

THE HASHEMI VERDICT AND THE HEALTH OF DEMOCRACY IN IRAQ

On Sunday, Iraq's Vice President Tariq al-Hashemi was sentenced to death by hanging after he and his son-in-law were convicted of organizing the murders of a security official and a lawyer. All told, Hashemi is subject to more than 150 charges of terrorism based upon allegations that he used death squads to target his political opponents. The verdict carries distressing implications for short-term domestic security in Iraq and for diplomatic relations with neighboring Turkey, where Hashemi currently resides and has been based since his trial began. While some observers view the case against Hashemi in purely sectarian terms, the targeting of a Sunni politician in a Shi'a-led state, the sentence in fact highlights the pernicious nature of personal rivalries within Iraqi politics. Further, it demonstrates the politicization of the Iraqi judicial system under Prime Minister Nouri al-Maliki, who has commandeered Iraq's legal institutions in order to consolidate power around his inner circle.

Hashemi is a leading member of the Iraqiyya coalition of secular and liberal politicians and Sunni Islamists that nominally has shared power with Maliki since 2010. A former leader of what was Iraq's largest Sunni Islamist group, the Iraqi Islamic Party (IIP), Hashemi left the IIP in 2009 to form the avowedly non-sectarian Tajdeed (Renewal) List.¹ Although he has held the post of Vice President of Iraq since 2006 and was once seen as a possible partner for Maliki in the Bush administration's attempts to sideline Shi'ite cleric Muqtada al-Sadr, Hashemi has long been at loggerheads with the Prime Minister.² As early as 2006, Hashemi began drawing attention to Maliki's consolidation of authority around a select group of members of his Da'awa party and accusing Maliki of sectarian, pro-Shi'a policies. During Maliki's first government, Hashemi complained repeatedly that the Prime Minister ignored the actions of Shi'ite death squads targeting Sunnis.³ Hashemi threatened to resign from the government in May 2007, saying that Maliki was excluding Sunnis from decision-making.⁴

Around the same time, however, reports began to appear in the Iraqi press alleging that Hashemi was creating a militia to act as his own personal bodyguard and to protect the predominantly Sunni Baghdad district of Adhamiyah from Shi'ite attackers. While it was Hashemi's outspoken opposition to Maliki's arrogation of power that imperiled his position, it was these links to armed groups that provided the Prime Minister with the ammunition to move against the Vice President. Although security forces were said to have threatened Hashemi's residence in Baghdad's Green Zone as

early as September 2011, it was the withdrawal of U.S. forces from Iraq that removed Maliki's final constraints.⁵ Tanks and troops under government control surrounded Hashemi's Baghdad residence on December 15, 2011. Two of his guards were arrested and beaten, and confessions were forced that were said to implicate Hashemi in an attack on parliament in late November. Hashemi was forced from a plane from Baghdad to Suleimaniyah in the Kurdistan region and held by police for three hours. The Vice President was allowed to leave, but not before three of his bodyguards were arrested. Since then, numerous former bodyguards and staff have been detained; one of the bodyguards died in custody, raising suspicion of torture.⁶

Hashemi subsequently travelled to Qatar, Saudi Arabia and Turkey, each of which received him as Vice President of Iraq. In late April, Hashemi and six bodyguards were indicted for involvement in a number of assassinations, including those of six judges. From Turkey, where he has been granted residence, Hashemi has denounced the show trial that has been held in his absence as a politicized farce. Maliki, meanwhile, repeatedly rejected calls from Hashemi and other members of Iraqiyya to transfer the trial to a court in the Kurdistan region or in disputed Kirkuk, which would still be under Iraqi legal jurisdiction while also under the protection of Kurds more sympathetic to Hashemi.

DOMESTIC POLITICAL IMPACT

A death sentence pronounced against the still-serving Vice President, shocking as it appears to Western audiences, likely will have limited impact upon the performance of Iraq's government. While Hashemi has been treated like a statesman in Doha, Riyadh and Ankara, and has been extremely vocal in both regional and Western media, he has played no active role in domestic politics in nearly nine months.⁷ It is extremely unlikely that Hashemi will return to Iraq, the death sentence and stories of tortured bodyguards severely undermining repeated assurances from Maliki's allies that Hashemi would receive full legal and personal protection should he present himself in Baghdad.

