



Home Office

# **Country Policy and Information Note**

## **Iraq: Actors of protection**

**Version 1.0**

**December 2020**

# Preface

## Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

## Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

## Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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# Assessment

Updated: 21 December 2020

## 1. Introduction

### 1.1 Scope of this note

- 1.1.1 Whether in general, those with a well-founded fear of persecution or serious harm from non-state actors can seek effective state protection.

### 1.2 Point to note

- 1.2.1 This note covers central and southern Iraq and the Kurdish Region of Iraq (KRI) (comprised of the governorates of Erbil, Sulaymaniyah, and Dahuk). For the purpose of this note, Iraqi state security forces refers to those forces present and active in areas of Iraq outside of the KRI.

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## 2. Consideration of issues

### 2.1 Credibility

- 2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Exclusion

- 2.2.1 Decision makers must consider whether there are serious reasons for considering whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.
- 2.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection.
- 2.2.3 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

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### 2.3 Protection

- 2.3.1 The Iraqi state security apparatus consists of the Iraqi Security Forces, the National Security Service, the Federal and Local Police, and the Popular Mobilisation Forces (PMFs) (or Popular Mobilisation Units). The Kurdistan Region of Iraq's (KRI) security apparatus consists of the Asayish intelligence agency, the Peshmerga and the municipal police (see [Iraqi State security apparatus](#) and [Kurdistan Region of Iraq security apparatus](#)).

- 2.3.2 Within Iraq, the Federal Police are the best equipped and trained of the police forces, and have evolved into a paramilitary counter-terrorism organisation. The Local Police are the civilian policing component and are recruited from the neighbourhood they patrol. However, this can mean they are beholden to local PMF leaders. They are under-resourced and underpaid and as a result frequently supplement their income through corrupt practices. Deficiencies in training and resources mean that in many cases the Local Police are unable to carry out normal policing functions beyond staffing check points and directing traffic. Policing effectiveness in response to crime varies from place to place with sources stating that in some areas police work may be performed well, while in other areas the police are not efficient in responding to crime (see [Capabilities of law enforcement agencies](#)).
- 2.3.3 The PMFs were formally established to help combat Daesh in 2014 and officially integrated into Iraq's security forces in November 2016. While the PMFs are officially part of the state apparatus and receive salary from the government, a number of PMFs are closely allied to the Iranian government. They are sometimes referred to as 'hybrid actors', at times operating with the state and at other times competing with it, pursuing their own agendas. While the Iraqi state is the primary resource for the PMF, PMF fighters ultimately answer to their leaders, some of whom are in turn connected to backers in Iran as well as allies inside the Iraqi government. For more information see [Popular Mobilisation Forces/Units \(PMFs/PMUs\)](#).
- 2.3.4 Reports indicate that security apparatus, including the Iraqi Security Forces, Federal and Local Police, the National Security Service, Asayish, Peshmerga, Municipal police and PMFs commit abuses with impunity, particularly arbitrary arrest and detention, and although prohibited by the constitution, torture and ill-treatment, abductions, enforced disappearances and extra-judicial killings. Those with actual or perceived affiliations with Daesh, Sunni Arabs and high profile activists or demonstrators are especially vulnerable to abuse by law enforcement apparatus (see [Human rights violations](#)).
- 2.3.5 There are reports that security forces in both Iraq and the KRI frequently ignore the constitution and law that prohibit arbitrary arrest and detention. Individuals are often arrested without warrants and held for prolonged periods of time without being told the reason and charges against them. Most reports of arbitrary arrest and detention were against suspected members or supporters of Daesh and their associates or family members, of which most are Sunni Arabs. There are also reports of religious minorities and prominent demonstrators and activists, including bloggers and lawyers, being arbitrary arrested and detained (see [Arbitrary arrest and detention](#)).
- 2.3.6 Sources state that torture and ill-treatment can take place during arrest, pre-trial detention and after conviction in facilities run by both the Iraqi state and the Kurdistan Regional Government. Torture is reported to be used to extract confessions with a report of children as young as 14 being subjected to it (see [Torture and ill-treatment](#)).
- 2.3.7 There are frequent reports of enforced disappearances often in the context of counter-terrorism operations and following protests and demonstrations. Sources indicate that following widespread protests between October 2019

and March 2020 there were 154 allegations of missing protesters and human rights activists who were presumed to have been abducted and detained. Of the 154 allegations of abduction, 20 people remain missing (see [Abductions and enforced disappearances](#)).

- 2.3.8 Available evidence indicates that extrajudicial killings occur frequently in Iraq and the KRI and are committed by a range of government actors including Iraqi and KRI security forces and PMF units. According to human rights groups, between 1 October 2019 and 30 April 2020 following widespread anti-government demonstrations, there were credible reports of the death of 487 protesters and 7,715 incidents of injury to protesters (see [Extrajudicial killings and excessive use of force](#)).
- 2.3.9 Corruption is reportedly a persistent problem across all sectors in Iraq and is described as being endemic, systemic and a major threat to the country's stability. There are numerous reports of corruption in the police forces, occurring at many levels. Sources state that officials demand bribes to reduce or drop charges, shorten sentences or release prisoners early (see [Corruption](#)).
- 2.3.10 As well as being subject to and affected by corruption, state protection apparatus are heavily politicised, with politically motivated appointments and poor management negatively affecting their overall performance in many cases (see [Capabilities of law enforcement agencies – State security apparatus](#)).
- 2.3.11 The law provides for an independent judiciary, but it is reportedly influenced by political pressure, tribal forces and religious interests, while corruption is widespread. Sources stated that judges, lawyers and their family members frequently faced death threats, attacks and killings by sectarian, tribal, extremist and criminal elements. There have been reports that following investigations into corruption, politicians and ministers under investigation have instructed allies outside of Iraq to launch social media campaigns to accuse Iraqi courts of persecuting them for political reasons. According to sources the legal system works more efficiently in the KRI, however the majority of judges have affiliations with the two leading political parties, despite laws stipulating that judges must avoid political party membership (see [Judiciary independence](#) and [Effectiveness of the judiciary](#)).
- 2.3.12 The justice systems in both Iraq and the KRI are hampered by politicisation and corruption. Sources state that within the justice system there is a lack of resources and training, low forensic capacity, a lack of reliable or impartial evidence and an overreliance on confessions that are often obtained during lengthy periods of detention and torture. There were numerous reports of violations of fair trial, with defendants frequently not having adequate time and facilities to prepare a defense. Terrorism cases are particularly prone to fundamental violations of due process, with denial of or limited access to lawyers, sometimes a presumption of guilt and short summary trials. One source claimed that in a study of 2 dozen cases, judges appeared to ignore torture allegations and, in some instances, relied on uncorroborated confessions. There were also reports of trials in the KRI being unnecessarily delayed for administrative reasons (see [Fair trial](#) and [Effectiveness of the judiciary](#)).



- 2.3.13 There is an informal tribal justice that operates in Iraq that frequently overlaps and coordinates with the formal justice system. Tribal justice has become increasingly popular and preferred to courts and police for a wide range of issues including a distrust of the formal legal system, limited funds to hire lawyers and the slowness of court proceedings. However, the tribal justice system is also open to corruption and influence by the power and connections of the parties involved (see [Tribal mechanisms](#)).
- 2.3.14 The government has made some efforts to investigate human rights abuses committed by security forces, however those responsible for perpetrating or authorising the abuses are not generally punished. Human rights agencies have stated that since 2016 authorities in Baghdad and in the KRI have done little to punish officers implicated in enforced disappearances and despite commitments by the Iraqi government in 2017, authorities apparently took no steps in 2019 to investigate historic incidents of extrajudicial killings and torture. Following the recent protests across Iraq where hundreds of people were killed by security forces, there have only been a handful of arrests and convictions, with most security forces members involved being referred to disciplinary or administrative punishments. Prime Minister Mustafa al-Kadhimi has made unsuccessful attempts to reign in the PMF militias and assert control over them. An Iraqi security forces raid on an Iranian-aligned party in Basra in May 2020 following the death of a protester was described as a 'rare response' (see [Accountability and impunity](#)).
- 2.3.15 While there is a functioning criminal justice system in both Iraq and in the KRI, they are highly politicised and corruption is common. Within Iraq the ability of authorities to provide state protection varies greatly, with several parts of the country not under the effective control of the state. The police are prone to corruption, poorly trained and severely under-resourced and although willing, are generally unable to provide effective protection. The willingness of the authorities to protect may also depend on the profile of the person. Within Iraq, protection for those with a perceived affiliation with Daesh, in particular Sunni Arabs, is unlikely to be available. Where the actor of persecution is a PMF, protection is also unlikely to be available. While there is a functioning tribal justice system in Iraq, it is unclear how much protection it affords to individuals.
- 2.3.16 Within the KRI sources state that the security apparatus have the potential to provide effective security with law enforcement being described as more effective than in the south/central areas of Iraq (see [Capabilities of law enforcement agencies – Kurdistan Region of Iraq security apparatus](#)). While the security forces in the KRI may be able to provide effective protection, the willingness to do so may depend on the profile of the person. While Kurds and other ethnic or religious minorities may be able to access effective protection, for individuals who are in conflict with politicians or those with a perceived affiliation with Daesh, in particular Sunni Arabs, protection is unlikely to be available.
- 2.3.17 Where the person has a well-founded fear of persecution from non-state actors, including 'rogue' state actors, decision makers must assess whether the state can provide effective protection. Where the person has a well-founded fear of persecution from 'hybrid' actors, they are unlikely to be able

to avail themselves of the protection of the authorities. Each case must be considered on its facts. The onus is on the person to demonstrate that they would not be able to seek and obtain effective state protection.

- 2.3.18 For further guidance on assessing the availability of state protection, see the instruction on [Assessing Credibility and Refugee Status](#).

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# Country information

Section 3 updated: 21 December 2020

## 3. Legal framework

### 3.1 Constitution

- 3.1.1 In November 2018 European Asylum Support Office (EASO) published a report entitled 'Iraq: Actors of Protection' which cited various sources and stated:

'The Iraqi Constitution provides guarantees for fundamental rights, rule of law, equal treatment before the law, equal participation, and judicial independence, as well as prohibition of discrimination on various grounds. It also provides for

"treatment with justice in judicial proceedings (Article 19(6)); participation in public affairs (Article 20); right to work (Article 22); and the preservation of the family, the protection of motherhood, childhood and old age, and the prohibition of child labor and violence in the family (Article 29). The Constitution also guarantees to all Iraqis, 'especially women and children,' 'social and health security,' 'basic requirements for living a free and decent life,' and income and housing (Article 30), as well as health care (Article 31), care for the persons with disabilities (Article 32), and education (Article 34)"

'The Constitution also provides for freedom of expression, assembly and peaceful demonstration in accordance with the law (Article 38); freedom of association (Article 39), freedom of expression, freedom of personal status according to their religion (Article 41), and freedom of thought, conscience and belief (Article 42). The Constitution prohibits all forms of violence and abuse in the family, however only KRI [Kurdistan Region of Iraq] has a law against domestic violence.

'...The Constitution of Iraq makes Islam the official religion of the country, but guarantees freedom of believe [sic] and practice for all individuals, including such as Christians, Yezidis, and Mandaen Sabeans... Regulations based on Sharia prevent conversion from Islam, and under Personal Status Laws, if a child has one Muslim parent, the child is considered Muslim.'<sup>1</sup>

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### 3.2 Criminal law

- 3.2.1 The November 2018 EASO report stated:

'Article 19 of the Iraqi Constitution provides guarantees that crime and punishment shall be treated under the law, and that "punishment shall only be for an act that the laws considers a crime when perpetrated". Article 19 also provides the right to legal defence in all phases of investigation and trial, the right to fair and just trial proceedings under the presumption of innocence, as well as the guarantee of a court-appointed defence lawyer for legal aid purposes. The same Article states that "unlawful detention shall be prohibited" as well as "imprisonment and detention shall be prohibited in

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<sup>1</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 4.1, p25), November 2018

places not designed for these purposes”. Preliminary investigation documentation must be provided to a competent judge no more than 24 hours after the time of arrest, which can only be extended once. The Constitution also prohibits torture, inhumane treatment, and coerced confessions under Article 37.

‘National Iraqi courts are responsible for applying the [Iraqi Penal Code](#) No 111 of 1969 and the Iraqi Criminal Procedures Code No 23 of 1971 in line with general constitutional guarantees relating to the punishment of crime. Iraqi criminal law contains “some provisions ensuring due process and fair trial”. The Criminal Procedure Code allows for legal procedural guarantees such as the right to legal counsel prior to questioning and the prohibition of mistreatment to extract confessions. In 2014, PM Abadi issued an Executive Order that prohibits the arrest and detention of persons except on the order of a competent judge or court in line with the Criminal Procedure Code and only by legally competent authorities, requiring registration of the individual with the Ministry of Justice within 24 hours while giving relevant information about the detainee and reasons for detention.’<sup>2</sup>

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### 3.3 Anti-terrorism laws

#### 3.3.1 The November 2018 EASO report citing various sources stated:

‘The Anti-Terrorism Law No. 13 of 2005 provides a broad definition of terrorism (193). Under the Anti-Terrorism Law of 2005, the death penalty is mandatory for those convicted of committing, threatening, inciting, planning, aiding/abetting, or financing terrorism as principals or accomplices.

