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Iraq: Rule of Law in the Security and Legal system



A report from a joint Norwegian-Swedish Fact Finding Mission to Iraq, end of November 2013, with additional and updated information from open sources.

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This report was written according to the common EU-guidelines for processing factual COI (2008). It was therefore composed on the basis of carefully selected, publicly available sources of information. All sources used are referenced. Some of them are anonymized in order not to identify informants. All information presented, except for undisputed/obvious facts has been cross-checked, unless stated otherwise.

The information provided has been researched, evaluated and processed with utmost care within a limited time frame. However, this document does not pretend to be exhaustive. Neither is this document conclusive as to the merit of any particular claim to refugee status or asylum.

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1. Summary and Conclusion

The Iraqi constitution of 2005 guarantees a security system protected by apolitical and non-sectarian security forces. Also in numbers the forces are well disposed to protect the people of Iraq. However, politicization of the Iraqi security forces (ISF), corruption, sectarianism and lack of proper training blur the picture.

The legal system is also outlined in the constitution, where it is described as an independent system above all powers except the law. However, in reality the police and courts (and other institutions) still have shortcomings.

The regular police are considered the most corrupt institution of the security and legal system and thus people are apprehensive to report crimes, even though there are indications that today police work is better performed than in 2010.

Corruption seems to be less common among judges than the police, but the judiciary is not independent as was envisaged by the constitution and still remained in 2010. Courts may be under pressure from influential politicians, tribes and other actors (like militias and criminals). A considerable lack/shortage of judges combined with the many arrests because of the insurgency has led to a large backlog, which is negative for both the defendants and the injured parties.

Not only cases are pending, but also draft laws and this doesn't improve the rule of law. For example, the judiciary is not yet governed by the law envisaged in the constitution.

There are some remedies for the people to lodge complaints against the authorities, but perhaps the most important institution to deal with these complaints, the High commission for Human Rights established in 2012, is still not functioning properly.

The remedies against corruption are weaker today than in 2010, mostly due to political interference and limited capacity.

There are legal measures to punish misconducting officials, but implementing them is not always easy – even if there is a will.

All in all, the worsened security situation and the political tug of war influence each other, and leads to deficits in both the capacity and the integrity of the Iraqi security and legal system - more so than in 2010, when we last assessed the rule of law in Iraq. The system still works, but the shortcomings seem to increase.

2. Introduction

2.1. Context/background

A Norwegian - Swedish delegation made a fact-finding mission to Baghdad in late 2010. One aim with the mission was to examine the judicial and security system and one of the reports published dealt with this subject.¹ The delegation found that in spite of the security-problems, Iraq was in a process of democratization, however vulnerable and uncertain. Representatives from the Ministry of Interior, the Ministry of Defense and the Judicial System expressed a will to proceed, as soon as possible, towards a country where citizens could trust the judicial system, but the process required further effort. In order to assess the results of these efforts and whether they have been sustained in the light of a worsening security situation, another Norwegian – Swedish delegation visited Iraq end of 2013. The information obtained during this recent mission has been compiled and updated with more recent information from open sources.

2.2. Scope of the report

This report addresses the current status of the security and legal system in Iraq. The report further examines how a crime is reported, how the courts handle filed cases, legislative questions, some laws and offences and institutions.

The main focus of the report is on the capacity and the integrity of the security forces and the judiciary. The report is geographically limited to central and southern Iraq (GOI-area). The Kurdistan region in Iraq (KRI) has not been the prime goal for collecting information.

The report mainly builds on information compiled following the joint fact finding mission on November 16th to 21st 2013, to Baghdad and Erbil undertaken by the Swedish Migration Board's country of origin information unit, Lifos, and the Norwegian Country of Origin Information Centre, Landinfo, at the Norwegian Directorate of Immigration. Further information was acquired through written open sources.

3. The Security and Legal System

In order for a security and legal system to work it needs functioning security forces and a functioning legal system. This requires an acceptable criminal law to punish criminals, sufficient resources for the judiciary to deal with an average influx of cases and remedies for the public to lodge complaints with authorities.

¹ Landinfo och Migrationsverket , *Delrapport från utredningsresa till Irak – oktober/november 2010, Myndighetsskydd*, 06-12-2010, [Lifos 24185]

Then the authorities should also be willing to deal with breach of duties and corrupt officials. One way of assessing the performance of the security and legal system in a country is to measure the prevalence of corruption and sectarian conduct in these sectors.²

In general the perceived corruption in Iraq remains on a very high level. On a scale from 0 (highly corrupt) to 100 (very clean) Iraq in 2010 scored 15 points and in 2013 the country scored 16 points. Of 178 countries in 2010 Iraq ranked 175 and of 177 countries in 2013 it ranked 171.³

According to a survey by Transparency International in 2013, about 44 % of the respondents thought that corruption in the public sector was a serious problem. Another 29 % thought it was a problem. More than half of the respondents thought that corruption had increased since 2011.⁴

Over the years there has been a number of anti-corruption efforts like the adoption of UN's Convention against Corruption, subsequent legislation criminalizing various forms of corruption and the creation of anti-corruption institutions. However political interference in anti-corruption bodies and politicization of corruption issues, weak civil society, insecurity, lack of resources and incomplete legal provisions limit the capacity to efficiently curb soaring corruption.⁵ In the 2013 survey, 10 % of the respondents thought that the anti-corruption efforts were very ineffective, while another 42 % found them ineffective. Still, 6 % thought the efforts were very effective.⁶

Sectarianism seemed on its way out after the provincial elections in 2009 when the rhetoric of the leading politicians was more national than sectarian. After the failure to form a national consensus government, after the parliamentary elections in 2010, the sectarian discourse regained momentum and is today very much the root of the insecurity in Iraq.

