



Iraq: Tribal Courts

August 2008

LL File No. 2008-001391

LRA-D-PUB-001170

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IRAQ

TRIBAL COURTS

Executive Summary

Tribal courts continue to play a central role in resolving criminal and civil matters among Iraqi tribesmen. Elderly tribal leaders act as judges in the tribal courts, imposing fines in civil matters and arbitrating monetary settlements with the victim's family in homicide cases. The courts adhere to the regulations and judgments of Islamic Sharia'a as well as customary tribal law, and follow a uniquely Islamic form of conflict resolution.

I. Historical Context

Because three-quarters of Iraq's population belongs to tribal confederations,¹ tribal tribunals play a vital role in resolving all types of criminal and civil matters raised among tribesmen.² Throughout Iraq's history, especially over the past 300 years, tribal leaders, known in Arabic as *Sheikhs*, have acted as the ultimate judges in Sunni, Kurdish, and Shi'i Iraqi tribes.³ They believe that an ordinary legal system is inadequate to achieve justice within the tribal community.⁴ The Iraqi central government may have officially abolished tribal law in 1958 but, fifty years later, Iraq's tribal legal system remains alive.⁵ Tribal courts assumed a greater role during the 1990s under Saddam Hussein's regime.⁶ They also survived the social and political changes that occurred after the U.S. invasion and the fall of the regime in 2003.⁷

¹ Andrew F. Krepinevich, *How to Win in Iraq*, FOREIGN AFFAIRS, Sept.–Oct. 2005, at 7, available at <http://www.foreignaffairs.org/20050901faessay84508/andrew-f-krepinevich-jr/how-to-win-in-iraq.html> (last visited Aug. 4, 2008).

² Dumeetha Luthra, *Tribal Justice Takes Hold in Iraq*, BBC NEWS CHANNEL, Feb. 2, 2004, http://news.bbc.co.uk/1/hi/world/middle_east/3449869.stm (last visited Aug. 4, 2008).

³ Michael Eisenstadt, *Tribal Engagement Lessons Learned*, MIL. REV., Sept.–Oct. 2007, at 20, available at <http://usacac.army.mil/CAC/milreview/English/SepOct07/eisenstadtengseptoct07.pdf> (last visited Aug. 4, 2008).

⁴ Quincy Wright, *The Government of Iraq*, 20 AM. POL. SCI. REV. 764 (Nov. 1926).

⁵ Ibrahim Al-Wahab, *Tribal Customary Law and Modern Law in Iraq*, 89 INT'L LAB. REV. 21 (1964).

⁶ Faleh A. Jabar, *Shayks and Ideologues: Detribalization and Retribalization in Iraq, 1968-1998*, MIDDLE EAST REP. 215, Summer 2000, at 31.

⁷ Susan Sachs, *The Sheik Takes Over: In Iraq's Next Act, Tribes May Play the Lead Role*, N.Y. TIMES, June 6, 2004, available at

II. Court Structure and Legal System

Tribal courts, the place where the tribal trials occur, differ in structure from that of a regular court. Tribal trials take place in a large tent, called the *al-Diwaniyya* (House of Court)⁸ where the tribal judges sit in the front row, facing both the plaintiff and the defendant. The body of the court consists of elderly tribal leaders who act as judges.⁹

Tribal courts do not follow the civil legal system. They are subject to tribal customs and traditions.¹⁰ Court decisions are final and derived by consensus.¹¹ There are no means of appeal after the tribunal renders its judgment.¹² In addition to civil disputes, tribal courts adjudicate all kinds of criminal matters.¹³ Tribal judges believe that if they punish offenders with a large fine, these offenders will not commit any crimes in the future.¹⁴ When judges arbitrate homicide cases, for example, they mediate between the murderer and the victim's family to reach a monetary settlement. This settlement is known in Arabic as *Dyiah Al-Dam* (blood money). According to the concept of blood money, the offender may pay financial compensation to the victim's family to receive their forgiveness.¹⁵

III. The Court's Relationship with Islamic Law

There is a close relationship between tribal law and Islamic *Sharia'a* (Law). Tribal judges adhere to the regulations and judgments of Islamic *Sharia'a* when judging many disputes.¹⁶ For instance, both the tribal and Islamic legal systems punish adultery and fornication by death.¹⁷ Moreover, tribal judges follow the Islamic form of conflict

<http://query.nytimes.com/gst/fullpage.html?res=9D05E4DC1E31F935A35755C0A9629C8B63&sec=&spo n=&&scp=8&sq=the%20sheiks%20take%20over&st=cse> (last visited Aug. 4, 2008).