‘...In the KRI, the Iraqi Penal Code and Penal Procedure Code apply. Terrorism is prosecuted in KRI under the Anti-Terrorism Law (No. 3 of 2006), which expired in July 2016, and was later renewed in July 2018. The Kurdistan anti-terrorism law also permits the death penalty. In December 2017, KRG ratified the General Amnesty Law No. 4 of 2017, which allows for reduction of sentences for some offences that occurred prior to the enactment, and the conversion of death sentences to 15 years in prison where reconciliation before a committee occurs with the victims and where the victims are in agreement with the reduction.

‘The UN has expressed concern that the anti-terrorism laws in Iraq and KRI are not in conformity with international human rights standards.’<sup>3</sup>

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### 3.4 Arrest and detention

#### 3.4.1 The November 2018 EASO report stated:

‘Numerous security, law enforcement, intelligence agencies and regular armed forces units are responsible for maintaining order in Iraq and have overlapping responsibilities that include counter-terrorism, frontline fighting, and law enforcement. Legal responsibility and powers of arrest and detention are split across different security forces and their respective

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<sup>2</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 4.2, p26), November 2018

<sup>3</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 4.2, p26-27), November 2018

ministries of defence, interior, counter-terrorism, or the Prime Minister's Office. Kurdish forces arrest and detain suspects in KRG-controlled areas; in disputed areas, it is jurisdictionally unclear, a situation exacerbated by ISIL's control in some areas during 2017

'...Human Rights Watch notes that while arrest and detention procedures fall under the Iraqi Penal Code and Criminal Procedures Code, they allow for police and "crime scene officers" to detain and interrogate suspects with a warrant. Specifically, the law "defines crime scene officers broadly, making it impossible to ascertain which forces are included".

'...After arrest, the person is held at facilities administered by the detaining authority. The Ministries of Justice, Defence, Interior, Labour and Social Affairs are all authorised to hold pre-trial detainees in Iraq. Intelligence services also operated detention facilities and claimed authority to arrest, detain and interrogate suspects, though Human Rights Watch stated there was an unclear legal mandate to do so.'<sup>4</sup>

- 3.4.2 In March 2020 the United States Department of State (USSD) published its Country Report on Human Rights Practices in Iraq which covered events in 2019. The report stated:

'The constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court.

'...The law prohibits the arrest or remand of individuals, except by order of a competent judge or court or as established by the code of criminal procedures. The law requires authorities to register the detainee's name, place of detention, reason for detention, and legal basis for detention within 24 hours of the detention—a period that may be extended to a maximum of 72 hours in most cases. For offenses punishable by death, authorities may legally detain the defendant as long as necessary to complete the judicial process. The Ministry of Justice is responsible for updating and managing these registers. The law requires the Ministries of Defense and Interior and the NSS [National Security Services] to establish guidelines for commanders in battlefield situations to register detainees' details in this central register. The law also prohibits any entity, other than legally competent authorities, to detain any person.

'...The law allows release on bond for criminal (but not security) detainees. Authorities rarely released detainees on bail. The law provides for judges to appoint paid counsel for the indigent. Attorneys appointed to represent detainees frequently complained that insufficient access to their clients hampered adequate attorney/client consultation.'<sup>5</sup>

- 3.4.3 On 17 August 2020 the Australian Government's Department for Foreign Affairs and Trade (DFAT) published its country information report on Iraq. The report appeared to corroborate the above information (see page 54) and further stated:

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<sup>4</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 4.4, p28-29), November 2018

<sup>5</sup> USSD, '[Country Report on Human Rights Practices 2019 – Iraq](#)', (Section 1.D), 11 March 2020

‘Article 19 (12;B) of the Constitution prohibits imprisonment or detention in places not designed for such purposes, pursuant to prison laws covering health and social care, and subject to state authorities. Prison facilities in Iraq are officially administered by the Iraqi Correctional Service, which sits within the Ministry of Justice. However, detention facilities are also operated by the Ministry of Defence, the Ministry of Labour and Social Affairs (juvenile facilities), and the KRG.’<sup>6</sup>

- 3.4.4 For information on arrest and detention procedures see section 4.3 of the November 2018 EASO [Iraq: Actors of Protection](#) report.

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### 3.5 Armed forces and security services

- 3.5.1 The DFAT report published in August 2020 stated:

‘Article 9(a) of the Constitution states that the Iraqi armed forces (and security services) are to be representative of the component parts of the Iraqi people; are to be subject to civilian control; shall defend Iraq; shall not be used as an instrument to oppress the Iraqi people; shall not interfere in political affairs; and shall have no role in the transfer of authority. Article 9 (c) prohibits military personnel from standing for election for political office or campaigning for candidates.’<sup>7</sup>

- 3.5.2 The August 2020 DFAT report stated that ‘Article 121 (5) of the Constitution allows the KRG [Kurdistan Regional Government] the right to maintain internal security forces. The two main Kurdish political parties both maintain an independent security apparatus, controlling separate internal, military and intelligence services that are nominally under the control of the KRG Ministry of Interior.’<sup>8</sup>

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Section 4 updated: 21 December 2020

## 4. State security apparatus

### 4.1 The Iraqi Security Forces (ISF)

- 4.1.1 The November 2018 EASO report, citing various sources, stated:

‘The Iraqi Security Forces (ISF) refers to the formal military and security forces reporting to the Ministry of Defence (MoD), Ministry of Interior (MoI), through the Council of Ministers. The Prime Minister is the Commander in Chief of the Armed Forces. PM Abadi abolished the Maliki-era Office of the Commander-in-Chief and replaced it with the Joint Operations Command (JOC). The Joint Operations Command is the highest headquarters of the ISF leadership with oversight over all operations commands and sometimes taking direct command of subordinate units. The JOC is mandated to coordinate the Ministry of Defence, Counter Terrorism Service (CTS), Prime Minister’s Special Forces Division, Presidential Brigades, the Ministry of Interior, and the Popular Mobilisation Committee (PMC).

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<sup>6</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p61), 17 August 2020

<sup>7</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p56), 17 August 2020

<sup>8</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p59), 17 August 2020



‘The Iraqi Constitution sets out that there should be no military militias; however, both the CTS and the PMUs [Popular Mobilisation Units – See [Popular Mobilisation Forces/Units](#)] are outside the authority of the Ministry of Interior and the Ministry of Defence and report to the Prime Minister.

‘...ISF units are mobile, rather than being permanently deployed to any regional operations command. ISF divisions maintain headquarters all over Iraq and are often “forward deployed” far from their usual headquarters. Regional operations commands are ‘standing operational-level headquarters’ responsible for supervision of all ISF units in their geographic boundaries. The ISF has twelve operational commands across Iraq, each of them having respective geographic areas of responsibility.’<sup>9</sup>

#### 4.1.2 The DFAT report published in August 2020 stated:

‘The Iraq Security Forces (ISF) consist of security forces administratively organised within the Ministries of Interior and Defence, the PMF [Popular Mobilisation Forces], and the Counterterrorism Service...Conventional military forces under the Ministry of Defence are responsible for the defence of the country but also carry out counterterrorism and internal security operations in conjunction with the Ministry of Interior. The Counterterrorism Service reports directly to the Prime Minister and oversees the Counterterrorism Command, an organisation that includes three brigades of special operations forces. The NSS [National Security Service] intelligence agency also reports directly to the prime minister. The ISF is a congested and contested space with security forces competing for power and relevance leading to a cross over and blurring of roles and responsibilities creating the conditions for corruption and instability.

‘...The Iraq Armed Forces (IAF) consist of an army, air force, navy and special forces, and has an estimated size of 165,000 total military personnel. Many units of the IAF are geographically-based, with Shi’a units serving in the south and Sunni in the centre... The IAF was effectively disbanded and rebuilt from scratch following the 2003 US-led invasion, meaning it lost a huge number of personnel with combat experience and military expertise.’<sup>10</sup>

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## 4.2 Popular Mobilisation Forces/Units (PMFs/PMUs)

### 4.2.1 On 18 November 2019 an article written by Renad Mansour (a research fellow in the Middle East and North Africa Program and project director of the Iraq Initiative at Chatham House), Thanassis Cambanis and Michael Wahid Hama (both senior fellows at the Century Foundation) was published by the Washington Post. The article, entitled ‘These Iraqi militias are attacking protesters and getting away with it. Here’s why.’ describe the Popular Mobilisation Forces as ‘hybrid actors’ and stated:

‘Some of these militias [involved in human rights violations during protests across Iraq in 2019] make up part of the Popular Mobilization Units (PMU) and are allied with Iran. They are often mischaracterized as non-state actors, simple proxies of Iran or extensions of the Iraqi government. None of these

<sup>9</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 5.1, p29-30), November 2018

<sup>10</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p56-57), 17 August 2020

descriptions is wholly true and results in a limited analytical understanding of such groups and their sources of strength.

‘As an alternative, our recent research develops the emerging concept of hybrid actors, which draw power from states and help shape state agendas, while at the same time pursue autonomous agendas. They are hybrid because they run counter to the Western policymaker’s binary of state vs. non-state actors. The concept can be applied more broadly to the region’s multiple, ongoing conflicts as well as to conflicts in other regions. Applying the hybrid concept to the case of these militias in the PMU more accurately depicts their dynamic relationships with Iraq and Iran without discounting their own autonomous agendas.

‘...Hybrid actors sometimes operate in concert with the state and at other times compete with it. They depend on state sponsorship, both from their host state and their foreign backers. At the same time, they enjoy the flexibility that comes with not being a state. They also generate their own revenue and possess autonomous military capability. They are among the most significant obstacles to long-term state stability in the region today.

‘Hybrid actors seek to harness and control some but not all spheres of the state’s authority. Those that survive over many years tend to penetrate the state and carve out official fiefdoms within its architecture. They develop structures parallel to the state, affording them extralegal autonomy.

‘Hybrids engage in war, diplomacy, politics and propaganda. They build and maintain constituencies, providing not just security but also services and ideological guidance. While almost all hybrid actors have some relationship with an external patron, they are more than mere proxies and have latitude to make their own policy and decisions.’<sup>11</sup>

#### 4.2.2 The same source further stated:

‘The Iraqi government relies on a wide array of institutions to protect the political system, from courts to communications officials who control the Internet. Hybrid actors play a unique role in this collaboration. They support the political system and receive extensive support from the government.

‘The Iraqi PMU played a decisive role in the military campaign against the Islamic State. Some of the militias and movements that today make up the PMU have been operating before the rise of the Islamic State. Today they have transformed from traditional non-state militias or proxies, like the Badr Brigade was during the Iran-Iraq war, into hybrids.

‘The PMU is officially part of the state, receiving salaries from the government under a 2016 law. PMU fighters ultimately answer not to a government commission but to their militia leaders. Some of these leaders are in turn connected to backers in Iran as well as to allies inside the Iraqi government.

‘...What distinguishes the hybrids is that, unlike Ministry of Interior or Defense troops, they are often more capable than government institutions,

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<sup>11</sup> Mansour, R et al, Washington Post, ‘[...Iraqi militias are attacking protesters...](#)’, 18 November 2019



serve multiple interests and draw support from states as well as from their own economic structures.

'In contrast to pure proxies, hybrids in the PMU seek to secure state patronage, which they use to bolster their constituents. The state is a primary resource for these groups and is also the avenue through which they pursue their own political and economic projects. Nonetheless, they are willing to undermine the state's institutions and authority when it serves their organizational interests.

'Hybrids can express open solidarity with the state without taking ownership of its governance record.'<sup>12</sup>

#### 4.2.3 The DFAT report published in August 2020 stated:

'The Popular Mobilisation Forces (PMF) are a state-sponsored umbrella military organisation composed of approximately 60 militia groups operating nationwide. The PMF was formally established based on a 2014 fatwa (Islamic declaration) by Iraq's Grand Ayatollah to assist in the conflict against Da'esh, and they played an important role in the eventual military victory. Most PMF units are Shi'a Arab and operate across Iraq, while Sunni Arab, Yazidi, Christian and other minority PMF units generally operate within or near their home regions. International observers place the numbers of those involved in the PMF at between 130,000 to 150,000 fighters, although precise figures are unclear. In the lower ranks, many of those involved in the PMF are reportedly motivated by financial considerations rather than ideology. In-country sources report that many PMF members "moonlight" from other jobs including in the police.

'In November 2016, the Iraqi parliament recognised the PMF as an official force. All PMF units officially report to the National Security Advisor and are under the authority of the Prime Minister, although this is not always the case in practice. On 1 July 2019, the Prime Minister decreed the PMF must fully integrate into the IAF by the end of the month, a move described by international observers as an unsuccessful attempt to rein in and assert control over the many rogue PMF elements. This move has not proven successful.