3.1. The Iraqi Security Forces

The Iraqi army, navy, and air force are Ministry of Defense forces. The Iraqi Police Service, federal police, facilities protection service, border enforcement, and oil police belong to the Ministry of Interior. These forces combined make up the Iraqi Security Forces (ISF). Their total numbers in 2013 are estimated at 733 050,⁷ an increase from 666 500 in 2010.⁸

² Free translation of a legal position on protection by authorities, RCI 10/2014, part 4.3.5, 27-03-2014, [Lifos 32037]

³ Transparency International, *Corruption Perceptions Indexes 2010 and 2013*

⁴ Transparency International, *Global Corruption Barometer 2013*,

<http://www.transparency.org/gcb2013/country/?country=iraq>

⁵ U4 Anti-corruption resource Centre, Iraq: *overview of corruption and anti-corruption efforts in Iraq*, April 2013, <http://www.u4.no/publications/iraq-overview-of-corruption-and-anti-corruption/>

⁶ Transparency International, *Global Corruption Barometer 2013*

⁷ Center for Strategic & International Studies (CSIS), *Iraq in Crisis*, 24 -01- 2014,

According to the constitution, article 9, they shall be apolitical and non-sectarian.

3.1.1. The Iraqi Army and para-military units

The forces with combat, counter-insurgency or counter-terrorism capabilities are the army (around 200 000) and the federal police (44 000.) When the US forces left Iraq by the end of 2011, only some Iraqi combat units were ready for independent operations. Already before the US left prime Minister al-Maliki increased his influence over combat and intelligence units by putting loyalists in top positions. Later on, Maliki's office has in practice managed to use key security forces as much for political control and repression as for security and stability measures.⁹

The army is still a rather trusted institution in Iraq. Only 19 % of the respondents in the Transparency International survey perceive the military to be corrupt. Yet, loyalties within the military are increasingly divided along sectarian and ethnic lines.¹⁰ This applies even more to the federal police (IFP), which has become a steadily more Shi'ite dominated force and one that Prime Minister Nouri al-Maliki has used against Sunnis that are not tied to al-Qaida Iraq (AQI) / Islamic State of Iraq and al-Sham (ISIS).¹¹

Without security and stability on a national level it is hard for the regular police force, the Iraqi Police Service (IPS) to perform well.

3.1.2. The Iraqi Police Service

The work of the police, 302 000 men and women, is governed by the Penal Procedure Law. The role of the police is to enforce the rule of law and provide local security.¹² How well the police work is performed differentiates from place to place. The delegation met a trusted lawyer, who meant that some police stations do 90% of the job satisfactory, others only 10%. It's according to him harder to get the job properly done in densely populated areas, e. g. Baghdad. The lawyer we met had experience of the police in Basra, where he was well received. He concluded that on the whole police work is well performed, better now than in 2010, and if corruption exists it is because individual officers are involved.¹³ Other sources state that the police (unclear which units) are the most corrupt element of the Iraqi security forces. It may be that some elements are highly corrupt and others are relatively passive – just staying in the station and collecting their pay.¹⁴ The latter was confirmed by an interlocutor at a western embassy, who meant that anyone can report a crime but the police

p. 204, http://csis.org/files/publication/140106_Iraq_Book_AHC_sm.pdf

⁸ Brookings, *Iraq Index*, p. 4, July 2013

<http://www.brookings.edu/~media/Centers/saban/iraq%20index/index20130726.pdf>

⁹ CSIS, *Iraq in crisis*, 24 -01- 2014

¹⁰ Ibid, p. 208

¹¹ Ibid, p. 237

¹² Ibid, p. 238

¹³ A lawyer, on occasion utilized by the Swedish embassy, Baghdad 17-11-2013

¹⁴ CSIS, *Iraq in Crisis*, 24-01-2014, pp. 234 and 238

are not efficient. Another western interlocutor added that people would rather resolve issues through their clans even though they might trust the local police. Crime reports are sent to higher unknown officials. Those and the police in general are deemed to be tied to one group or another. Also, there is the risk that the police might pressure you to give them money.¹⁵

According to Transparency international (2011) there was a 64 % bribe prevalence in the police. Other surveys showed lower numbers and regional variations e. g. around 30 % in Baghdad and less than 4 % in the KRI (compared to 12 % for the whole country in general).¹⁶ In 2013, the corruption level within the police seemed to be between 30 and 35 %.¹⁷

Representation of minorities within the local police forces continue along the lines of the efforts described in the report from 2010, but affected minorities seldom think that the numbers are representative for their communities, especially when it comes to high ranking officers.¹⁸

The police got a wide and comprehensive education as long as US forces remained in Iraq. The Police Development Program (PDP) that was launched by the State Department in October 2011 was also ambitious ranging from forensics to explosive ordinance disposal. Later it was downsized and finally terminated in March 2013.¹⁹ Some programs continue, like training of female police officers in the USA.²⁰ The United Kingdom (UK) continues to fund several projects to strengthen the rule of law. This effort includes a pilot project aiming to bring local communities together with their police station in Baghdad in order to develop a community based approach to policing, which can better identify and pre-empt crime, social disorder and conflict. The EU Integrated Rule of Law Mission for Iraq (EUJUST LEX), whose expert (one of them) the delegation met, also continues with training of police, judges and prison officers.²¹