⁸ Jaber Al-Jaberi, *Tribal System Promises Much for a New Iraq*, MIDDLE EAST ROUNDTABLE, Feb. 7, 2008, <http://www.bitterlemons-international.org/inside.php?id=879> (last visited Aug. 4, 2008).

⁹ *Supra* note 2.

¹⁰ Frank H. Stewart, *Tribal Law in the Arab World: A Review of the Literature*, 9 INT'L J. OF MIDDLE EAST STUD. 481 (Nov. 1987).

¹¹ *Supra* note 3.

¹² U.N.H.C.R., COUNTRY OF ORIGIN INFORMATION–IRAQ 17 (Aug. 12, 2004), available at <http://www.unhcr.org/refworld/docid/411c8cdc4.html> (last visited Aug. 4, 2008).

¹³ *Id.*

¹⁴ *Supra* note 2.

¹⁵ *Supra* note 4; see also *supra* note 3, at 19.

¹⁶ Samira Haj, *The Problem of Tribalism: The Case of Nineteenth-Century Iraqi History*, 16 SOC. HIST. 48 (Jan. 1991).

¹⁷ AMATZIA BARAM, THE IRAQI TRIBES AND THE POST-SADDAM SYSTEM 4 (Saban Ctr. for Middle East Policy, Brookings Inst., July 3, 2003), available at http://www.brookings.edu/papers/2003/0708iraq_baram.aspx (last visited Aug. 4, 2008). See also QURAN, *Sura An-Nur* 24:29, "Strike the adulteress and the adulterer one hundred times. Do not let compassion for them keep you from carrying out God's law—if

resolution, which according to Islamic law, is composed of two stages: (1) *Sulh* (peacemaking), and (2) *Musalaha* (reconciliation).¹⁸ The process of *Sulh* and *Musalaha* is an alternative dispute resolution technique that has been used among tribes for centuries. *Sulh* involves a negotiation of redress between the affected parties. Tribal judges or elderly tribal leaders usually supervise this negotiation process. When the parties reach an agreement, tribal leaders publicly declare *al-Musalaha*. Based on *al-Musalaha*, both parties are legally bound by that peace agreement under tribal law.¹⁹

IV. Concluding Remarks

Tribal courts operate completely outside of the system of civil law otherwise adhered to in modern Iraq, and remain central to the resolution of tribal disputes. The elderly tribal leaders who act as judges in such courts play the role of adjudicator, arbitrator, and mediator, guided by Islamic *Sharia'a* and customary tribal law.

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August 2008

you believe in God and the Last Day—and ensure that a group of believers witnesses the punishment,” and *Sunnah* (comprised of the prophet’s actions and saying), Vol. 2, Bk. 23, No. 413, in which ‘Abdullah bin Umar said: “Jews brought to the Prophet a man and a woman from amongst them who have committed (adultery) illegal sexual intercourse. He ordered both of them to be stoned (to death), near the place of offering the funeral prayers beside the mosque.”

¹⁸ WALID PHARES, *FUTURE JIHAD: TERRORIST STRATEGIES AGAINST AMERICA* 34 (Palgrave Macmillan 2005).

¹⁹ *Supra* note 8; see also Kathleen Meilahn, *Cultural Understanding Within Context as a Tool for Countering Irregular Threats and a Force of Peace*, VI (No. 2) STRATEGIC INSIGHTS 8 (Mar. 2007), available at <http://www.ccc.nps.navy.mil/si/2007/Mar/meilahnMar07.pdf> (last visited Aug. 4, 2008).