'A large number of PMF elements reportedly answer directly to the Iranian government, and in particular to the Islamic Revolutionary Guard Corps. In-country sources have described some PMF groups as being essentially Iranian occupation forces... According to in-country sources, individual PMF elements exercise close control over many neighbourhoods, particularly in Shi'a areas. PMF groups effectively run these areas, providing a range of services that would normally be fulfilled by the state (particularly welfare and security). The manner in which PMF groups conduct themselves at the neighbourhood level depends upon the individual group.'<sup>13</sup>

#### 4.2.4 In October 2020 EASO published a report entitled 'Iraq; Security situation'. The report, citing various sources, stated that analyst Seth Frantzmann, writing for the US magazine, Foreign Policy, remarked in June 2020 that

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<sup>12</sup> Mansour, R et al, Washington Post, '[...Iraqi militias are attacking protesters...](#)', 18 November 2019

<sup>13</sup> DFAT, '[Country Information Report – Iraq](#)', (Section 5, p57-58), 17 August 2020

'local militia groups' power remained to be curtailed by the government, which was still lacking a formal hierarchy to organize them under state authority.'<sup>14</sup>

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### 4.3 Ministry of Interior and police

#### 4.3.1 The November 2018 EASO report, citing various sources, stated:

'As of October 2018, the Prime Minister of Iraq is acting as the Minister of Interior [Mol]... Routine policing, law enforcement and domestic order are the responsibility of the Ministry of Interior. Mol oversees the governorate level local police (sometimes referred to as the Iraqi Police Service, IPS) and the Iraqi Federal Police (formerly called the Iraqi National Police). The work of the police is governed by the Penal (or Criminal) Procedure Law. However, police are also engaged in counterterrorism with their functions being overshadowed by militias during the fight against ISIL [Islamic State of Iraq and the Levant].

'Ministry of Interior forces were reported to have an authorised strength of 531,000 in 2013, across the Iraqi Police Service, Iraqi Federal Police, border enforcement, facilities protection police and the oil police. Due to "ghost soldiering" [someone present on payroll lists and official documentation, but who does not actually serve in the ranks] actual figures of police personnel have been difficult to estimate. Sources report high attrition rates among police were a problem with only 40-70% of trained police recruits staying in the force in 2013.'<sup>15</sup>

#### 4.3.2 The same report also noted that the Ministry of Interior has specialised police units called 'Family and Child Protection Units'. According to UNAMI, these units have improved women's access to justice; however, they are limited to provincial capitals and major cities and lack suitable facilities and female personnel<sup>16</sup>.

#### 4.3.3 On 17 August 2020 the Australian Government's Department for Foreign Affairs and Trade (DFAT) published its country information report on Iraq. The report stated:

'The Ministry of Interior is responsible for domestic law enforcement and maintenance of order. It oversees the Federal Police, Provincial Police, Facilities Protection Service, Civil Defence and Department of Border Enforcement. Energy Police, under the Ministry of Oil, are responsible for providing infrastructure protection.

'...The Iraqi Police falls under the authority of the Ministry of Interior's Security Department. It is divided into the Iraqi Police Service (IPS), which is a uniformed organisation administered at the provincial level and tasked with the general maintenance of law and order and with initial incident response; and the Federal Police, which is a paramilitary organisation that responds to domestic incidents such as armed insurgency, large-scale civil disobedience

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<sup>14</sup> EASO, '[Iraq: Security situation](#)', (Section 1,2,3, p21), October 2020

<sup>15</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 5.3, p34), November 2018

<sup>16</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 5.3.1.2), November 2018

and riots that are beyond the capabilities of the IPS but not severe enough for the IAF. According to in-country sources, the Iraqi Police have an estimated 300,000 members in total. The Federal Police are the better equipped and trained of the two services.’<sup>17</sup>

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#### 4.4 Federal Police

##### 4.4.1 The EASO 2018 Actors of Protection report citing various sources stated:

‘The Iraqi Federal Police are focused more on counter-terrorism than ordinary policing and are organised into military-style units; particularly in recent years fighting ISIL, they have transformed themselves into a paramilitary force rather than focusing on law enforcement. Sources report its membership to be between 37,000, 42,000 or up to 44,000.

‘The force is structured across six territorial Divisions, including mechanised brigades, maintaining a presence in:

- ‘• 1st Federal Police Division, under Baghdad Operations Command with MoD;
- ‘• 2nd FP Division, deployed to secure Baghdad and Baghdad belts for counterterrorism, securing pilgrimage routes, and law enforcement;
- ‘• 3rd FP Division, under Ninewa Operations Command with MoD;
- ‘• 4th FP Division, responsible for southern Baghdad, areas south of the city, parts of Salah al Din, Basra, Karbala and Wasit;
- ‘• 5th FP division, provides security in south and east Salah al Din, the Jazeera desert west of Samarra, and participated in Mosul operations;
- ‘• 6th FP Division, operating in Ninewa, Fallujah, Anbar.

‘ISW [Institute for the Study of War] describes it as a “deployable gendarmerie” with capabilities ranging between those of the Iraqi Army and the local police. The FP is reportedly deployed alongside PMUs [Popular Mobilisation Units] “during every major PMF-led operation”. They are heavily armed with armoured and mechanised units and heavy weapons. The Federal Police is dominated by Shia and recruited and deployed nationally.’<sup>18</sup>

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#### 4.5 Local police

##### 4.5.1 The EASO Actors of Protection report citing various sources stated:

‘The Iraqi Police Service is responsible for local and governorate level law enforcement and is the “civilian policing component” operating in the governorates. The local police forces in each governorate are responsible for day-to-day security and are the primary first responders generally serving as the first line of defence against terrorism and crime... The Iraqi police are locally recruited, unlike the Federal Police and Iraq Army which are recruited

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<sup>17</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p56,58), 17 August 2020

<sup>18</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 5.3, p35), November 2018

nationally and have large Shia contingents from the south...Compared to the Federal Police, local Iraqi police services lack firepower, patrolling in soft-shell vehicles and carrying pistols.’<sup>19</sup>

- 4.5.2 The DFAT report published in August 2020 stated that ‘IPS members are recruited locally and are generally reflective of the demographic of the neighbourhoods that they patrol. Local recruitment, however, can mean police are beholden to local PMF leaders. There is also a significant disconnect between the priorities of national police command and local police forces, many of which reportedly operate as independent fiefdoms.’<sup>20</sup>

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## 4.6 Emergency Response Division

- 4.6.1 The November 2018 EASO report citing various sources stated:

‘The Emergency Response Division [ERD] is a specialised counterterrorism unit within the Mol or Mol’s “commando unit”. ERD played a large role in liberating Ninewa and Mosul in particular. The ERD has been characterised by the US advisors as a “very effective fighting force” against ISIL and it has received US training and support in the past. Detracting from the anti-ISIL focus, in July 2018, ERD was re-deployed by the Prime Minister out of the disputed territories into the south to deal with growing unrest and protests there.

‘The ERD and its commander are described by ISW [Institute for the Study of War] as having “close ties” with the Badr Organisation [a militia within the Popular Mobilisation Forces]. ISW observes that the ERD is “less disciplined” than other special forces organisations and “likely more compromised” due to the leadership and operational closeness it has to the Iran-backed PMUs.

‘...The ERD is blacklisted by the US military for committing gross violations of human rights and no longer receives US equipment of support as of March 2015; however, they continue to coordinate on fighting ISIL.’<sup>21</sup>

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## 4.7 Border Guards, Facilities Protections Service, Oil Police

- 4.7.1 The November 2018 EASO report citing various sources stated:

‘Iraq’s Border Guards are a motorised brigade attached to Mol and responsible for overseeing ports and borders, as well as having a role in counterterrorism. The Guards are structured under five distinct Regional commands... Mol’s Facilities Protection Police are responsible for protecting critical infrastructure and are more responsive to the ministries whose infrastructure they protect than the Mol. The Oil Police are under the Ministry of Oil and serve to guard Iraq’s oil fields mainly in Basra and southern Iraq.’<sup>22</sup>

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<sup>19</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 5.3, p37), November 2018

<sup>20</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p59), 17 August 2020

<sup>21</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 5.3, p40), November 2018

<sup>22</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 5.3, p41), November 2018

## 4.8 National Security Service (NSS)

### 4.8.1 The November 2018 EASO report citing various sources stated:

'The NSS reports to the Prime Minister and according to the Constitution, is under civilian control, subject to legislative oversight and should operate in accordance with principles of human rights. The NSS is "ostensibly focus[ed] on intelligence collection" with a role similar to the traditional mukhabarat. The NSS reportedly clash with other security forces due to lack of coordination in "battle space" between units responsible for a given territory. In Ninewa, NSS are often present at checkpoints to identify individuals of interest. The NSS also administers PMU units that are recruited from local Sunni militias known as Tribal Mobilisation Units (TMUs) or local Sunni al-hashd al-ashari, which mainly come from Shamar and Jabour tribes and are US-funded and equipped. At their peak, these forces in Iraq numbered 12 000, however due to attrition and lack of political support these numbers dropped under Maliki, and as of May 2018 reporting, their numbers are "disappearing".'<sup>23</sup>

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Section 5 updated: 21 December 2020

## 5. Kurdistan Region of Iraq security apparatus

### 5.1 Asayish

#### 5.1.1 The November 2018 EASO report citing various sources stated:

'The Asayish is the intelligence agency of the Kurdish Regional Government responsible for "domestic security throughout the region" working in cooperation with the MoI and Ministry of Justice. The Asayish is regulated by law for responsibilities over counter-terrorism, counter-trafficking of human beings, drug and weapons and matters of national security. The website of the General Security Department states that the Asayish is overseen by Parliament and the KRG Council of Ministers.

'...Within Asayish, there are political allegiances between the KDP [Kurdish Democratic Party] and PUK [Patriotic Union of Kurdistan] and parties also had their own intelligence services: the KDP's intelligence service, Parastin, and the PUK's Zanyari, with PUK essentially controlling Sulaymaniyah Asayish and KDP controlling the Erbil office of Asayish. These two intelligence agencies were unified under the law in 2011; however, they continue to work closely with the official branch of Asayish on intelligence gathering operations.'<sup>24</sup>

#### 5.1.2 The August 2020 DFAT report stated that 'Asayish is the KRG's primary security and intelligence agency. Its official functions include counterterrorism, counter-espionage, gathering intelligence, assessing security threats, and countering smuggling, economic and political crimes and sabotage.'<sup>25</sup>

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<sup>23</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 5.6, p49-50), November 2018

<sup>24</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 8.1, p75), November 2018

<sup>25</sup> DFAT, '[Country Information Report – Iraq](#)', (Section 5, p59), 17 August 2020



## 5.2 Peshmerga

### 5.2.1 The November 2018 EASO report citing various sources stated:

‘In the Kurdistan region, the Peshmerga and “militias of the KDP and PUK” are responsible for maintaining order in KRI...The KRG Ministry of Peshmerga Affairs oversees the Peshmerga. The KDP’s Zerevani and the PUK’s Emergency Force are both de facto part of the Peshmerga although they report to the Ministry of Interior, thereby having both a civilian policing and military function. They are described as a “military police force” with functions that switch between police work and soldiering. Both of these groups were involved in frontline anti-ISIL operations largely being active in their respective traditional zones of political influence.

‘The Peshmerga is part of the Iraqi Security Forces (ISF), but falls under the jurisdiction of KRG but also has to follow certain Iraqi laws. Under the 2009 Law No. 5 on the Peshmerga, the Peshmerga is a regular united military force and it is prohibited that political parties maintain militias or private armed groups. Since 2010, fourteen regional brigades (about 40,000 personnel) have been integrated under the Ministry of Peshmerga, however, outside these brigades, there are an estimated 120,000 Peshmerga, mainly divided between the PUK’s 70 Unit and the KDP’s 80 Unit, who are “directly controlled” by their Political Bureaus, not the Ministry of Peshmerga Affairs. In July 2014, the Kurdish Parliament instructed the KRG to unify the command of the Peshmerga within six months; however, it still remains divided on partisan lines. The Peshmerga are a predominantly Kurdish force and recruitment is patronage-based.’<sup>26</sup>

### 5.2.2 The August 2020 DFAT report stated;

‘The Iraqi army is forbidden by law to enter the KRG. The Peshmerga (Kurdish for “those who face death”) is the KRG’s military force, with primary responsibility for the KRI’s security. The Peshmerga, which is generally viewed as a highly competent military force, played an important role in the military victory over Da’esh.