The last two years the IPS may have had a nominal eight weeks of training, less than the whole training before and only slightly more than the 45 days of initial training the police trainees got in 2010. According to the Center for Strategic & International Studies (CSIS), large elements lack effective real world training for their role.²²

¹⁵ Analysts at the embassies of UK and USA, Baghdad November 17 and 18, 2014

¹⁶ U4 Anti-corruption resource Centre, Iraq: *overview of corruption and anti-corruption efforts in Iraq*, April 2013

¹⁷ Transparency International, *Global Corruption Barometer 2013*

¹⁸ Minority Rights Group International (MRGI), *Improving security for minorities in Iraq*, June 2012, <http://www.minorityrights.org/11409/briefing-papers/improving-security-for-minorities-in-iraq.html>

¹⁹ CSIS, *Iraq in Crisis*, 24-01-2014, pp.235 - 36

²⁰ URUK Press services, *Dearborn Police join effort to train Iraqi Police officers*, 25-05-2013, <http://www.urukpress.com/english/view.401/>

²¹ UK Foreign and Commonwealth Office, *Human rights and Democracy Report 2013 Section XI: Human Rights in Countries of Concern – Iraq*, 10-04-2014, http://www.ecoi.net/local_link/273699/389463_en.html

²² Lifos document 24185 p. 12 and CSIS, *Iraq in Crisis*, 21-01-2014, p. 238

3.1.2.1. *Reporting a Crime*

A civilian who wants to report a crime should go to a police station. (A car theft should be reported within 24 hours. There's the risk of the car being used in bomb attacks.) You can choose to report to the police or the investigative judge. The judge may also be present at the police station. The police may otherwise bring the civilian to a court, where an investigating judge proceeds with the case. (Penal Procedure Law, vol. 3, art. 1). The investigating judge has a six month period of training and prosecutors two years in addition to their law exam (Bachelor of Laws).²³

There are additional requirements to become a judge. In exceptional cases lawyers with a long (legal) experience may become judges²⁴. The lawyer we met once, wanted to become a judge himself, but was denied as he was not a Baathist. In 2005 the authorities asked him to come back, but he was scared because of the security situation. Many judges were killed.

3.2. **Federal powers**

According to article 47 of the Iraqi constitution, the federal powers shall consist of the legislative, executive and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers.

The parliament, or as it is called in the constitution, The Council of Representatives (CoR) is the legislative power. According to article 61 of the constitution it shall a. o. enact federal laws.

The government, or as it is called in the constitution, the Council of Ministers, is the executive power. According to article 80 of the constitution, it shall exercise six powers, among them propose bills.

3.2.1. **The Shura Council**

The Shura Council is a venerable Iraqi Institution, which dates back to the British mandate when British legal advisors were assigned to the ministries. Its' legal basis is dating back to 1933 and can now be found under law 65 of 1979 as amended by law 106 of 1989. The Shura Council is comparable with the "Conseil D'Etat" in France and as an advisory body "lagrådet" in Sweden. Its' main focus has been on advise/vetting of bills, both primary and secondary legislation, to ensure constitutionality and avoid contradictions with the Iraqi legal system prior to the draft being passed to

²³ A lawyer, on occasion utilized by the Swedish embassy, Baghdad 17-11-2013

²⁴ For details see Landinfo och Migrationsverket, *Delrapport från utredningsresa till Irak – oktober/november 2010, myndighetsskydd*, 06-12-2010, [Lifos 24185]

the parliament. The Shura Council responsibilities were expanded in 1989 to include an administrative disciplinary body and an administrative court.²⁵

This means in short that the Shura Council oversees the laws and makes reviews. Further on, it handles the judicial administration, meaning that the council solves legal disputes between individuals and the GOI. (For example if somebody is not considered eligible for construction rights he/she may complain to the Shura Council.) The second leg of the judicial administration concerns legal disputes between the governorates and the GOI, e.g. governorate councils jobs. Finally the Council checks punishment proceedings in order to see to that they are handled according to law. It functions as an employment court, checking if the reaction from the employer is according to the law. All complaints from state employees must be filed at the Shura Council, for example financial punishment or firing (could be because of fake education documents). Also matters about employment rights and salaries are brought to the Council. Corruption cases are sent to the criminal courts.²⁶

As presently constituted, the Shura Council comes under the aegis of the Ministry of Justice. A replacement for the Shura Council, independent of the Ministry of Justice, is one of the many potential bodies envisaged by the Constitution that have not yet come into being.²⁷

3.3. The Judiciary

The federal judiciary is composed of the Higher Judicial Council (HJC), the Federal Supreme Court (FSC), the Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that should be regulated by law. According to the constitution, no power shall have the right to interfere in the judiciary and the affairs of the justice. In other words the judicial power should be independent.²⁸ Since 2010, this independence has been eroded through manipulations by Maliki and by rulings of the FSC and the HJC. Especially the ruling in January 2011, that placed all of Iraq's independent bodies under the supervision of the cabinet stand out as a milestone towards executive encroachment. Having the same person, chief justice Medhat al-Mahmoud, as head of the HJC and the FSC makes decision-making highly centralized and thus easier for Maliki to manipulate. (In 2013 the parliament tried to ban the head of the FSC from also being the chief justice of the HJC. Al-Mahmoud lost his position in the FSC, but later regained it, and is again head of both institutions.) This tendency is reinforced by the absence of the legal

