On the issue of de-Ba’athification, while there was consensus that those responsible for human rights abuses should be held accountable, respondents felt that it was unfair to penalize individuals solely on the basis of party membership and drew clear distinctions between supporters of Saddam Hussein and Ba’ath party members. In its recommendations, the report calls for a suspension of the de-Ba’athification program until a new vetting process with fair and clear criteria is established after the handover in late June.

Many respondents expressed widespread suspicion of the outside world, including the U.S., the United Nations, and Arab states, for leaving Iraqis to their fate and supporting the former regime. However, despite generally negative attitudes toward international involvement in Iraq, many recognized that the Iraqi judicial system might not be capable of mounting fair and independent trials and that outside expertise and support, provided in a noncontrolling manner, was needed to achieve justice and establish respect for the rule of law. The report criticizes the tight U.S. control of every stage of the justice process and urges greater involvement of independent international experts.

Respondents showed a strong desire for the rest of the world to know the full truth of what happened in Iraq and recognized that such a process would have to go beyond prosecutions and involve some form of truth-seeking. This highlights the need for carefully planned and organized education programs to raise Iraqis' awareness of the broad range of transitional justice options and the past experiences of other countries, and assist them in making informed decisions about their future.

“Even though they form the basis of social reconstruction, the areas of legal justice, truth-seeking, the rule of law, and security should not be the sole focus of intervention,” said Dr. Harvey Weinstein, associate director of the Human Rights Center and clinical professor at the School of Public Health, at the University of California, Berkeley. “Social reconstruction requires attention to issues of distributive justice, including economic, cultural, and social rights, as well as human rights education, school reform, freedom of the press, and freedom of movement. All Iraqis from all ethnic and religious groups must be engaged in this essential process of building trust and unity.”

The report concludes that the transition to a society based on the rule of law must be approached with a holistic transitional justice strategy that incorporates prosecutions, investigations and exhumations, vetting, institutional reform, and social reconstruction and reconciliation.

### **About the ICTJ**

The ICTJ assists countries pursuing accountability for mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. It provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments, and others. The ICTJ assists in the development of strategies for transitional justice comprising five key elements: prosecuting perpetrators, documenting violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and advancing reconciliation. The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so.

The president of the ICTJ is Alex Boraine, the former deputy chairperson of the Truth and Reconciliation Commission in South Africa and currently an adjunct professor at the New York University School of Law. Hanny Megally is the Middle East and North Africa Program Director at the ICTJ. He has more than 26 years of experience in the field of human rights in that region, having headed the Middle East departments at Amnesty International, the Ford Foundation, and most recently, Human Rights Watch.

### **About the Human Rights Center**

Founded in 1994 with the assistance of the Sandler Family Supporting Foundation, UC Berkeley's Human Rights Center is a unique interdisciplinary research and teaching enterprise that reaches across academic disciplines to conduct research in emerging issues in international human rights and humanitarian law. While basing its programs in the legal framework that defines the field, the Center has deliberately chosen not to situate its work within a law school but within the larger University, where it draws upon the creativity and expertise of scholars in such diverse programs and departments as anthropology, demography, education, ethnic studies, geography, journalism, law, political science, and public health.

Eric Stover is Director of the Human Rights Center and Adjunct Professor of Public Health at the University of California at Berkeley. In the early 1990s, he co-conducted the first research on the social and medical consequences of land mines in Cambodia and other post-war countries. Since then, he has worked on war crimes issues in the former Yugoslavia, Rwanda, and Iraq. Dr. Harvey M. Weinstein is Associate Director of the Human Rights Center and Clinical Professor at the School of Public Health, at UC Berkeley. He has been involved in accountability and social reconstruction projects in Rwanda and the former Yugoslavia and is currently an investigator on a project focused on harnessing education as a vehicle for reconciliation in Rwanda.

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# IRAQI VOICES

## Attitudes Toward Transitional Justice and Social Reconstruction

May 2004

### EXECUTIVE SUMMARY

In a society ravaged by a legacy of brutal authoritarian rule, political violence, and massive human rights abuses, and currently under foreign occupation, the challenges to rebuilding a society and effectively addressing the past are manifold. Every country's transitional justice experience is unique and shaped by its history, as well as its current political, legal, social, and economic circumstances. Accordingly, understanding local populations' needs, attitudes, and perceptions of transitional justice and social reconstruction is integral to the development of legitimate processes that help ensure stability, peace, and justice.

This report is based on data obtained from extensive interviews and focus group discussions conducted in July and August 2003 with representatives from a broad cross-section of the Iraqi population, collected by a team of researchers from the International Center for Transitional Justice (ICTJ) and the Human Rights Center (HRC) at the University of California, Berkeley.