‘... Although the KRG’s Ministry for Peshmerga Affairs formally controls the Peshmerga, there is no central military command structure and Peshmerga units follow separate military hierarchies depending on political allegiance. Attempts to unify Peshmerga units, and to establish a mechanism for cooperation between the central military and Peshmerga, are ongoing. Neither of the two main KRI political parties disclose information about the composition of their forces, and there are no reliable estimates as to the size of the Peshmerga.’<sup>27</sup>

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## 5.3 Ministry of Interior and Police

### 5.3.1 The EASO report citing various sources and published in November 2018 stated:

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<sup>26</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 8.1, p73-74), November 2018

<sup>27</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p59), 17 August 2020

'Municipal police are responsible for traditional civil and traffic enforcement, environmental policing, immigration enforcement, and facilities protection roles. Municipal police forces are responsible for routine policing, patrols, first response and investigation to minor felonies although they have a range of administrative functions. Emergency police handle major felonies.

'According to a research paper on the KRG security forces published in 2009, the municipal police remain politically divided along party lines. Police forces in the Dohuk and Erbil governorates which are KDP dominated, report to the Ministry of Interior, and have a General Directorate in charge of each governorate, with district and sub-districts police stations. Police in the PUK area around Sulaymaniyah have stations distributed throughout the governorate.'<sup>28</sup>

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Section 6 updated: 21 December 2020

## **6. Capabilities of law enforcement agencies**

### **6.1 Effectiveness of state security apparatus**

6.1.1 In May 2020 the USSD Overseas Security Advisory Council (OSAC) published its Crime and Safety Report for Baghdad. The report stated that the:

'ISF has a limited ability to respond to security incidents, terrorist attacks, and criminal activities. Response times and capabilities may vary wildly, as displayed by their recent response to protests at the U.S. Embassy. Iraqi police do not meet U.S. or western standards. ISF maintains a large presence in most major urban areas to limit potential terrorist, insurgent, and militia activity. There are many permanent, manned military checkpoints and security stations; temporary ones often appear without advance notice.'<sup>29</sup>

6.1.2 The EASO 2018 report noted that according to a February 2018 OSAC report, 'crime statistics in Iraq and reporting mechanisms are incomplete and inconsistent within Iraqi law enforcement and security forces'.<sup>30</sup>

6.1.3 The EASO 2018 report, citing various sources, further stated:

'In 2018, police and military units in Baghdad are described by the Overseas Security Advisory Committee (OSAC) as having the ability to respond to "security incidents, terrorist attacks and criminal activities" although response and capabilities of responding authorities "vary considerably". Lifos [the Swedish Migration Agency] stated in its 2014 report that policing effectiveness in response to reporting a crime can differ from place to place. Sources reported to Lifos that in some areas, police work may be performed well, while others stated that the police are not efficient in responding to crime. Crime reports are "sent to unknown higher officials" and police are "generally tied to one group or another". According to the UN, Iraqi police and law enforcement officials lack "resources, training, and forensic capacity

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<sup>28</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 8.1, p74), November 2018

<sup>29</sup> USSD OSAC, '[Iraq 2020 Crime & Safety Report: Baghdad](#)', 12 May 2020

<sup>30</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 5.3.1.3), November 2018

to gather impartial and reliable evidence of sufficient standard to identify alleged perpetrators, warrant charges, or secure convictions before the courts”.<sup>31</sup>

6.1.4 The August 2020 DFAT report stated:

‘The ability of authorities to provide state protection varies according to geographic location, with several parts of the country not under the effective control of the state. Human rights groups have consistently raised concerns that impunity for abuses committed by security authorities and other official bodies remains the norm. All state protection institutions are significantly subject to and affected by corruption, particularly the police. State protection bodies are also heavily politicised, and politically motivated appointments and problematic management have negatively affected their overall performance in many cases. Poorly defined administrative boundaries and disputed territories between central authorities and the KRG have led to confusion and dispute in some instances over the jurisdiction of security forces and the courts.’<sup>32</sup>

6.1.5 The same report also noted, ‘The police have historically been regarded as a secondary service by both the government and population, and have been under-resourced and under-paid... Many police also “moonlight” in other occupations, including as PMF members. Deficiencies in training and resources mean that in many cases police are unable to carry out normal policing functions beyond staffing checkpoints and directing traffic.’<sup>33</sup>

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## 6.2 Effectiveness of Kurdistan Region of Iraq security apparatus

6.2.1 The 2018 EASO report stated:

‘According to OSAC, command and control over KRI police and military units is sufficient to respond to security, criminal and terrorist incidents; and forces are directed where required and they have sufficient training and modern equipment. A 2016 FFM report by the Danish Immigration Service (DIS) states that in areas controlled by the KRG, their forces have the potential to provide very effective security. Law enforcement in KRI was described as more effective than in the south/central areas of Iraq, however, other sources commented that there are areas outside of KRI control where there are pockets that lack law enforcement, such as west of KRI. Another source interviewed by DIS stated that the possibility of protection can depend on “who the persecutor is” and those in conflict with politicians would not be protected by authorities. Human Rights Watch stated to DIS that Kurdish forces have been able to pursue targets in KRI and in KRI-controlled areas with the support of international forces and provide support against ISIL, but also gave the view that there is “no effective protection of human rights in KRI”.’<sup>34</sup>

6.2.2 The same source further stated:

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<sup>31</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 5.3.1.2), November 2018

<sup>32</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p56), 17 August 2020

<sup>33</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5.13), 17 August 2020

<sup>34</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 8.2, p75), November 2018



‘For protection of individuals from targeting by armed groups such as ISIL in KRI or Kurdish controlled areas, sources interviewed by DIS stated that authorities have the capacity to protect from conflict, but it can be impacted by the person’s profile; some armed groups are aligned with either the KDP and PUK which impacts their willingness to intervene, depending on whether the person belongs to a group the Peshmerga would protect.

‘The UNHCR [United Nations High Commissioner for Refugees] stated in 2016 that “in the disputed areas, the possibility to seek protection from the authorities in case of conflict with armed groups depends on whether or not a person belongs to the groups that the Peshmerga would protect. According to UNHCR, groups that are protected by the Peshmerga include Kurds and ethnic or religious minorities. In line with this, an international humanitarian organisation said that private individuals’ possibility to seek protection from the Kurdish authorities if they have conflicts with armed groups in KRI and other Kurdish controlled areas depends on who they are. According to the international humanitarian organisation, generally, Sunni Arabs would be unlikely to receive support from the authorities, especially if conflicts are with non-Sunni Arabs. The international humanitarian organisation added that if a Sunni Arab has a conflict with Islamic State, there is nothing that the authorities can do”.’<sup>35</sup>

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### 6.3 Corruption

6.3.1 The EASO Country Guidance Note published in June 2019 stated that ‘corruption is reportedly a persistent problem in the police forces, occurring at many levels, and involving bribes to reduce or drop criminal charges’ and that ‘Perpetrators [of domestic violence or honour killings] frequently go unpunished, as they are able to escape punishment through bribery’<sup>36</sup>.

6.3.2 The USSD Iraq country report published in March 2020 stated that:

‘Overcrowding [of prisons and detention centers] exacerbated corruption among some police officers and prison administrators, who reportedly took bribes to reduce or drop charges, shorten sentences, or release prisoners early.

‘...Prison and detention center authorities reportedly sometimes delayed the release of exonerated detainees or inmates due to lack of prisoner registration or other bureaucratic issues, or they extorted bribes from prisoners for release at the end of their sentences... Guards allegedly often demanded bribes or beat detainees when detainees asked to call their relatives or legal counsel.’<sup>37</sup>

6.3.3 The same source further stated that:

‘Despite the 2016 law concerning rights of detainees, NGOs [Non-Governmental Organisations] widely reported that detainees had limited ability to challenge the lawfulness of detention before a court and that a bribe

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<sup>35</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 8.2, p76-77), November 2018

<sup>36</sup> EASO, ‘[Country Guidance: Iraq](#)’, (Section IV, p124-125), June 2019

<sup>37</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.C), 11 March 2020

was often necessary to have charges dropped unlawfully or gain release from arbitrary detention.

‘...defendants and their attorneys were not always granted access to evidence, or government officials demanded a bribe in exchange for access to the case files.’<sup>38</sup>

6.3.4 The August 2020 DFAT report stated:

‘Despite the strong legislative framework and protections, international observers report that corruption in Iraq is endemic, systemic and a major threat to the country’s stability. An extensive opinion poll carried out across Iraq in March/April 2019 found corruption was the major concern for ordinary Iraqis: 82 per cent were concerned or very concerned about corruption at the highest levels of government, and 83 per cent perceived corruption to be getting worse.

‘...Domestic and international observers report that corruption plays out at all levels of Iraqi society and across all sectors. Bribes are often required to obtain basic services, while bribery, money laundering, nepotism and misappropriation of public funds occur at all levels of government...Corruption is also endemic in other sectors, including the Judiciary, police and state security services, customs administration and natural resources, particularly the oil industry.’<sup>39</sup>

6.3.5 The same report also noted that as a result of being under paid many police have supplemented their income through corruption. According to surveys, one-third of Iraqis report having paid a bribe to the police<sup>40</sup>.

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Section 7 updated: 21 December 2020

## 7. Rule of law and the judiciary

### 7.1 Iraqi State structure and governance

7.1.1 In June 2019 EASO published a guidance note on Iraq which stated:

‘The judiciary is made up of the Federal Supreme Court, Court of Cassation, Public Prosecution Department, Judicial Oversight Committee, and federal courts and the Higher Judicial Council, which oversees the federal court system. Under the Constitution of Iraq, the judiciary is independent and no power is above the judiciary except the law. The Iraqi Constitution provides guarantees for fundamental rights, rule of law, equal treatment before the law, equal participation, and judicial independence, and prohibits discrimination on various grounds.’<sup>41</sup>

7.1.2 For further information see the Republic of Iraq Supreme Judicial Council [website](#).

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<sup>38</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.D.1.E), 11 March 2020

<sup>39</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 2, p13-14), 17 August 2020

<sup>40</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5.13), 17 August 2020

<sup>41</sup> EASO, ‘[Country Guidance: Iraq](#)’, (Section IV, p123-124), June 2019

## 7.2 Kurdistan Region of Iraq (KRI) structure and governance

### 7.2.1 The guidance note published by EASO in June 2019 stated:

‘The KRI is governed by the autonomous KRG under the Iraqi Constitution. The KRG is responsible for the governorates of Erbil, Sulaymaniyah, and Dahuk. The KRI is the only constitutionally recognised autonomous region. The Constitution permits the KRG to have their own executive, legislative and judicial powers, aside from those exclusive to the federal government. They are allocated an equitable share of national revenues, and are permitted to establish and organise their own internal security forces, such as police.’<sup>42</sup>

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## 7.3 Judicial independence

### 7.3.1 The August 2020 DFAT report stated:

‘Article 19 (1) of the Constitution guarantees the independence of the judiciary, and states there is no higher power above the judiciary than the law... Article 97 states judges may not be removed except in cases specified by law; Article 98 (1) prohibits judges or public prosecutors from combining a judicial position with legislative and executive positions and any other employment; and Article 98 (2) prohibits them from joining any party or political organisation or performing any political activity.’<sup>43</sup>

### 7.3.2 A Government of Iraq (GOI) document of 12 September 2019 and published by the United Nations of the High Commissioner for Human Rights (OHCHR) on 20 December 2019 stated that ‘In order to consolidate the principle of judicial independence, article 98 of the Constitution prohibits judges or public prosecutors from combining a judicial post with legislative or executive responsibilities or any other employment, just as it prohibits them from joining a political party or organization or performing any political activity.’<sup>44</sup>

### 7.3.3 On 4 March 2020 Freedom House published its annual report on political rights and civil liberties in 2019 entitled ‘Freedom in the World 2020 – Iraq’. The report stated that ‘The judiciary is influenced by corruption, political pressure, tribal forces, and religious interests. The lines between the executive, legislative, and judicial branches are frequently blurred, and executive interference in the judiciary is widespread. Due to distrust of or lack of access to the courts, many Iraqis have turned to tribal bodies to settle disputes, even those involving major crimes.’<sup>45</sup>

### 7.3.4 The March 2020 USSD report stated:

‘The constitution provides for an independent judiciary, but certain articles of law restricted judicial independence and impartiality. The country’s security situation and political history left the judiciary weak and dependent on other parts of the government.

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<sup>42</sup> EASO, ‘[Country Guidance: Iraq](#)’, (Section IV, p125-126), June 2019

<sup>43</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p59), 17 August 2020

<sup>44</sup> GOI ‘[Common core document forming...the reports of States parties](#)’, (p23), 12 September 2020

<sup>45</sup> Freedom House, ‘[Freedom in World 2020 – Iraq](#)’, (Section F1), 4 March 2020

‘...Numerous threats and killings by sectarian, tribal, extremist, and criminal elements impaired judicial independence. Judges, lawyers, and their family members frequently faced death threats and attacks. In February [2019] Mosul Investigation Court Judge Samir Barwari was assaulted while passing through a checkpoint belonging to the PMF Brigade 40. The judge reported that the fighters assaulted him and beat his driver. The judge had asked for help from the police in advance of crossing the checkpoint, and although police officers escorted him, they did not intervene in the confrontation due to fear of the PMF.’<sup>46</sup>

- 7.3.5 On 4 May 2020 Middle East Monitor (MEM) published an article entitled ‘Iraq judiciary says it’s under pressure to exonerate corrupt politicians’ which stated:

‘Iraq’s judiciary has been under pressure to exonerate corrupt politicians being investigated for embezzlement and abuse of power, the spokesperson for the Supreme Judicial Council said yesterday.