²⁵ Global Justice Project, *Iraq Shura Council and report from a symposium 10-02-2010*, <http://gjni.org/2010/03/02/major-legislative-drafting-symposium-brings-together-key-iraqi-institutions/>

²⁶ Head and two members of the Shura Council, meeting in Baghdad 18-11-2013

²⁷ Global Justice Project, <http://gjni.org/library/primary/state-shura-council/>

²⁸ Article 87, 88 and 89, Iraqi Constitution of 2005

framework that according to the constitution should be governing the work of the judiciary.²⁹

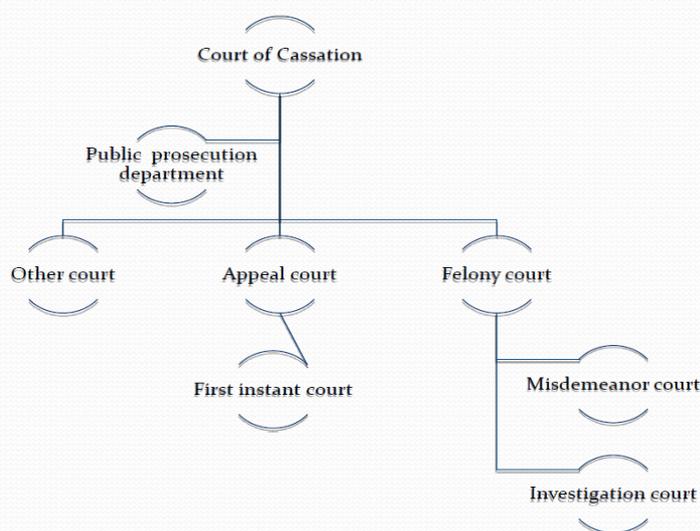
Regarding the need for judges, one looks at the demand for the country as a whole. All decisions in this regard are taken by the HJC.³⁰

Regular judges serve under the HJC, administrative judges under the Shura Council.³¹

3.3.1. The Courts

The regular criminal justice system consists of courts of investigation, first instance courts (including misdemeanor courts), courts of appeal and a Court of Cassation (and the public prosecution department).

Iraqi Federal Court System



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The criminal courts may be under pressure from threats and have one weakness in common, the many cases. An investigating judge may, according to a lawyer we met, have responsibility over areas with one million people. He claimed that there are 25 judges in Karkh, one of the two jurisdiction areas of Baghdad. According to his estimates more judges are needed all over Iraq. As it is now, the judges only have time to read summaries of the preliminary investigation reports. A judge may not even have time to read them at all. The judges simply have too much work and

²⁹ Institute for the Study of War (ISW), *Maliki's Authoritarian Regime*, 17-04-2013, <http://www.understandingwar.org/report/maliki-s-authoritarian-regime>

³⁰ A lawyer, on occasion utilized by the Swedish embassy, Baghdad 17-11-2013

³¹ The Shura Council

³² A sketch by Raid Juhi, former judge for the Iraqi High Tribunal in Baghdad, 2012

A sketch of the present structure of the entire judiciary in Iraq can be found here:

Global Justice Project: Iraq, *Judicial Independence: court structure diagram*

<http://gjni.org/wp-content/uploads/court-structure-chart.doc>

that influences the rule of law negatively.³³ An EU expert on rule of law, generally critical towards the judicial system, agreed and meant that this is one of the reasons the rule of law was bad.

The expert estimated that there are 1 700 judges in Iraq.³⁴ Medhat al-Mahmoud recently said that in 2013 Iraq had 1 300 judges, almost three times as many as in 2003.³⁵ In 2010 the goal was 2000 judges.³⁶ Tribal justice makes up for the shortage and can sometimes be better than the official judicial system. When the cases get a political angle it is perhaps not so independent. The judges are not told to rule in a certain way, but may, out of fear, be too attentive to signals from the machinery of power. Also pressure from (influential) tribes may affect rulings by the courts. The courts are also very much dependent on the chief judge, which leads to delays. Nothing in the judicial system is carried on without the approval of a superior. Another example of the weak bureaucracy is that detainees are not released due to lack of documents, even if there is a formal decision made to release them. Generally it works better in the KRI, where judges for one thing are not under threat.

The expert summarized the situation by saying that the government of Iraq (GOI) is busy protecting itself, and everything else is secondary.

The legal experts from EUJUST LEX have not (yet) trained the defence counsels. The expert on rule of law we talked to had not heard of any good defence counsels. The biggest problem is that the defendant doesn't get to meet his defence counsel before the trial. There are 19 000 inmates in pretrial detention.³⁷ Because of the insurgency/deteriorating security situation there are continuously new arrests. The arrests create chaos in the (sunni) communities. The police have many blank warrants of arrest, handy to fill in at need.³⁸ On the other hand there seems to be progress in resolving lawsuits. Recently 630 of 1730 detained were released, so perhaps we are beginning to see the light at the end of the tunnel³⁹ Al-Mahmoud recently claimed that the rate of case resolution once they arrive in the court system ranges from 94 to 98 percent.⁴⁰

Corruption is less common among judges than the police. A judge earns 7 000 USD a month and has a free car and in some cities a specially

³³ A lawyer, on occasion utilized by the Swedish embassy, Baghdad 17-11-2013

³⁴ Expert on rule of law from EUJUST LEX, Baghdad 19-11-2013

³⁵ United States Institute of Peace (USIP), *Iraq Chief Justice Cites Judicial Progress and Needs Amid Tensions*, 28-03-2014, <http://www.usip.org/olivebranch/iraq-chief-justice-cites-judicial-progress-and-needs-amid-tensions>

³⁶ Landinfo och Migrationsverket, *Delrapport från utredningsresa till Irak – oktober/november 2010, myndighetskydd*, 06-12-2010, p. 22, [Lifos 24185]

³⁷ Expert on rule of law from EUJUST LEX, Baghdad 19-11-2013.