While the death sentence will undoubtedly serve to fuel tensions between Maliki and Hashemi's Iraqiyya partners, it is unlikely to bring the dispute to a head. Following Maliki's initial moves against Hashemi in December, Iraqiyya decided to boycott parliament, a miscalculation that was intended to force concessions from Maliki but that in fact served only to marginalize Iraqiyya from government. Having endured a succession of defections since returning to the political process, and with Iraqiyya leaders such as Deputy Prime Minister Saleh al-Mutlaq and Parliamentary Speaker Osama al-Nujaifi apparently having achieved at least some level of rapprochement with Maliki, Hashemi's bloc is not likely to take such a stand again. While calls for the formation of autonomous federal regions to counter Maliki's centralization of power intensified following the issuing of charges against Hashemi, these too appear to have lost momentum.

Iraqiyya members' responses to the sentence have been muted, pointing to the politicization of the judiciary at the hands of the Prime Minister's office. A source close to Iraqiyya leader Ayad Allawi suggested that Allawi will likely ask Iraqi President Jalal Talabani to intervene on Hashemi's behalf. However, while expressing "regret" at the timing of the verdict—while Hashemi remains technically in office—and concern that the sentence might "complicate efforts to achieve national reconciliation," Talabani was quick to add that expressing his opinion did not constitute challenging the judiciary or interfering in its decisions.⁸

DEMOCRATIC, SECURITY, AND DIPLOMATIC IMPLICATIONS

While western media accounts have focused on the fact that Maliki is a Shi'a and Hashemi a Sunni, sectarianism is insufficient as an explanation for Maliki's targeting of Hashemi. Hashemi was a political rival to Maliki with his own

constituency who had enjoyed considerable support from the U.S. He was an outspoken critic of the Prime Minister for years, increasingly so during the tortured period of government formation in 2010. The withdrawal of the U.S. from Iraq provided Maliki with the opportunity to move against Hashemi and some of his partners.

Maliki's attack, however, came through the courts. While he leveraged security forces to intimidate opponents, including Hashemi, as early as September 2011, he did not strike. Instead he warned Hashemi off, and even after the first of Hashemi's bodyguards were arrested and accusations were made against the Vice President, Hashemi was allowed to leave for the Kurdish capital, Arbil. Had Hashemi's brief detention at Baghdad airport—as well as other attempts to intimidate rivals and opponents such as Mutlaq and Independent High Electoral Commission (IHEC) head Faraj al-Haidari—cowed Hashemi into silence, it is possible that the case against him might have been allowed to fall through one of the innumerable gaps in the Iraqi legal system.

This, rather than the perennial sectarian conflict, is the most troubling aspect of Iraq's fledgling democracy that is highlighted by the Hashemi verdict. Maliki and his allies have successfully taken the Iraqi judicial system under their control and used it to pursue a political vendetta, forcing one of the most powerful politicians in Iraq from the country and all but ensuring that he will not return during the tenure of Maliki. The fact that Hashemi was acquitted in a third case relating to the killing of another security officer will do little to assuage concerns at the politicization of the Iraqi judicial system; neither will the fact that, as the International Crisis Group has noted, "[a]lthough the arrest warrant was issued by a panel of judges, some have questioned whether the judicial authorities had adequate opportunity to review the files before taking this step."⁹

The sentence against Hashemi is the most high-profile in a long list of examples of the politicization of the Iraqi legal system at Maliki's hands. Repeatedly the Prime Minister has pressured Iraq's top judicial institutions—the Supreme Court and Higher Judicial Council—to rule in ways that have enhanced his power and that of his allies at the expense of rivals. Key decisions include the March 2010 Supreme Court ruling that allowed Maliki's post-election coalition to be considered the largest parliamentary bloc and therefore to take power at the expense of the largest bloc at the time of voting, Iraqiyya;¹⁰ the July 2010 Higher Judicial Council judgment that new legislation can be proposed by the cabinet or the president and not by parliament;¹¹ and the stipulation that Iraq's independent bodies—including the Integrity