‘Judge Abdul Sattar Bayrakdar said while the judiciary is taking serious steps to fight corruption and hold embezzlers to account, including some politicians and ministers, they have launched social media campaigns through their allies residing outside of Iraq to accuse Iraqi courts of persecuting them for political reasons.

‘He explained that the “corrupt politicians” launched their social media campaigns after their political parties failed to close their cases or provide them with protection.

“Some of them [the corrupt] are members of the House of Representatives who enjoy immunity,” he added.

“The judiciary’s message to those who steal public money is whatever your status or position, your lies will not save you,” he said.’<sup>47</sup>

- 7.3.6 The August 2020 DFAT report additionally stated:

‘Judges, lawyers and their family members frequently face abuse, death threats and attacks in relation to their work from sectarian, tribal, extremist and criminal elements. In April 2018, for example, a group of armed individuals shot and wounded a judge in Maysan Governorate who was reportedly overseeing the investigation of several official corruption complaints, while in the same month an improvised explosive device (IED) killed the vice-president of Diyala Governorate’s Court of Appeals. In July 2018, a group of lawyers in Basra protested the killing of a fellow lawyer who had been defending people involved in demonstrations calling for delivery of essential services. There have also been numerous reports of attacks against lawyers providing support to individuals involved in the protests that commenced in October 2019. International observers report that the threat posed by such attacks can act to impair judicial independence.’<sup>48</sup>

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<sup>46</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.E), 11 March 2020

<sup>47</sup> MEM, ‘[Iraq judiciary says it’s under pressure to exonerate corrupt politicians](#)’, 4 May 2020

<sup>48</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p59-60), 17 August 2020

- 7.3.7 On 11 November 2019 the Tahir Institute for Middle East Policy (TIMEP) published an article entitled 'Judiciary in Kurdistan Region in Peril' which stated:

'Last November [2018], one of the Kurdistan Region's few remaining judges seen as independent announced his resignation as a member of the regional judicial council. Judge Latif Sheikh Mustafa was protesting the intervention of the region's two main political parties, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), in the judiciary as well as the failure of the judiciary to act as an independent institution. Mustafa's resignation comes after four other resignations of senior judges for similar reasons in the past four years. The two parties have long been working to undermine independence of the judiciary, but it was not until July this year [2019] that they were able to control it completely by agreeing to split and appoint the judges in the region's top courts.

'In an attempt by the KDP and the PUK to stifle the independence of the judiciary completely, the parties agreed to appoint 10 judges for the Court of Cassation, with five selected by the KDP and five by the PUK. Likewise, the presidents of the Erbil, Duhok, Sulaimani, and Garman Appellate Courts are KDP and PUK members and selected by them, too. In this politicized atmosphere, the judiciary system works as subordinate to the executive power. Per the Iraqi Constitution, members of the Judiciary Council of Iraq are voted on by the Iraqi parliament. Yet the Kurdistan region does not follow suit with its respective parliament, and instead, the cassation court's 10 judges are sworn in by Kurdistan Region Prime Minister Nechirvan Barzani after being selected by the main parties.'<sup>49</sup>

- 7.3.8 The same source further stated:

'In October 2007, the Kurdistan Region established its first government following the 1991 Kurdish uprising, with the regional parliament passing Law No. 23 of 2007 (the Judiciary Law). Although the law did not meet expectations of judges, lawyers, and civil society organizations, it was a turning point in the history of region's judiciary and step toward its independence. Yet the KDP and PUK gradually expanded their clout throughout the judiciary to the extent that almost all judges are now either affiliated with one of the parties. Attempts by the parties and government to undermine the judiciary left it at not only their mercy, but that of tribal leaders and politicians. This has posed the main obstacle to justice, democracy, and rule of law in the region because of problems with implementation of existing laws.

'...a majority of judges have KDP or PUK affiliations despite laws in Iraq and the Kurdistan region stipulating that judges must avoid political party membership, with judges appearing at party rallies during the election campaigns. In one notable instance, a group of Erbil judges visited Hiwa Ahmed Mustafa, a member of the KDP Leadership Council, to congratulate him on becoming head of the KDP's Shaqlawa branch. Mustafa then had an arrest warrant on charges of ordering opening fire against young Sulaimani

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<sup>49</sup> TIMEP, '[Judiciary in Kurdistan Region in Peril](#)', 1 November 2019



protesters in February 2011, when one protester was killed and another 54 wounded.

‘Other problems hampering judicial independence include the power of the Kurdistan Region Security Council and politicization of the terrorism court—in which judges make rulings based on instructions of KDP and PUK security forces and clients—and the two parties’ monopolization of the Syndicate of Lawyers, which hampers its ability to defend lawyers’ rights, especially in cases related to political issues.’

7.3.9 For more information see the [full article](#) published by TIMEP.

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## 7.4 Fair trial

7.4.1 On 28 January 2020 the UN Assistance Mission for Iraq (UNAMI) and the UN Office of the High Commissioner for Human Rights (OHCHR) published a report ‘based on independent monitoring of 794 criminal court trials of defendants mainly associated with the so-called Islamic State of Iraq and Levant (ISIL) from 1 May 2018 through 31 October 2019, conducted with the full support of Iraq’s High Judicial Council.’<sup>50</sup> The findings of the study:

‘...show serious concerns that basic fair trial standards were not respected in terrorism-related trials. The main areas of concern include:

‘- Violations of fair trial standards relating to equality before the courts and conduct of hearings – in particular as a result of ineffective legal representation, lack of adequate time and facilities to prepare a case, and limited possibility to challenge prosecution evidence – which cumulatively placed the defendant at serious disadvantage compared to the prosecution.

‘- The overreliance on confessions, with frequent allegations of torture or ill-treatment that were inadequately addressed by courts and that on their own constitute a human rights violation, further contributed to the disadvantaged position of defendants.

‘- Prosecutions under the anti-terrorism legal framework – with its overly broad and vague definition of terrorism and related offences – focused on “association” with or “membership” of a terrorist organization, without sufficiently distinguishing between those who participated in violence and those who joined ISIL for survival and/or through coercion, and with harsh penalties that failed to distinguish degrees of underlying culpability.

‘-Under anti-terrorism laws, the death penalty is mandatory for a wide range of acts that do not meet the “most serious crimes” threshold, which is necessary for imposing such a sentence. The overall findings also indicate the imposition of the death penalty following unfair trials.

‘-Practical restrictions on the publicity of hearings, lack of victim attendance in proceedings and overreliance on a charge of “membership” of a terrorist organization limited the possibility for victims and their families, as well as

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<sup>50</sup> OHCHR, [‘Iraq: UN report on ISIL trials recognizes efforts and raises concerns’](#), 28 January 2020

the general public, to see the perpetrators being held to account, and failed to expose the full range of crimes committed.’<sup>51</sup>

7.4.2 The ‘Freedom in the World 2020 – Iraq’ report published on 4 March 2020 stated that:

‘Criminal proceedings in Iraq are deeply flawed. Arbitrary arrests, including arrests without a warrant, are common. Terrorism cases in particular have been prone to fundamental violations of due process, with human rights groups describing systematic denial of access to counsel and short, summary trials with little evidence that the defendants committed specific crimes other than association with IS. In 2018, some trials of suspected IS members that resulted in death sentences lasted as little as 20 minutes, and hundreds of family members of suspected IS fighters have been arbitrarily detained.’<sup>52</sup>

7.4.3 The USSD report published in March 2020 stated:

‘The constitution and law provide all citizens the right to a fair and public trial, but the judiciary did not enforce this right for all defendants. Some government officials, the United Nations, and CSOs reported trial proceedings fell short of international standards.

‘By law accused persons are innocent until proven guilty. Judges in ISIS-related cases, however, sometimes reportedly presumed defendants’ guilt based upon presence or geographic proximity to activities of the terrorist group, or upon a spousal or familial relationship to another defendant, as indicated by international NGOs throughout the year. The law requires detainees to be informed promptly and in detail of the charges against them and of their right to a fair, timely, and public trial. Nonetheless, officials routinely failed to inform defendants promptly or in detail of charges against them. Trials were public, except in some national security cases. Numerous defendants experienced undue delays in reaching trial.

‘...Defendants’ rights under law include the right to be present at their trial and the right to a privately retained or court-appointed counsel, at public expense, if needed. Defendants frequently did not have adequate time and facilities to prepare a defense. Insufficient access to defense attorneys was a serious defect in investigative, trial, and appellate proceedings. In June [2019] at the trial of seven French citizen ISIS combatants, the defendants met their lawyers just minutes before the trial and had no access to legal counsel during pretrial detention. This scenario was typical in counterterrorism courts, where judicial officials reportedly sought to complete convictions and sentencing for thousands of suspected ISIS members quickly, including through mass trials.

‘...Defendants and their attorneys have the right, under law, to confront witnesses against them and present witnesses and evidence. They may not be compelled to testify or confess guilt. Nevertheless, defendants and their attorneys were not always granted access to evidence, or government officials demanded a bribe in exchange for access to the case files. In numerous cases judges reportedly relied on forced or coerced confessions as the primary or sole

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<sup>51</sup> UNAMI & OHCHR, ‘[Human Rights in the Administration of Justice in Iraq...](#)’, (pIV-V), 28 Jan 2020

<sup>52</sup> Freedom House, ‘[Freedom in World 2020 – Iraq](#)’, (Section F2), 4 March 2020

source of evidence in convictions, without the corroboration of forensic evidence or independent witness testimony.’<sup>53</sup>

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## 7.5 Effectiveness of the judiciary

- 7.5.1 The 2018 EASO report citing various sources stated that ‘According to Lifos [the Swedish Migration Agency], the legal system “works better in the KRI” than in the other parts of Iraq, as judges are not under threat. Transparency International also writes that corruption in KRI is lower than in Iraq, but still relatively high for the region and few are convicted for corruption.’<sup>54</sup>
- 7.5.2 The ‘Freedom in the World 2020 – Iraq’ report published on 4 March 2020 stated that ‘Corruption remains a major problem in Iraq, and was a key contributor to the protest movement in Baghdad and other cities that erupted in 2019...The judicial system, itself hampered by politicization and corruption, takes action on only a fraction of the cases investigated by the Integrity Commission, one of three governmental anticorruption bodies. The KRG suffers from similar corruption problems.’<sup>55</sup>
- 7.5.3 The March 2020 USSD report stated:  
‘HRW [Human Rights Watch] reported in September [2019] that a study of appeals court decisions indicated judges in almost two dozen cases appeared to ignore torture allegations and, in some instances, relied on uncorroborated confessions. According to HRW, judges denied these appeals even when the torture allegations were substantiated by forensic medical exams, and where the confessions were unsubstantiated by any other evidence or extracted by force.  
‘...KRG officials noted that prosecutors and defense attorneys frequently encountered obstacles in carrying out their work and that trials were unnecessarily delayed for administrative reasons. According to the IHRCKR [Independent Human Rights Commission Kurdistan Region], some detainees remained in KRG internal security service facilities for extended periods even after court orders for their release. Lawyers provided by an international NGO continued to have access to and provide representation to any juvenile without a court-appointed attorney.’<sup>56</sup>
- 7.5.4 However, the same source also stated:  
‘In March [2019] HRW reported on improvements to the judicial process in the Ninewa Governorate. Judges began requiring a higher evidentiary standard to detain and prosecute suspects, minimizing the court’s reliance on confessions alone, erroneous wanted lists, and unsubstantiated allegations. On February 4 [2019], HRW representatives attended a trial before the Ninewa counterterrorism court and observed judges applying the new rules.’<sup>57</sup>

<sup>53</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.E), 11 March 2020

<sup>54</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 8.4.2, p80), November 2018

<sup>55</sup> Freedom House, ‘[Freedom in World 2020 – Iraq](#)’, (Section C2), 4 March 2020

<sup>56</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.E), 11 March 2020

<sup>57</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.E), 11 March 2020



#### 7.5.5 The August 2020 DFAT report stated:

‘International observers report the criminal justice system in Iraq is weak. Trial monitoring by international bodies has revealed consistent failures to respect due process and fair trial standards as required by the Constitution and Iraq’s international human rights obligations, particularly in relation to the ICCPR [International Covenant on Civil and Political Rights] and CAT [Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment]. Lack of resources and training, low forensic capacity, a paucity of reliable or impartial evidence, reliance on confessions that are often gained during lengthy periods of detention without charge, and regular use of torture, all contribute to the frequent failure of due process and the miscarriage of justice...[T]he judiciary (like other national institutions) is susceptible to corruption and political interference in relation to court verdicts.’<sup>58</sup>

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Section 8 updated: 21 December 2020

## 8. Tribal justice system

### 8.1 Tribal structures

- 8.1.1 In November 2019 Haley Bobseine of The Century Foundation, an American think tank, published a report entitled ‘Tribal Justice in a Fragile Iraq’ based on field research ‘conducted in Sunni tribal areas in Anbar, Erbil and Baghdad governorates as well as in areas of the predominantly Shia Arab South’ and ‘interviews about tribal practices elsewhere in Iraq, including in Ninevah and Diyala governorates’<sup>59</sup>. The report stated:

‘Approximately 75 percent of Iraq’s population are members of one of Iraq’s 150 tribes. Iraq’s largest tribes number in the hundreds of thousands, the smallest just several thousand. Iraq, of course, is a diverse country. A majority of the population are Shia and Sunni Arabs, but there are also many Kurds and smaller ethnic and religious minorities; many Iraqis from all these backgrounds are also members of tribes. Tribal customs and laws vary. There is significant overlap and little variation among Sunni and Shia Arab tribal customs and “urf” (tribal law), with most discrepancies limited to the price of “diya” (financial payments made to settle disputes). Tribal differences are greater among other ethnic and religious groups.