³⁸ Independent journalists, Baghdad 17-11-2013

³⁹ Shafaaq News, *Iraq releases about 630 terrorist suspects not proven of being guilty*, 08-04-2014, <http://english.shafaaq.com/index.php/politics/9479-iraq-releases-about-630-terrorist-suspects-not-proven-of-being-guilty>

⁴⁰ USIP, *Iraq Chief Justice Cites Judicial Progress and Needs Amid Tensions*, 28-03-2014

protected place to live. Judges don't need corruption, says the lawyer, but adds that personal relations may help speed up cases. (An example was given about a man saying to a judge who is his neighbor: "I am going to the court tomorrow on this case, can you help?" There is a law that enables lawyers to address such behavior. If the complaint is turned down, an appeal may be lodged at the Court of Appeal. This in turn leads judges not to misbehave. Still they may not resist if PM Maliki or any of the ministers engage in any (individual) case. Judges are influenced by political leaders, but the majority of court rulings are not affected. Among Iraqis being asked in 2013 how they perceive the judiciary, 22 % said they had paid a bribe and 26 % felt it was corrupt.⁴¹

Not only police and judges, but also lawyers, may be affected by pressures from influential people, e. g. tribes. The delegation met one lawyer, who refrained from taking personal status and some criminal (article 4, Anti-Terrorism Law of 2005) cases. He was afraid of the repercussions.

Court rulings built on confessions in criminal cases are beginning to give way to more evidence based rulings. Forensics is making progress at some police stations. Other stations work in the old way (with forced confessions).⁴² United Nations Assistance Mission for Iraq (UNAMI) has observed that the courts frequently fail to adhere to fair trial standards. This applies in particular to individuals charged under the Anti-Terrorism Law. The courts relied in those cases on confessions or evidence of secret informants to support convictions, even when accused persons claimed that these confessions were obtained through the use of torture.⁴³ In other cases defendants are released because of lack of evidence.⁴⁴ For victims of crime and those who need other legal counsel, especially women and the most vulnerable, a help desk has recently been set up in the well protected Karkh jurisdiction compound in Baghdad. It's a joint HJC, UNDP and an Iraqi NGO effort to facilitate the citizen's access to justice in the country.⁴⁵

3.3.2. Laws

Draft laws are often pending. The government blames the security situation when they refrain from passing laws and implement new laws. The Shura Council also blames the attack on the justice ministry in March 2013 for the

⁴¹ Transparency International, *Global Corruption Barometer 2013*

⁴² A lawyer, on occasion utilized by the Swedish embassy, Baghdad 17-11-2013

⁴³ United Nations Security Council, *Second report of the Secretary-General submitted pursuant to paragraph 6 of resolution 2110 (2013)*, S/2014/190, 27-03-2014, http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7149.pdf

⁴⁴ Shafaaq News, *Iraq releases terrorist suspects not proven of being guilty*, 08-04-2014

⁴⁵ United Nations Development Programme (UNDP), *Press release 03-11-2013, New help desk in Baghdad's oldest court provides free legal assistance to women and most vulnerable*, <http://www.undp.org/content/rbas/en/home/presscenter/pressreleases/2013/11/03/new-help-desk-in-baghdad-s-oldest-court-provides-free-legal-assistance-to-women-and-most-vulnerable/>

delays, e. g. of the new refugee law. (Two Shura Council members were killed.)⁴⁶ A judge in the council has pointed to the lack of structure and discipline as the main cause of delays in reviewing laws.⁴⁷

Many laws were pending at the time of the delegations' visit, e. g. the law against domestic violence (The Family Protection Law), the health law, the Federal court and the Parties laws. A member of parliament blamed the Shura Council.⁴⁸ Another reason given by a UNHCR representative was that Maliki's opponents stall the new laws because they want him to fail.

A new welfare law is drafted, the Social and Pension welfare Law, and the UNHCR is pushing for it to be endorsed. The representative of UNHCR we met thought it was a fantastic law. Maliki has actually pushed the law, and all Iraqis will benefit from this new law, but some members of the parliament have been against it because Maliki will get the glory for it.

The General Services and Basic Infrastructure Law will give companies access to oil and the companies will give services in return. Sunni members of parliament do not approve of the law, which is about basic infrastructure.⁴⁹

A law for the protection of children, written three years ago, has been pending at the Shura Council since July 2013. Our interlocutor thinks it's a real pity since the law is quite good, better than the corresponding law in KRI which is too abstract and general. The pending law includes e. g. illegitimate children.⁵⁰

One law that was endorsed by the parliament (on 7 September 2013) was the law for the Care of Persons with Disabilities and Special Needs. However it doesn't fully comply with Iraq's obligations under the Convention on the Rights of Persons with Disabilities.