Commission, IHEC and the Central Bank – should report directly to the cabinet.¹²

While the Prime Minister has repeatedly leveraged the judiciary to consolidate power and sideline rivals—in addition to the cases noted above, he made repeated attempts to delay and distort vote counts during the 2010 electoral process—he has not always been so concerned with the rule of law. Human rights organizations frequently have publicized the ‘precautionary’ extralegal detention and torture of thousands of individuals,¹³ often held without even being told of the charges against them, as well as the number of executions conducted in a country whose legal system relies on confessions, taken by force more often than not.¹⁴ Meanwhile, Iraq has acquitted senior Lebanese Hezbollah leader Ali Mussa Daqduq, strongly believed to have masterminded the killing of five American soldiers in 2007, on the grounds that only evidence collected by an investigating judge is admissible under the Iraqi judicial system.¹⁵ The Daqduq verdict has been widely viewed as evidence of pressure upon Maliki from Hezbollah’s sponsor Iran, which enjoys a close if complicated relationship with the Iraqi Prime Minister.

None of this is meant to suggest that sectarian dynamics are irrelevant to the Hashemi case. The death sentence likely will incense elements of the Sunni population already disenfranchised or disengaged from the political process who view Maliki’s policies purely in sectarian terms.¹⁶ In the short term, it may fuel violence against Shi’ite civilians and especially against members or symbols of the legal system. This, in turn, may prompt responses by members of Shi’ite militias who have lately focused more on rivalries with one another than on, for instance, retaliating for increasingly intense, frequent and often sophisticated attacks by al-Qaeda affiliates.¹⁷ Among those groups already inclined to view Iraqi political dynamics in sectarian terms, Hashemi’s death sentence will likely compound existing prejudices and may fuel localized unrest.

Equally worrisome over the long term, however, are the implications for Iraq’s relations with neighboring Turkey, whose Prime Minister Recep Tayyip Erdogan was quick to express support for Hashemi following the verdict.¹⁸ Hashemi’s stay in Turkey has coincided with a particular low period in Iraqi-Turkish relations, with Maliki and Erdogan frequently exchanging barbed criticisms.¹⁹ Maliki has accused Turkey of behaving like a “hostile state” aiming to establish hegemony in the Middle East,²⁰ while Iraqi government spokesman Ali al-Dabbagh criticized Turkey for acting “as a lawyer for others” in supporting Hashemi.²¹ The hostility

between the two governments over the Hashemi case and the Syrian crisis has engendered a diplomatic crisis,²² with Iraq demanding the replacement of the Turkish consul in Kirkuk after Turkish Foreign Minister Ahmet Davutoglu visited the disputed city in August.²³ With Turkey apparently content to host Hashemi indefinitely and thus to provide one of Maliki’s most vocal critics with a stage from which to denounce the Prime Minister, and with Turkey seemingly aligning ever more firmly with the Kurdistan Regional Government in its dispute with Baghdad over oil and gas revenues, relations are unlikely to improve. This, in turn, diminishes the already slim prospect of Iraqi-Turkish cooperation over the Syrian crisis, over which Turkey has been extremely active and Iraq, at best, agnostic.

The recent increase in violence along historic fault lines will make it difficult to gauge the effects of the Hashemi verdict upon Iraq’s fragile security environment. The verdict itself was announced in conjunction with a massive wave of apparently coordinated ISI attacks that killed more than 100 people across the country.²⁴ While the Hashemi verdict likely did not relate to this attack, the effects may compound to exacerbate immediate political tensions and possibly to mobilize the politically disenfranchised. In the longer term, the implications are dire for rule of law institutions in Iraq. The consolidation of power at the hands of Maliki and his inner circle, particularly through the politicization of the judiciary, raises extreme skepticism about the prospect of free and fair elections in 2013 and beyond and casts grave doubts about the health of democracy in Iraq.²⁵

NOTES

¹ Gina Chon, “[Disunity Threatens Sunni Iraq](#),” *Wall Street Journal*, September 28, 2009.