‘The largest unit within the Arab tribal structure is the “qabalah,” or tribal confederation. Tribal confederations may span across several countries and are made up of dozens of tribes, or “asha’ir” (singular “ashirah”). Within Iraq, Arab tribal confederations are broken down into asha’ir, which are then divided into a category of subgroups known as “fakhdh” (clan), which in turn comprises a number of houses, or “biyout” (singular “bayt”), and which finally include a number of “awa’il” (families).

‘... Tribes are characterized by a distant patrilineal ancestry, one often more claimed than real. As is the case elsewhere in the world, Iraqis may manipulate their genealogical ancestry in search of new tribal associations.

<sup>58</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 5, p60), 17 August 2020

<sup>59</sup> Bobseine, H; The Century Foundation, ‘[Tribal Justice in a Fragile Iraq](#)’, (p2), 7 November 2019

A “sheikh” is a venerable tribal leader, and each tribe normally includes multiple sheikhs. Tribal leadership, or sheikhdum, is often passed down from a sheikh to his eldest son, but can also be passed to other male members of the same bayt, sometimes leading to infighting. Younger sons or other male relatives utilize financial gains, political connections, or leadership of government-aligned paramilitary groups (such as the PMU) to secure positions of power.’<sup>60</sup>

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## 8.2 Tribal law and dispute resolution

### 8.2.1 The Century Foundation report published in November 2019 stated:

‘The informal Iraqi tribal justice system is often perceived by outsiders as operating in parallel to the formal justice system. In practice, however, the two systems frequently overlap and even coordinate with each other, and at other times challenge each other. Resorting to one system over the other to resolve disputes is often a calculation based on the relevance of the tribal system in a particular area, the strength of one’s tribe or sheikhs as opposed to the opposing party’s tribal affiliations, or whether there is access to the formal legal system, among other reasons...

‘Tribal customary law, urf, is a dynamic amalgamation of tribal customs, precedents from prior tribal resolutions, and, to a certain extent, interpretations of sharia law, although not all tribal rulings are strictly in line with Islamic law. Urf shapes the entire tribal justice process. It may evolve through iteration and according to prevailing circumstances. There is little variation among different tribes’ customary law. During interviews, Arab tribal jurists, or “arfa,” separately estimated that more than 80 percent of tribal structures, customs, and processes between Arab tribes are the same, facilitating the resolution of intertribal disputes. Customary law is usually unwritten, but increasingly, some tribes are codifying their urf into written texts.

‘Generally, the main goal of the tribal justice system is to provide stability and maintain collective honor, while preventing a descent into revenge killings and the escalation of conflict. The tribal justice system generally subordinates the individual good for the collective good.’<sup>61</sup>

### 8.2.2 The same source further stated:

‘Tribal sheikhs oversee the gamut of both civil and criminal matters (as they are referred to in the formal system), mediating disputes over land and property, water, commercial matters, inheritance, “honor crimes,” car accidents, drug offenses, theft, fraud, and murder, among other matters. Tribal negotiation and conflict resolution occur at every level of the tribal system. Most disputes are resolved at the house or clan level. Contentious murder cases or other serious disputes may be transferred for adjudication by higher-ranking sheikhs at the level of the tribe. Geographically, disputes are mediated where the issue they involve occurs.

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<sup>60</sup> Bobseine, H; The Century Foundation, [‘Tribal Justice in a Fragile Iraq’](#), (p3), 7 November 2019

<sup>61</sup> Bobseine, H; The Century Foundation, [‘Tribal Justice in a Fragile Iraq’](#), (p5), 7 November 2019

‘...Sheikhs take the final decision in resolving disputes, but several sheikhs noted that input from trusted and expert sources is important. For example, one sheikh from the Qayyarah area south of Mosul relies on the advice of a twelve-person shura council whose membership is partially decided in consultation with the wider community. The council helps advise him on his caseload, which he says typically includes up to three minor cases a day and ten more serious cases a year.

‘Tribal conflict resolution does not happen in a vacuum. Tribal procedures and negotiations are influenced by various factors including the social status and political connections of the tribes involved, the sheikhs’ level of influence and connections, the gender and social status of the perpetrator and the victim, and any history of feuding. Furthermore, the nature of this informal justice system means that there is no official standardization of rulings, and the system remains open to manipulation.’<sup>62</sup>

- 8.2.3 See the full [report](#) for further information on tribal negotiation processes and variations among differential tribal laws.
- 8.2.4 The June 2019 EASO Guidance Note on Iraq stated that ‘Tribal customary law (urf) is a longstanding, important and common mechanism for dispute resolution and preservation of order in Iraq. Tribal justice has reportedly become increasingly popular and preferred to courts and police for a wide range of issues including criminal matters such as murder, assault and theft, particularly in central and southern Iraq.’<sup>63</sup>

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### 8.3 Tribal justice and formal justice

- 8.3.1 The 2018 EASO report citing various sources stated that:

‘Tribal justice in Iraq remains common and has reportedly become increasingly popular and preferred to courts and police, particularly in central and southern Iraq... Tribal authorities are seen as more expedient for settling disputes than state justice institutions, or, used where the authorities fail to resolve the dispute, or where complainants need to pay bribes to state judicial officials. Dr. Chatelard observed that the tribal justice system is an auxiliary, rather than a competitor with the state judicial system; tribal structures are sanctioned in practice by the state, but do not have an official status and enforcement officials may also encourage conflicting parties to use the tribal justice system, while state courts sometimes also refer cases for tribal settlement.

‘...In 2018, the Ministry of Justice announced a new “arbitration initiative” to create a team of 47 Sheikhs who will work voluntarily as tribal arbitrators to resolve tribal disputes, in direct affiliation with the Ministry of Justice, to attempt prevention of escalation; though the initiative has been criticised by civil society for undermining state institutions, creating a parallel justice structure, and undermining human rights.’<sup>64</sup>

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<sup>62</sup> Bobseine, H; The Century Foundation, ‘[Tribal Justice in a Fragile Iraq](#)’, (p5-7), 7 November 2019

<sup>63</sup> EASO, ‘[Country Guidance: Iraq](#)’, (p92), June 2019

<sup>64</sup> EASO, ‘[Iraq: Actors of Protection](#)’, (Section 6.6, p67), November 2018

### 8.3.2 The Century Foundation report published in November 2019 stated:

‘The informal tribal justice and formal justice systems frequently overlap and even coordinate with each other, and at other times challenge each other. Iraqis use (and abuse) these systems as they seek justice, revenge, or absolution from guilt. It is not always clear how much real authority the state’s recognition of tribes affords them. Nonetheless, coordination between the formal justice system and tribal sheikhs occurs regularly. Senior tribal leaders said that they often interact with security agencies (especially in rural areas) following the occurrence of a crime—especially a violent crime—in order to de-escalate tensions. However, interaction between formal and tribal justice systems most commonly occurs after tribal resolutions are concluded.

‘...Sometimes the line between the state and tribe is blurred. Tribal sheikhs, their relatives, and other tribesmen may staff security, judicial, police, and other Iraqi government bodies. Favoritism is common and some government positions or security forces are known for being staffed almost exclusively by a particular tribe, which is especially true in areas of southeast Iraq and in Anbar governorate. Some use their official positions to take sides in tribal disputes in support of their own tribal affiliation. It can be unclear whether an action is fundamentally the result of a tribal or state decision.

‘Officials may feel pressure (whether from sheikhs themselves or from fellow tribesmen) to rule or act in favor of their tribe at the expense of others. Other times, law enforcement personnel are reluctant to interfere in tribal conflicts, as their involvement may risk further escalation. In certain cases, there is a high risk that local conflicts between a police officer and an army soldier could degenerate into tribal conflict.

‘Sheikhs often coordinate with various security forces deployed in their area, and will inform the relevant force, depending on the nature of the crime, of issues in their areas. While tribal leaders first try and resolve disputes themselves, there are some cases that they often directly refer to the state. These include Islamic State terrorism or sensitive security cases, including murder cases involving powerful actors—for which sheikhs may fear retaliation. The level of coordination, however, may be influenced by the current strength or weakness of the state, personal relations between sheikhs and local security and state actors, and the status of broader tribal relations between a sheikh’s tribe and those of the predominant tribe staffing the local government branches and security forces.’<sup>65</sup>

### 8.3.3 The same source further stated:

‘Despite coordination, sheikhs regularly extol what they perceive as the superiority of the tribal justice system, describing it as faster, fairer, and less corrupt than the Iraqi court system. But Iraqi tribes are not antithetical to the state—sheikhs say they have no problem with Iraqi law (barring occasional exceptions) but rather object to its flawed implementation, which is often plagued by corruption.

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<sup>65</sup> Bobseine, H; The Century Foundation, ‘[Tribal Justice in a Fragile Iraq](#)’, (p7-8), 7 November 2019

'They not only see themselves as filling a "justice gap" where the state is absent, but also highlight aspects of tribal justice they perceive to be superior to those of the formal justice system, such as quick case resolution and a lack of pretrial detention. "We can resolve an issue in a day, which could take the state months," one sheikh said. "I don't have much confidence in the ability of investigative police to fulfill their functions, as they are mostly corrupt in a systemic, organized way. This corruption starts from the top, so it is here to stay," said a senior sheikh from Qayyarah, south of Mosul. Sheikhs denied that the tribal justice system is also plagued with corruption. Others acknowledged that corruption exists, but, as one sheikh said, "it is normally associated with PMU groups or those who gained recognition as a sheikh through state connections—these 'new sheikhs' sometimes exploit the system for their own benefit."

'...Residents, if unhappy with a tribal decision, may file a claim with an Iraqi state court, but must weigh potential backlash with tribal leaders if they "sidestep their authority" by doing so. Others may attempt to influence decisions by enlisting one of the myriad government-aligned paramilitary groups that may be perceived as more powerful than tribal and state security actors in some parts of the country... some Iraqis may prefer to approach PMU members to mediate disputes in their favour.

'...One Iraqi researcher said that while tribal justice can play an important role in society, it also undercuts state judicial authority. Fast and tribal decisions are influenced by the power and connections of the party involved, with the case usually decided in favor of the more powerful party. When the more powerful tribal party is permitted to influence, or allow judges to drop ongoing cases in the formal justice system, it means that sheikhs can influence state decisions without proper formal oversight. While the Iraqi judiciary is notorious for its shortcomings, the codified laws and structure of the formal system provide more robust safeguards for impartial justice, even if in practice it is not always delivered.

'...A kaleidoscope of obstacles can lead to disputes being resolved by tribal sheikhs rather than in the formal justice system. These issues include distrust of the formal legal system; limited funds to hire lawyers; slowness of court proceedings; lack of access to affordable transportation connecting neglected, rural areas to cities where courts are located; and the potential for backlash if residents sidestep their sheikh and go first to the court system.'<sup>66</sup>

8.3.4 For information on subjects such as tribal justice after Daesh, women and tribes, tribal affiliations with extremist groups, and the returns of internally displaced persons see the full [report](#).

8.3.5 The June 2019 EASO Guidance Note on Iraq stated:

'Tribal law is described as filling gaps not addressed by the state and where state institutions are weak. Tribal structures are sanctioned in practice by the State, but do not have an official status. Enforcement officials may also encourage conflicting parties to use the tribal justice system, while state courts sometimes also refer cases for tribal settlement.