UNAMI was in November 2013 cautiously hopeful concerning the drafting of the law for protection of the rights of ethnic and religious communities. A special committee, "article 125 committee" (alluding to article 125 of the Iraqi constitution) of the parliament has been working on it for quite some time. UNAMI facilitated meetings on the draft law.⁵¹ An Iraqi NGO, Masarat Institute for Cultural and Media Development, helped prepare the first draft. The news now is that a final draft may be put before the next parliament, following the elections scheduled for April 30 this year. The

⁴⁶ UNHCR, Baghdad 17-11-2013

⁴⁷ Global Justice Project

⁴⁸ Iraqi news, *Bazoni holds State Shura Council responsibility over delay in endorsing health laws*, 5-11-2013, <http://www.iraqinews.com/baghdad-politics/bazoni-holds-state-shura-council-responsibility-over-delay-in-endorsing-health-laws/#axzz2yIRwPBrw>

⁴⁹ UNHCR, Baghdad 17-11-2013

⁵⁰ UNICEF, Baghdad 17-11-2013

⁵¹ United Nations Security Council, *First report of the Secretary-General submitted pursuant to paragraph 6 of resolution 2110 (2013)*, 13-11-2013, p. 7, [Lifos 31354]

hope of the supporters of the law is that the next parliament will act on it, which could help mitigate emigration by minorities and halt their leaving central and southern Iraq for the northern governorates of the country.⁵²

3.3.2.1. *Criminal Law*

The Penal code of 1969 is still valid. Some CPA-orders are still in force and some other amendments have been made. As far as the delegation understands nothing is amended after 2005. That year a special law dealing with the increasing violence was introduced, the anti-terrorism law. Since that year following the new constitution an overall principle of no ministerial rule was established.⁵³ However, that principle has been set aside on several occasions in the last couple of years.

3.3.2.2. *Personal Status Law*

The Personal Status Law of 1959 protected women's rights and still does. The Justice Minister has introduced amendments from the Jaafari law (an old shia law), which if promulgated/implemented would be a setback for women. The pending law would restrict women's rights in matters of inheritance and parental and other rights after divorce, make it easier for men to take multiple wives, and allow girls to be married from age nine. The amendments have not yet been implemented. According to the lawyer, all in the CoR are opposed, even the shia parliamentarians. He elaborated that the Iraqi streets and Najaf refuse this change. The time is not ripe and such a change would only bring the country into more problems.⁵⁴

3.3.2.3. *Nationality law*

In the Iraqi constitution (2005), Iraqi citizenship is guaranteed anyone who is born to an Iraqi father or to an Iraqi mother. As many other provisions in the constitution, citizenship shall be regulated in law, and in this case a Nationality law was enacted 7 March 2006. According to this law a person born in Iraq by unknown parents shall also be considered Iraqi.⁵⁵

A child born by an Iraqi mother and an unknown or stateless father abroad, will be registered in the mother's family book. He gets the mother's name. He may get Iraqi citizenship if he applies at least one year before he reaches 18 years.⁵⁶ A child born abroad must have been registered as living in Iraq at least one year prior to obtaining the citizenship.⁵⁷ Meanwhile the uncle, on the mother's side, can serve as a guardian.

⁵² AlMonitor, *Iraq needs law to protect minorities*, 06-02-2014, <http://www.al-monitor.com/pulse/ru/originals/2014/02/iraq-need-new-law-protect-minorities.html>

⁵³ A lawyer, on occasion utilized by the Swedish embassy, Baghdad 17-11-2013

⁵⁴ Ibid

⁵⁵ Article 18 of the constitution and article 3 of the Nationality Law

⁵⁶ Article 4 of the Nationality law

⁵⁷ Landinfo Respons, *Irak: Statsborgerskap for barn med ikke-irakisk far*, 19-12-2013 http://landinfo.no/asset/2698/1/2698_1.pdf

A child born by an Iraqi mother and a Palestinian father cannot seek Iraqi citizenship.⁵⁸

3.3.3. Offences

Absence without leave, French leave and desertion

Civilians who leave their jobs without permission are deemed to having resigned after 10 days. Soldiers who do the same used to be taken to a military court, policemen to a police court (administered by MoI). According to the Internal Security Forces Penal Code of 2008, they risk a salary deduction or maximum 6, or in exceptional cases, 12 months jail. “The wages are good so why leave!?” ponder our interlocutors from the Shura council and continues with the following information. Policemen make 700 to 800 USD a month – minimum. Soldiers make more. If the governmental council members let somebody off their job, it will be handled by the Shura Council.⁵⁹

From a police officer attending a EU JUSTLEX conference/seminar at hotel Rashid in Baghdad we heard that policemen and military personnel used to risk up to six months prison for leaving their work without notice. But an amnesty in August cleared them. At first the amnesty was to last until October 15, but now it is indefinitely.⁶⁰

Maliki, (as commander in chief of the Armed Forces), beginning of August 2013, issued a general amnesty for members of the ISF who had been absent or deserted from their units. The amnesty came in the wake of the Abu Ghraib prison attack and is therefore likely intended to allow ISF members who defected the opportunity to return without enduring any punishment. The amnesty will also cover ISF members who defected before 2007. It is very likely that the amnesty is designed to re-enlist Sunni soldiers who may have deserted then and more recently.⁶¹ Its durability, and whether it covers policemen in the Anbar province, seems questionable after media reports about 1 200 policemen there dismissed by the Interior minister. The decision is said to have been taken when they failed to report for duty in January 2014.⁶² However, in line with the amnesty, they were not punished.