² Hamza Hendawi, “[Iraq’s Shiite prime minister criticizes Sunni vice president, widening rift](#),” Associated Press, November 21, 2007.

³ Fareed Zakaria, “[A Political Path Out of Iraq](#),” *The Washington Post*, May 31, 2006.

⁴ Nic Robertson, “[Sunni demand could unravel Iraqi government](#),” CNN, May 7, 2007.

⁵ International Crisis Group, “[Déjà Vu All Over Again: Iraq’s Escalating Political Crisis](#),” July 30, 2012, p. 6.

⁶ Human Rights Watch, “[Iraq: Investigate Death of VP’s Bodyguard in Custody](#),” March 23, 2012.

⁷ Politics-by-telecommuting is common among Iraq’s political leaders: witness Muqtada al-Sadr’s frequent periods in Qom, Ayad Allawi’s

residence in Amman, and President Jalal Talabani's extended visits to the U.S. and Germany for health reasons.

⁸ [Statement on Iraqi Presidency website](#), September 10, 2012.

⁹ International Crisis Group, "[Iraq's Secular Opposition: The Rise and Decline of al-Iraqiya](#)," July 31, 2012, p. 23

¹⁰ "[Allawi begins coalition talks after narrow win](#)," Agence France-Presse, March 27, 2010.

¹¹ Michael S. Schmidt and Jack Healy, "[Maliki's Broadened Powers Seen as a Threat in Iraq](#)," *New York Times*, March 4, 2011.

¹² "[Iraqi Central Bank, Election Body Slam Court Ruling](#)," Radio Free Europe/Radio Liberty, January 27, 2011.

¹³ Human Rights Watch, "[Iraq: Mass Arrests, Incommunicado Detentions](#)," May 15, 2012.

¹⁴ "[Iraq execution spree under the spotlight](#)," Al Jazeera, September 11, 2012.

¹⁵ Elizabeth O'Bagy and Stephen Wicken, "[Fact Sheet: Ali Mussa Daqduq](#)," Institute for the Study of War, May 14, 2012.

¹⁶ The Hashemi verdict is unlikely directly to affect extremist groups such as the Islamic State of Iraq, who view Iraqiya's Sunni leaders as collaborators for entering into a government with Maliki.

¹⁷ "[Violent clashes between members of the Mahdi Army and members of the League of the Righteous in Baghdad's Shula](#)," IPA Iraq, September 3, 2012.

¹⁸ "[Turkey says will not hand over fugitive Iraqi VP Hashemi](#)," Reuters, September 11, 2012.

¹⁹ One interesting facet of the hostility between Maliki and Erdogan has been the Turkish Prime Minister's insistence that Maliki is encouraging sectarian tensions while at the same time attacking Maliki in increasingly sectarian tones himself. "[Erdogan warns Iraqi PM against stirring sectarian, ethnic tensions](#)," Reuters, April 19, 2012; "[Erdogan urges common sense in Iraq but says current picture is not promising](#)," Today's Zaman, January 10, 2012.

²⁰ Barry Malone, "[Iraq summons Turkish envoy over Erdogan broadside](#)," Reuters, April 23, 2012.

²¹ Andrew Parasiliti, "[Iraqi Spokesman: Al-Hashemi Is 'Connected Directly' To Terrorists](#)," Al-Monitor, September 10, 2012.

²² "[Turkish-Iraqi ties set to hit new low over persona non grata crisis](#)," Today's Zaman, September 10, 2012.

²³ "[Davutoglu's historic visit to Kirkuk angers Iraqi government](#)," Today's Zaman, August 2, 2012.

²⁴ Kareem Raheem, "[Iraq blasts kill 100 as fugitive VP gets death sentence](#)," Reuters, September 9, 2012.