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<sup>66</sup> Bobseine, H; The Century Foundation, '[Tribal Justice in a Fragile Iraq](#)', (p8-10), 7 November 2019



‘Although Article 45(2) of the Iraqi Constitution prohibits tribal traditions that contradict human rights, tribal dispute mechanisms can involve violations of human rights, such as giving away female relatives as compensation, honour killings, retributive killings or banishment. Women are particularly vulnerable regarding tribal justice and can encounter harsh treatment for transgression of tribal customs.’<sup>67</sup>

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Section 9 updated: 21 December 2020

## 9. Human rights violations

### 9.1 Arbitrary arrest and detention

- 9.1.1 In July 2018 Human Rights Watch (HRW) published an article entitled ‘Iraq: Intelligence Agency Admits Holding Hundreds Despite Previous Denials’ which stated:

‘Iraq’s National Security Service (NSS), an Iraqi intelligence agency reporting to Iraq’s prime minister, has acknowledged for the first time that it is detaining individuals for prolonged periods of time, despite not having a clear mandate to do so, Human Rights Watch said today. NSS is holding more than 400 detainees in a detention facility in east Mosul. As of July 4, 2018, 427 men were there, some of whom had been held for more than seven months.’<sup>68</sup>

- 9.1.2 The same source further stated:

‘The NSS officer who spoke to researchers on the condition of anonymity said that officers know some prisoners are innocent. He said the NSS held many of them for months because Nineveh only has one counterterrorism judge hearing cases of detainees held by the NSS, leading to long delays. He said in cases where a defendant does not confess to a crime, the judge needs to order a range of investigations to be carried out by various security actors which also takes a long time to complete.

‘The NSS head in Mosul stated that the detention site has many prisoners they would like to transfer to other authorities, with a judge’s order, but that there is no room available in other prisons.’<sup>69</sup>

- 9.1.3 The EASO Country Guidance Note published in June 2019 stated that there is evidence that a number of different groups including but not limited to Sunni Arabs, Yazidis, Turkmen, human rights activists and children have all been subjected to arbitrary arrest and detention by members of the Iraqi Security Forces, the National and Federal Police, PMF units as well as the Kurdish Peshmerga, Asayish and Municipal Police<sup>70</sup>.

- 9.1.4 In March 2020 the USSD stated:

‘The constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court. Despite such protections, there were numerous reports of

<sup>67</sup> EASO, ‘[Country Guidance: Iraq](#)’, (p92), June 2019

<sup>68</sup> HRW, ‘[Iraq: Intelligence Agency Admits Holding Hundreds...](#)’, 22 July 2018

<sup>69</sup> HRW, ‘[Iraq: Intelligence Agency Admits Holding Hundreds...](#)’, 22 July 2018

<sup>70</sup> EASO, ‘[Country Guidance: Iraq](#)’, (pp.13,27,45,53,59,68-69,85,143-144), June 2019

arbitrary arrests and detentions, predominantly of Sunni Arabs, including IDPs [Internally Displaced Person].

‘...Human rights organizations reported that government forces, including the ISF, Federal Police, NSS, PMF, and Asayish, frequently ignored the law. Local media and human rights groups reported that authorities arrested suspects in security sweeps without warrants, particularly under the antiterrorism law, and frequently held such detainees for prolonged periods without charge or registration. The government periodically released detainees, usually after concluding that it lacked sufficient evidence for the courts to convict them, but many others remained in detention pending review of other outstanding charges.

‘...Based on information from multiple sources, HRW estimated that at the end of 2018, Iraqi and KRG authorities were detaining approximately 1,500 children for alleged ISIS [Islamic State of Iraq and Syria] affiliation. Authorities previously and arbitrarily detained families perceived to have possible ISIS affiliation. Of the 1,036 children detained on national security charges in 2017, approximately 80 percent were held by federal authorities, and the rest were held by the KRG.’<sup>71</sup>

9.1.5 The same source further stated:

‘There were numerous reports of arbitrary or unlawful detention by government forces, including ISF, Federal Police, NSS, PMF, Peshmerga, and Asayish. There were no reliable statistics available regarding the number of such acts or the length of detentions. Authorities often failed to notify family members of the arrest or location of detention, resulting in incommunicado detention if not enforced disappearance. Humanitarian organizations also reported that, in many instances, central government forces did not inform detainees of the reasons for their detention or the charges against them. Most reports of arbitrary or unlawful detention involved suspected members or supporters of ISIS and their associates and family members. Individuals arbitrarily or unlawfully detained were predominantly Sunni Arabs, including IDPs.

‘On October 4 [2019], eight human rights defenders in Basrah were arbitrarily detained without warrant by Iraqi security forces, including human rights defender Hussam al-Khamisy, according to witnesses who spoke to the NGO Gulf Center for Human Rights and local rights groups. They were held for six hours and released only after being forced to sign a document, which they were not allowed to read.’<sup>72</sup>

9.1.6 The August 2020 DFAT report stated that ‘There are also reports of Iranian-aligned PMF groups arbitrarily or unlawfully detaining Kurds and Turkmen in Kirkuk and Christians and other minorities in western Ninewah and the Ninewah Plains. KRI law permits the extension of pre-trial detention for up to six months under court supervision. According to human rights observers, however, detainees are often held for longer periods without trial.’<sup>73</sup>

<sup>71</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.D), 11 March 2020

<sup>72</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.D), 11 March 2020

<sup>73</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 4, p54), 17 August 2020

- 9.1.7 In August 2020 the UN Assistance Mission for Iraq (UNAMI) and the UN Office of the High Commissioner for Human Rights (OHCHR) published a report entitled 'Human Rights Violations and Abuses in the Context of Demonstrations in Iraq – October 2019 to April 2020'. The report stated that during wide spread anti-government demonstrations:

'...a pattern emerged of targeted arbitrary arrests and detention of prominent demonstrators and activists, including bloggers and lawyers, who were taken from their homes or arrested at checkpoints after their names were reportedly checked against a list.

'...In general, detainees interviewed were given the opportunity to inform their families of their whereabouts but often after several days. This contributed to reports, in November 2019, of large numbers of missing protesters, causing great distress to family members unable to locate their relatives. According to international human rights law, detainees have the right to promptly notify a family member of the fact and location of their detention. The denial of such a right, combined with the lack of access to lawyers during the interrogation phase, may have created conditions amounting to incommunicado detention.'<sup>74</sup>

- 9.1.8 On 11 August 2020 the UN Security Council published a report by the UN Secretary-General on the Implementation of Resolution [2522](#). The report stated: 'In addition to those in the southern and central governorates, protests also took place in the Kurdistan Region, during which the arbitrary arrest of journalists and protesters, including teachers, was reported. On 16 May [2020], at least eight journalists and other protesters were arrested and briefly detained in Dahuk Governorate during a peaceful protest.'<sup>75</sup>

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## 9.2 Torture and ill-treatment

- 9.2.1 The July 2018 article published by Human Rights Watch (HRW) included details of an interview with Faisal Jeber, a former detainee at the NSS detention facility in East Mosul. The article stated:

'Faisal Jeber, the archeologist, told Human Rights Watch that the detainees he spoke to said they were being held on suspicion of ISIS affiliation and alleged that during interrogations NSS officers had beaten them with plastic or electrical cables, electrocuted them, beaten the soles of their feet, and hung them with their hands bound behind their backs.

'Jeber said that at 3 a.m. on his first night at the prison, an argument broke out between two prisoners in his room. He said two guards came in, took the two men out, and in front of the window Jeber saw each guard beat one of the men with plastic cables and pipes for about 20 minutes, cursing and shouting at them before returning them to the room.

'He said that first night in detention he was told that a man had died after being tortured:

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<sup>74</sup> UNAMI & OHCHR, '[Human Rights Violations and Abuses in...Iraq...](#)', (p25), August 2020

<sup>75</sup> UN Security Council, '[Report of the Secretary-General...](#)', (p10), 11 August 2020



'My first night it was the time when we all get to use the bathroom. As we were getting ready to leave our room in a line, we heard voices coming out of the room and it was chaos; the guards were saying someone had died. One prisoner with me said that he had been in the cell with the man who died, and said he was in his thirties, had been at the prison for some time, and had been tortured to the point that he had been half paralyzed.

'The NSS July 11 response acknowledged deaths at the prison, stating, "There have been very limited cases of death, which were judicially documented," without providing any further detail.'<sup>76</sup>

- 9.2.2 An article published in January 2019 by HRW entitled 'Kurdistan Region of Iraq: Detained Children Tortured' stated:

'The Kurdistan Regional Government in northern Iraq is torturing children to confess to involvement with the Islamic State (ISIS), Human Rights Watch said today.

'Children told Human Rights Watch that in 2017 and 2018, security officers, known as Asayish, used beatings, stress positions, and electric shock on boys in their custody. Most said they had no access to a lawyer and they were not allowed to read the confessions Asayish wrote and forced them to sign.

'...Human Rights Watch interviewed 20 boys, ages 14 to 17, charged or convicted of ISIS affiliation, at the Women and Children's Reformatory in Erbil in November 2018, and three boys who had recently been released... Sixteen of the 23 children said that one or more Asayish officers had tortured them during interrogation at Asayish facilities, beating them all over their bodies with plastic pipes, electric cables, or rods. Three boys said that the officers used electric shocks. Others described being tied into a painful stress position called the "scorpion" for up to two hours. Several boys said the torture continued over consecutive days, and only ended when they confessed.

'...None of the boys said that they were allowed to read the confession Asayish wrote for them and forced them to sign. Most only learned what it said when it was read out in court.

'At least five boys said they told an investigative or trial judge that their confession was produced under torture, but that the judges appeared to ignore their statements.'<sup>77</sup>

- 9.2.3 In June 2019 HRW published an article which reported on the torture of a man suspected of being an accomplice in a car theft by police at a Baghdad police station. The article stated that during an extended interrogation in which an interrogator was trying to extract a confession, the suspect was 'hung from his hands for three days'. Following three attempts to repair arterial damage, doctors were forced to amputate the suspect's left arm<sup>78</sup>.
- 9.2.4 On 18 February 2020 Amnesty International (AI) published a report entitled 'Human Rights in the Middle East and North Africa: Review of 2019; Iraq'.

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<sup>76</sup> HRW, '[Iraq: Intelligence Agency Admits Holding Hundreds...](#)', 22 July 2018

<sup>77</sup> HRW, '[Kurdistan Region of Iraq: Detained Children Tortured](#)', 8 January 2019

<sup>78</sup> HRW, '[Iraq: Amputation Apparently Caused by Torture](#)', 26 June 2019

The report stated that ‘There were widespread reports of torture and other ill-treatment of detainees held by central Iraqi and KRG forces, particularly of those suspected of affiliation with IS [Islamic State], who were coerced to provide “confessions” during interrogation. Courts continued to allow torture-tainted evidence to be used in trials, especially in those of IS suspects.’<sup>79</sup>

9.2.5 The August 2020 DFAT report stated:

‘There have been consistent reports government forces from a range of agencies and PMF groups regularly abuse and torture individuals – particularly Sunni Arabs – during arrest, pre-trial detention and after conviction. Former prisoners, detainees and international human rights organisations have documented cases of torture and other cruel, inhuman or degrading treatment or punishment in Ministry of Interior-run facilities in particular, and to a lesser extent in Ministry of Defence-run facilities and those under KRG control. In-country sources report torture is most likely to occur at the point of arrest as a means of gaining a confession. Although the law prevents the use of torture to get confessions, human rights groups report courts routinely accept forced confessions as evidence, particularly in Da’esh-related counterterrorism cases.’<sup>80</sup>

9.2.6 The same source further stated:

‘An August 2018 HRW report alleged the use of torture in three Ministry of Interior facilities in and around Mosul, based on statements from two former detainees and the father of a man who died during interrogation. According to the report, one interviewee reportedly witnessed or experienced repeated torture during interrogations from January to May 2018, including hanging from the hands bound behind the back and beatings with plastic and metal pipes and cables. HRW reported in April 2019 that it had received no reply to two letters sent to authorities requesting an update on steps taken to investigate the allegations, and it had been advised torture was continuing to occur in the facilities. Other human rights organisations have asserted authorities frequently fail to investigate credible allegations security forces routinely torture terrorism suspects and often convict defendants based (often solely) on allegedly coerced confessions.’<sup>81</sup>

9.2.7 The joint report published in August 2020 by UNAMI and OHCHR looking at human rights violations and abuses during anti-government demonstrations between October 2019 and April 2020 stated:

‘UNAMI/OHCHR received credible allegations of torture or ill-treatment of arrested demonstrators. Information provided suggests that incidents of torture or ill-treatment of demonstrators occurred mostly during the initial interrogation, with additional accounts of protesters being beaten during arrest, including with rifle butts. Victims reported that the torture or ill-treatment was generally for the purpose of extracting confessions, forcing signature of documents of unknown content, and in some cases as a form of punishment. Beatings, including to the soles of the feet, and severe threats

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<sup>79</sup> AI, [‘Human Rights in the Middle East and North Africa: Review of 2019; Iraq’](#), 18 February 2020

<sup>80</sup> DFAT, [‘Country Information Report – Iraq’](#), (Section 4, p53), 17 August 2020

<sup>81</sup> DFAT, [‘Country Information Report – Iraq’](#), (Section 4, p53-54), 17 August 2020

were the most common forms of torture and ill-treatment reported. Others described electric shocks, choking/suffocation or hanging from the ceiling by the limbs. In addition, several persons indicated being subjected to slaps and verbal abuse while in detention.’<sup>82</sup>

9.2.8 The same source further stated:

‘Males who were abducted described being subjected to various acts amounting to torture and/or ill-treatment during “interrogation”, including severe beatings, electrocution, hosing/bathing in cold water, hanging from the ceiling by the arms and legs, death threats and threats to their family, as well as degrading treatment (such as being urinated on and photographed naked). Female interviewees described being beaten, threatened with rape and subjected to acts of a sexual nature without consent. In all but one case, the victims received no medical treatment during their abduction.’<sup>83</sup>

9.2.9 In October 2020 EASO published a report entitled ‘Iraq: Treatment of Iraqis with perceived affiliation to ISIL’. The report, which cited various sources, stated:

‘Throughout 2019, human rights observers continued to report the use of torture and ill treatment by Iraqi and KRG authorities, particularly of detainees held on suspicion of ISIL affiliation. Human Rights Watch and Amnesty International described the use of torture of ISIL suspects, including children, across Iraq throughout 2019 as “widespread”. Children suspected to have ties with ISIL were reported to be “exposed to a heightened risk of violence, including sexual violence, abuse, exploitation and neglect” in detention, according to the UN. For instance, in KRI, in Erbil, at the Reformatory for Women and Children, despite reported better detention conditions than in other facilities, Human Rights Watch expressed “grave concerns”, in particular due to “beatings and verbal abuse” and “death threats” by some guards towards children detained.’<sup>84</sup>

9.2.10 The same source further stated:

‘Torture continued to be reported among sources in 2020: The Arabic-language news outlet, Elaph, reported that the Iraqi Salvation Development Front party accused the government of subjecting around 15 000 prisoners, including ISIL members, to torture in Al-Hout prison in Al-Nasiriyya, Thi Qar governorate, and claiming that tens have died since the beginning of 2020; they called on the government to investigate human rights violations.