⁵⁸ A lawyer, on occasion utilized by the Swedish embassy, Baghdad 17-11-2013

⁵⁹ The Shura Council, Baghdad 18-11-2013

⁶⁰ A police officer from Basra, interview in Baghdad 19-11-2013

⁶¹ ISW, *Iraq Update* #33, 21-08-2013, <http://iswiraq.blogspot.se/2013/08#!/2013/08/the-struggles-of-iraqi-security-forces.html>

⁶² Middle East Monitor, *Iraq government dismisses police "deserters"*, 03-03-2014, <https://www.middleeastmonitor.com/news/middle-east/10079-iraqi-government-dismisses-police-deserters>

3.3.3.1. *Misconduct*

The members of the Shura Council stated that it is not easy to punish employees who misconduct. The employer must adhere to a strict legal procedure. If an employee forges documents he/she is dismissed. (The Shura Council collects decisions in a book in order to combat fiddling.) Also if a worker doesn't do his work to the standards, he might be punished financially (salary deduction).⁶³

3.3.3.2. *Crimes*

The expert on rule of law mentioned concerning crimes that sexual violence against women often goes unpunished. The victims seldom go to the police. If they do, the perpetrator's clan can pay him out of it. The expert meant that you can always pay your way out. Money talks. She had also heard of cases when the police and judges were shot.

It's unclear if crime in general has risen, maybe trafficking because that's where the money is, thinks the expert of rule of law.⁶⁴

⁶³ The Shura Council

⁶⁴ Expert of rule of law, EUJUST LEX

4. High Commission for Human Rights

Article 102 of the Iraqi constitution (2005) envisaged a High Commission for Human Rights and several other independent commissions only subject to monitoring by the parliament and regulated by law. The parliament passed a law in 2008 establishing the commission for human rights⁶⁵. However it took until 9 April 2012 before the parliament approved the establishment. It was welcomed by the UN as a landmark achievement for Iraq. The process of selecting the 11 permanent commissioners and three substitutes had taken one year to be completed.⁶⁶ Other developments have also been slow. The commission had failed to elect a president and had not obtained any office, neither in Baghdad nor in the governorates, at the time we were visiting Baghdad. According to an analyst at the Swedish embassy the commissioners only met in plenary when the EU checks the activity of the commission or when a donation is of immediate interest. Still they had achieved better food rations to the prisoners in Chamchamal. Their priority is better conditions for children, women and prisoners.⁶⁷

The main role of the High Commission for Human Rights is to monitor all violations of human rights in all fields and in all government and non-governmental institutions. Any citizen has the right to file a complaint directly to the commission. It is assigned to make independent decisions and issue annual reports to the parliament and to the international organizations.⁶⁸

UNAMI continues to support the work of the High Commission for Human Rights and a report from the commission is expected in October 2014.⁶⁹

⁶⁵ Institute for International Law & Human Rights, *A comparative look at Implementing Human Rights Commission Laws*, March 2009, <http://www1.umn.edu/humanrts/research/Egypt/Implementing%20HR%20Commission%20Laws.pdf>

⁶⁶ Asia Pacific Forum, Iraq: *Parliament approves inaugural human rights commission*, 11-04-2012, <http://www.asiapacificforum.net/news/iraq-parliament-approves-inaugural-human-rights-commission>

⁶⁷ The Embassy of Sweden in Baghdad, 18-11-2013

⁶⁸ Asia Pacific Forum, same as footnote 66

⁶⁹ United Nations Security Council, *Second report of the Secretary-General submitted pursuant to paragraph 6 of resolution 2110 (2013)*, 14-03-2014, <http://www.uniraq.org/images/SGReports/SG%20report%202107%20March%202014.pdf>

Abbreviations

AQI	Al-Qaida Iraq
CoR	Council of Representatives
CPA	Coalition Provisional Authority
CSIS	Center for Strategic & International Studies
EUJUST LEX-Iraq	European Union Integrated Rule of Law Mission for Iraq
FSC	Federal Supreme Court
GOI	Government of Iraq
HJC	Higher Judicial Council
IFP	Iraqi Federal Police
IPS	Iraqi Police Service
ISF	Iraqi Security Forces
ISIS	Islamic State of Iraq and al-Sham
KRI	Kurdistan Region in Iraq
MRGI	Minorities Rights Group International
NGO	Non Governmental Organization
PDP	Police Development Program
UK	United Kingdom
UNAMI	United Nations Assistance Mission for Iraq
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children Emergency Fund
USA	United States of America

References

Electronic sources

(All electronic sources retrieved 30 April 2014)

AlMonitor, *Iraq needs law to protect minorities*, 06-02-2014, <http://www.al-monitor.com/pulse/ru/originals/2014/02/iraq-need-new-law-protect-minorities.html>

Asia Pacific Forum, *Iraq: Parliament approves inaugural human rights commission*, 11-04-2012, <http://www.asiapacificforum.net/news/iraq-parliament-approves-inaugural-human-rights-commission>

Brookings , *Iraq Index*, July 2013
<http://www.brookings.edu/~media/Centers/saban/iraq%20index/index20130726.pdf>