Taking place months after the fall of Baghdad but before the capture of Saddam Hussein and the establishment of the Iraq Special Tribunal, this survey provided many participants with the first opportunity to offer their opinions on these critical issues. Those working to develop justice, truth, and peace-building structures should take into account Iraqi needs and desires, profiled in this comprehensive, yet nuanced, portrait of Iraqi perspectives on the issues critical to their country's peaceable development.

The report's conclusions and recommendations are divided into seven main areas: past human rights abuses, justice and accountability, truth-seeking and remembrance, amnesty, vetting, reparations, and social reconstruction and reconciliation. These mechanisms, taken together, comprise a comprehensive and coordinated approach to social repair and transitional justice that underscores the importance of exploring the individually valuable role each plays in a particular context. Implementing piecemeal processes in transitional societies runs the enormous risk of failing to adequately address the past, arrive at the truth, achieve justice, and rebuild trust.

This study reveals a shared national experience of widespread exposure to **human rights abuses**, but also shows that Iraqis were mostly aware of the violations perpetrated by the regime's intelligence, security, and military forces against victims from different ethnic, religious, and political groupings. Most participants portrayed "human rights" as the reverse of their personal experience of suffering and as a set of preconditions for a life with dignity and respect. In light of these findings, the ICTJ and the HRC urge that institutions and procedures be implemented to prevent such abuses from recurring, including: reforming the police, security, and intelligence services and providing personnel international human rights training; ensuring that all military and policing policies are consistent with international human rights standards; and ensuring that all legislation complies with international human rights standards, including universal equality and nondiscrimination. The state of Iraq should also ratify the United Nations Convention Against Torture and adopt legislation to implement the International Covenant on Civil and Political Rights. Further, public education on the meaning of human rights as a legal framework for human dignity and justice must be an important component of societal reconstruction measures.

Respondents viewed the concept of **justice** as the inverse of the previous regime and a just society as everything that the old system was not. Many strongly supported holding accountable those responsible for human rights violations through fair and public trials that ensure that punishments fit the crimes. Most identified Saddam Hussein, his family, and his closest supporters as those who should be held accountable, and they stressed the need to differentiate between Ba'ath party leadership and mere party members. Comments indicated distrust of

the United States because of the historical support provided to Saddam Hussein and the disorder, lack of security, and looting that followed the end of his regime.

Generally, attitudes toward international participation—including that of the United States, other Arab states, and the United Nations—in the trials of members of the former regime were driven by a variety of conflicting feelings: mistrust of international politics; anger and resentment toward the international community; disappointment, distrust, and wounded pride toward the U.S. for its previous support of Saddam Hussein and as an Occupying Power; a desire for fair trials, but swift and vengeful justice; a strong demand for an Iraqi-controlled accountability process, but a lack of belief in the fairness of the Iraqi judicial system; and mixed feelings about judges and lawyers from the old regime, recognizing the need for international expertise and assistance. An additional source of anger and mistrust toward the international community emerges from the impact of years of sanctions and the Oil for Food Program. The opinions expressed made it clear that belief in the legitimacy of a trial process will have to be built gradually.

Although the Iraqis conveyed a strong desire to bring to justice those responsible for past human rights abuses, it is critical that the process is, and is perceived to be, fair and legitimate. To ensure legitimacy and fairness, the U.S. role must be reduced, while assistance and expertise should be extended to include independent actors via an independent mechanism that channels support and expertise to Iraqis. Standards and conditions that would enable the creation of an accountability process must be set, including: Saddam Hussein and the responsible leadership should be charged with the most serious crimes under international law (genocide, crimes against humanity, or war crimes); the trials should be independent, impartial, public, and fair; a witness protection program should be developed; and, in concert with appropriate Iraqi representatives, international technical assistance in the area of judicial input and/or advice should be offered. Given the public's overwhelming desire for the death penalty, international advisers will need to work closely with the appropriate Iraqi authorities about the international trend toward the abolition of the death penalty.

The survey indicated broad support for an official **truth-seeking** and historical memory-preservation process, largely springing from desires to reveal to the rest of the world the truth about what happened in Iraq; prevent a repetition of the past; process personal experiences through a larger national narrative; and obtain information from perpetrators on those missing. Although some respondents suggested various ways in which a truth-seeking process should be started, several questioned the wisdom of opening and directing their energies to examining old wounds, while most felt that such a process should not be perceived as a substitute for holding those responsible for the crimes legally accountable.

Given the possibility that only a small amount of the total number of perpetrators can be prosecuted before the Special Tribunal and domestic courts, a truth commission could help provide a comprehensive account of past human rights abuses; provide victims with a forum that acknowledges their suffering; make recommendations about preventive measures; explore the possibility of providing reparations; and promote the rebuilding of trust and understanding without sacrificing accountability. The decision as to whether to establish this particular truth-seeking mechanism should be made by Iraqis, including victims, their families, nongovernmental organizations, and other civil society actors. Once that decision is made, the process of creating a truth commission should be based on education, consultation, and coordination, and must be independent of political considerations.