Center for Strategic & International Studies (CSIS), *Iraq in Crisis*, 24 -01-2014, http://csis.org/files/publication/140106_Iraq_Book_AHC_sm.pdf

Global Justice Project: Iraq, <http://www.gjpi.org/library/primary/state-shura-council/> and <http://gjpi.org/2010/03/02/major-legislative-drafting-symposium-brings-together-key-iraqi-institutions/>
http://csis.org/files/publication/140106_Iraq_Book_AHC_sm.pdf and
Judicial Independence: court structure diagram
<http://gjpi.org/wp-content/uploads/court-structure-chart.doc>

Constitution of the Republic of Iraq
https://www.usip.org/ruleoflaw/projects/unami_iraq_constitution.pdf

Criminal Procedure Code 23 of 1971
<http://gjpi.org/2009/04/25/criminal-procedure-code-23-of-1971/>

Former Judge Raid Juhi, *A sketch of the Iraqi Federal Court System*
http://www.bhc-iq.com/Pub/7-RaidJohi_Iraqi%20Criminal%20law-.pdf

Institute for International Law & Human Rights, *A comparative look at Implementing Human Rights Commission Laws*, March 2009,
<http://www1.umn.edu/humanrts/research/Egypt/Implementing%20HR%20Commission%20Laws.pdf>

Institute for the Study of War (ISW), *Maliki's Authoritarian Regime*, 17-04-2013, <http://www.understandingwar.org/report/maliki-authoritarian-regime>
and *Iraq Update #33*, 21-08-2013,

<http://iswiraq.blogspot.se/2013/08#!2013/08/the-struggles-of-iraqi-security-forces.html>

Internal Security Forces Penal Code of 2008, <http://gipi.org/wp-content/uploads/law-14-of-2008-internal-security-forces-penal-law.pdf>

Iraqi news, *Bazoni holds State Shura Council responsibility over delay in endorsing health laws*, 5-11-2013, <http://www.iraqinews.com/baghdad-politics/bazoni-holds-state-shura-council-responsibility-over-delay-in-endorsing-health-laws/#axzz2yIRwPBrw>

Landinfo och Migrationsverket, *Delrapport från utredningsresa till Irak – oktober/november 2010, Myndighetsskydd*, 06-12-2010, [Lifos 24185]

Landinfo Respons, *Irak: Statsborgerskap for barn med ikke-irakisk far*, 19-12-2013 http://landinfo.no/asset/2698/1/2698_1.pdf

Middle East Monitor, *Iraq government dismisses police "deserters"*, 03-03-2014, <https://www.middleeastmonitor.com/news/middle-east/10079-iraqi-government-dismisses-police-deserters>

Minority Rights Group International (MRGI), *Improving security for minorities in Iraq*, June 2012, <http://www.minorityrights.org/11409/briefing-papers/improving-security-for-minorities-in-iraq.html>

Nationality Law of 2006, <http://www.refworld.org/docid/4b1e364c2.html>

RCI 10/2014, *Rättsligt ställningstagande angående vad som utgör ett godtagbart myndighetsskydd/...*, 27-03-2014, [Lifos 32037] www.migrationsverket.se

Shafaaq News, *Iraq releases about 630 terrorist suspects not proven of being guilty*, 08-04-2014, <http://english.shafaaq.com/index.php/politics/9479-iraq-releases-about-630-terrorist-suspects-not-proven-of-being-guilty>

Transparency International, <http://www.transparency.org/gcb2013/country//?country=iraq>

U4 Anti-corruption resource Centre, *Iraq: overview of corruption and anti-corruption efforts in Iraq*, April 2013, <http://www.u4.no/publications/iraq-overview-of-corruption-and-anti-corruption/>

UK Foreign and Commonwealth Office, *Human rights and Democracy Report 2013 Section XI: Human Rights in Countries of Concern – Iraq*, 10-04-2014, http://www.ecoi.net/local_link/273699/389463_en.html

United Nations Development Programme (UNDP), *Press release 03-11-2013, New help desk in Baghdad's oldest court provides free legal assistance to women and most vulnerable*,
<http://www.undp.org/content/rbas/en/home/presscenter/pressreleases/2013/1/03/new-help-desk-in-baghdad-s-oldest-court-provides-free-legal-assistance-to-women-and-most-vulnerable/>

United Nations Security Council, *First report of the Secretary-General submitted pursuant to paragraph 6 of resolution 2110 (2013)*, 13-11-2013, p. 7, [Lifos 31354]

United Nations Security Council, *Second report of the Secretary-General submitted pursuant to paragraph 6 of resolution 2110 (2013)*, S/2014/190, 27-03-2014, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7149.pdf

United States Institute of Peace (USIP), *Iraq Chief Justice Cites Judicial Progress and Needs Amid Tensions*, 28-03-2014,
<http://www.usip.org/olivebranch/iraq-chief-justice-cites-judicial-progress-and-needs-amid-tensions>

URUK Press services, *Dearborn Police join effort to train Iraqi Police officers*, 25-05-2013, <http://www.urukpress.com/english/view.401/>

Oral sources

Expert on Rule of Law from EUJUST LEX, Baghdad

Independent journalists, Baghdad

Lawyer, on occasion utilized by the Swedish embassy in Baghdad

Police Officer from Basra

Shura Council, Baghdad

The embassies of Sweden, UK and USA in Baghdad

UNHCR

UNICEF