Interviewees' responses indicated that they do not consider **amnesty** an option for those found to be guilty of serious crimes, while they tended to agree that amnesty was possible for perpetrators of lesser crimes. Indeed, in keeping with international legal standards, no Iraqi suspected of committing acts of genocide, war crimes, or crimes against humanity should be offered any form of amnesty.

While most respondents blamed the Ba'ath party for various crimes and felt that those responsible should be dismissed, they also felt it was unfair to penalize individuals solely on the basis of their party membership and tried to distinguish between mere members and supporters of Saddam. Some expressed concern that large-scale deba'athification might deplete Iraq of crucial human resources. **Vetting** is an incomplete solution to human

rights abuses and should be accompanied by broader, more systemic reforms, such as in processes of selection and training. The initial de'athification process administered by the U.S. and the Iraqi Interim Governing Council offered too few distinctions and safeguards to comply fully with international standards and should be stopped until a thorough review is undertaken. In its stead, a new, independent, and transparent vetting process that adheres to strict procedures and standards of evidence should be established. The implications for raising the specter of new dissident movements and violence must be considered if any form of vetting is to be contemplated. Thus, this particular approach must be weighed against other justice options in a comprehensive package.

While recognizing that their suffering and losses were incalculable and, therefore, unable to be truly compensated, interviewees expressed widespread support for both material and symbolic compensation—to be provided for by an “oil-rich” Iraqi state—and rehabilitation as ways of rebuilding lives, restoring dignity, and moving beyond the legacy of the old regime. Given the scale of human rights violations, several steps should be taken to begin the **reparations** process in Iraq. A commission comprising Iraqis and international experts as advisers should be formed to create a reparations program via a transparent and consultative process. That commission should investigate the various forms of material and symbolic reparations and examine individualized and collective distribution of either form. A reparations program should be designed in coordination with other transitional justice mechanisms, including accountability, truth-seeking, vetting, and institutional reform. Furthermore, the international community has an obligation to provide resources for the reconstruction of Iraq, which can be used to fund the reparations program.

The respondents understood **reconciliation** as meaning “unity,” although there was disagreement on whether unity already existed among Iraqis, with some believing that it did and that reconciliation was therefore unnecessary, and others feeling that the current divisions between groups was the construct of the previous regime. Nonetheless, many responses indicated that some process is desirable for national reconciliation through education, media, and community programs. Securing basic needs, maintaining security and stability, and improving economic conditions were the three most pressing issues in **social reconstruction** for all groups. Overall, hope for the future and eagerness to control their own destiny was balanced by caution over short-term challenges and concern about the occupation and lack of a long-term plan for Iraq.

In order for social reconstruction to be achieved, it is essential that attention be directed to the economic, cultural, and social rights of Iraq’s varied ethnic and religious groups through a concerted effort of collecting ongoing population-based data that genuinely reflects their needs and expectations. A focus on educating the population about human rights must occur at multiple levels—not only for adults, but within the school system itself, along with comprehensive education reform that addresses teaching history and literature, stereotyping, and tolerance. Piecemeal approaches to school reform are doomed to fail if the goal is preparing Iraqi youth for an active role in a democratic society. Education reform must be undertaken in concert with Iraqi educators, historians, writers, and artists.

Access to accurate and unbiased information is critical and requires respect for a free press. An active educational program for print and broadcast journalists must be undertaken in conjunction with the media community, world media, and, especially, the Arab media.

Cross-ethnic and religious group engagement is essential for building trust and a commitment to a unified Iraq. If one group is uncritically singled out at the expense of others, inevitable dissension will lead to further bloodshed and a terminally weak state. Our data suggest that elements of unity do exist and must be actively supported. Freedom of movement will be an important dimension of the process.

Local community efforts to build trust and unity should be supported. No assumptions should be made about what contributes to “reconciliation.” These will vary from community to community and will proceed at different rates.

Finally, legal justice (including exhumation of mass graves), security, and rule of law are the underpinnings of social reconstruction but should not be thought of as the sole focus of intervention. A comprehensive plan for social reconstruction should be developed that incorporates input from all segments of society and promotes Iraqi ownership of the process. This design and implementation should be based within the Iraqi government as it evolves, not within the international community or international NGOs. These organizations can serve as technical advisers or implementing partners.

Although respondents did not characterize transitional justice mechanisms as critical aspects of one comprehensive and coordinated strategy, they did express support, to varying degrees, of each approach. As Iraqis look to secure a peaceful and just future, it will be vital that they, with the help of independent experts, think of the transition to a society based on the rule of law as a necessarily holistic process, and engage in serious consultation, planning, and coordination from the earliest stages.