‘In a 2020 interview with the organisation Prison Insider, which raises awareness on prison conditions, Agnès Callamard, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, stated that “inmates are almost, without fail, victims of torture or ill treatment by the authorities” committed during detention in order to extract confessions.’<sup>85</sup>

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<sup>82</sup> UNAMI & OHCHR, ‘[Human Rights Violations and Abuses in...Iraq...](#)’, (p26), August 2020

<sup>83</sup> UNAMI & OHCHR, ‘[Human Rights Violations and Abuses in...Iraq...](#)’, (p36), August 2020

<sup>84</sup> EASO, ‘[Iraq: Treatment of Iraqis with perceived affiliation to ISIL](#)’, (Section 1, p16), October 2020

<sup>85</sup> EASO, ‘[Iraq: Treatment of Iraqis with perceived affiliation to ISIL](#)’, (Section 1, p16), October 2020

### 9.3 Abductions and enforced disappearances

#### 9.3.1 The February 2020 Amnesty International report stated:

‘Dozens of protesters and activists from several governorates, including Baghdad, Amarah and Karbala, were abducted and forcibly disappeared by security forces in the period between early October and December [2019]; a few were released days or weeks later.

‘...Displaced Iraqis perceived to be affiliated with IS were subjected to enforced disappearance following arrest by central Iraqi security forces at checkpoints, in IDP camps and in areas of origin to which they had returned. Many of the arrests occurred in areas previously held by IS or considered to have been IS strongholds.

‘The fate of thousands of men and boys who were arrested and then forcibly disappeared by central Iraqi security forces, including the PMU, while fleeing IS-held areas between 2014 and 2018 remained unknown. Their disappearances left behind many female-headed households; these women suffered the stigma of perceived affiliation with IS.’<sup>86</sup>

#### 9.3.2 The USSD report published in March 2020 and covering events in 2019 stated:

‘There were frequent reports of enforced disappearances by or on behalf of government forces, including Federal Police, PMF, Peshmerga, and Asayish, as well as by nongovernment militias and criminal groups. The International Commission on Missing Persons estimated 250,000 to a million persons remained missing from decades of conflict and human rights abuses.

‘Many suspected members of ISIS, and individuals close to them, were among those subject to forced disappearance. Amnesty International and HRW issued reports documenting the disappearance of 643 Sunni Muslim males from Fallujah and Saqlawiyah and further mass disappearances of Sunni males at Razzaza. These incidents were largely attributed to Kataib Hezbollah, which maintained an illegal detention facility with at least 1,700 prisoners in Jurf al-Sakhar, south of Baghdad. The government took no action to free these detainees or investigate human rights abuses related to their captivity.’<sup>87</sup>

#### 9.3.3 The August 2020 DFAT report stated that:

‘Human rights observers report authorities and Popular Mobilisation Forces (PMF) systematically carry out enforced disappearances, particularly in the context of counter-terrorism operations. Those disappeared are overwhelmingly Sunni males, including children as young as nine. During the fight against Da’esh, the Hezbollah Brigades PMF reportedly arrested and disappeared hundreds of men passing through the al-Razaza Checkpoint, the main crossing point between Anbar and Karbala Provinces.

‘In April 2019, human rights groups submitted to the UN Committee on Enforced Disappearance for urgent action the case of 192 IDPS who were

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<sup>86</sup> AI, [‘Human Rights in the Middle East and North Africa: Review of 2019: Iraq’](#), 18 February 2020

<sup>87</sup> USSD, [‘Country Report on Human Rights Practices 2019 – Iraq’](#), (Section 1.B), 11 March 2020

arrested at the checkpoint on a single day in October 2014, all of whom remain unaccounted for. According to Amnesty International, central government and KRG forces were responsible for the forced disappearance of thousands of men and boys since 2014, particularly around Mosul. A September 2018 HRW report documented 74 specific cases of men and four cases of boys reportedly forcibly disappeared by government forces, primarily PMFs, between April 2014 and October 2017.<sup>88</sup>

- 9.3.4 The joint report published in August 2020 by UNAMI and OHCHR which focused on the widespread protests in Iraq stated:

‘Between 1 October 2019 and 21 March 2020, UNAMI/OHCHR received 154 allegations of missing protesters and human rights activists who were presumed to have been abducted or detained. Of these allegations, UNAMI/OHCHR verified 99 cases involving 123 alleged missing persons.

‘Of these cases, UNAMI/OHCHR was able to confirm the whereabouts of 103 persons, while 20 remained missing or whose status was unknown at the time of the publication of this report. Of the 103 persons located, at least 32 individuals were abducted in circumstances indicating that the perpetrators may be armed actors commonly referred to as “militia”; 34 individuals were arrested and detained by security forces and did not or could not contact their families during their detention; and 37 individuals either could not be contacted or declined to share details with UNAMI/OHCHR about their cases, mainly due to security concerns, including the risk of reprisal.’<sup>89</sup>

- 9.3.5 The same source further stated:

‘UNAMI/OHCHR verified the cases of 32 individuals who appeared to have been abducted in circumstances indicating that the perpetrators may be armed actors commonly referred to as “militia”. UNAMI/OHCHR observed commonalities across accounts with respect to the pre-meditated nature of the abductions, the profile of persons targeted, the motive behind the abductions, the modus operandi, and the level of organization displayed by the perpetrators. Interrogation, punishment and deterring involvement in the demonstrations appeared to be the main motivations for the abduction and torture/ill-treatment.

‘In all incidents, the victims had participated in demonstrations or provided support to demonstrators. Notably, nearly all abductees were activists prior to the demonstrations, played a significant role in demonstrations and/or posted statements critical of the authorities, political parties or armed groups on social media. Abductees were detained for two to 14 days, in locations including houses, “caravans” and military camp/prison-like rooms. They were typically forced into vehicles by several masked and armed men in public areas. They were not provided with means to contact their families. None of those abducted appeared before a judge or entered the formal justice system in any way.

‘...UNAMI/OHCHR received credible information that 20 people (18 men and two boys) linked to demonstrations who disappeared between 1 October and

<sup>88</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 4, p51), 17 August 2020

<sup>89</sup> UNAMI & OHCHR, ‘[Human Rights Violations and Abuses in...Iraq...](#)’, (p35), August 2020



2019 and March 2020 remained missing at the time of the publication of this report, and their fate unknown.

‘All of those missing participated in the demonstrations as protesters, or are otherwise linked to activities in support of the demonstrations or broader criticism of Government. They include social media activists, lawyers, journalists, writers, teachers and students. Seventeen victims disappeared from Baghdad, one from Basra, one from Maysan and one from Babil.’<sup>90</sup>

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## 9.4 Extrajudicial killings and excessive use of force

### 9.4.1 The March 2020 USSD report stated:

‘There were numerous reports that the government, members of the security forces, nongovernmental militias, and ISIS affiliates committed arbitrary or unlawful killings...Government security forces reportedly committed extrajudicial killings. While the government claimed to investigate allegations, it rarely made public its identification and prosecution of specific perpetrators of abuses and atrocities.

‘...Human rights organizations reported that Iran-aligned PMF militia groups engaged in killing, kidnapping, and extortion throughout the country, particularly in ethnically and religiously mixed governorates.’<sup>91</sup>

### 9.4.2 The August 2020 DFAT report stated:

‘Human rights observers report extrajudicial killings occur frequently in Iraq, often in conjunction with enforced disappearance. A range of government and non-government actors have reportedly been responsible for such killings, including government and KRI security forces, PMF groups and non-state actors, particularly Da’esh. Those targeted have included (but are not limited to) persons involved in protest activity, prominent female civil society activists, military and political leaders, including tribal sheikhs, judges and lawyers, persons with perceived affiliations to Da’esh, and LGBTI individuals.’<sup>92</sup>

### 9.4.3 The same source further stated:

‘A wave of nationwide protests commenced at the beginning of October 2019, with demonstrators expressing discontent at a system perceived as corrupt and untrustworthy, and with unacceptable influence from Iran and elsewhere. The protests were subjected to regular violence by various parts of the security forces, including masked men who were widely assumed to be from Iraq’s many militias.

‘...In the first week of October 2019, security forces killed scores of protesters and injured many more when they dispersed protests by firing live ammunition and deploying tear gas and hot water cannons. After a second wave of protests began on 24 October 2019, security forces again met protesters with excessive force. On 25 October [2019] in Baghdad, anti-riot forces fired previously unseen types of tear gas grenades into crowds in a

<sup>90</sup> UNAMI & OHCHR, ‘[Human Rights Violations and Abuses in...Iraq...](#)’, (p36-37), August 2020

<sup>91</sup> USSD, ‘[Country Report on Human Rights Practices 2019 – Iraq](#)’, (Section 1.A), 11 March 2020

<sup>92</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 4, p50), 17 August 2020



manner that witnesses said was intended to kill rather than disperse protesters. Human rights observers reported the grenades utilised by security forces were ten times heavier than regular tear gas grenades, and were reportedly fired directly into crowds of peaceful protesters at head height, killing almost instantly anyone hit by them.

‘Security forces also used lethal or semi-lethal force to disperse largely peaceful protests in Karbala on 28 October [2019], firing live ammunition and tear gas and attempting to run protesters over with vehicles. Security forces continued to use violence against protesters throughout November, particularly in Baghdad, Basra, Najaf and Nasiriya. During the night of 27 November [2019] in Najaf, at least 12 protesters were reported to have been killed in clashes with security forces after protesters stormed and torched the Iranian consulate in the city. The following night, various security forces attacked protesters in Nasiriya, killing at least 30 and injuring many others.

‘Human rights observers reported that authorities launched a coordinated campaign to end the occupation of city squares in Baghdad, Basra, Najaf and Nasiriya in late January 2020...Witnesses in the cities reported armed men in unmarked uniforms arrived in vehicles typically used by security forces and attacked protesters, beating and detaining people and burning their tents. There were numerous reports of security forces and militias firing live ammunition into crowds. A medic in Baghdad reported that his medical team transported 13 gunshot victims to hospital during the protests.’<sup>93</sup>

- 9.4.4 The joint report published in August 2020 by UNAMI and OHCHR looking at human rights violations and abuses during anti-government demonstrations stated:

‘UNAMI/OHCHR recorded credible reports of the death of 487 protesters and 7,715 incidents of injury to protesters at, or in the vicinity of, demonstration sites from 1 October 2019 to 30 April 2020. From the information obtained and reviewed by UNAMI/OHCHR, 359 of the 487 protester deaths (74 per cent) are attributed to security forces and 109 deaths (22 per cent) to “unidentified armed elements”, 12 including due to small-scale attacks at demonstration sites. Nineteen bodies of protesters were found in burned down buildings affiliated to political parties and public offices set on fire by protesters, accounting for four per cent of deaths. The total number of recorded deaths included at least 34 children - all boys - and one woman.

‘Of the 7,715 incidents of injured protesters, UNAMI/OHCHR attributed 6,894 cases (89 per cent) to security forces and 821 cases (11 per cent) to “unidentified armed elements” and anonymous small-scale attacks at demonstration sites. A comprehensive disaggregation of those injured was not possible.’<sup>94</sup>

- 9.4.5 In regards to the Iraqi Security Forces involved in the response to demonstrations the same source stated:

‘No law or internal regulations clearly identify the security forces mandated to engage in crowd control and respond to demonstrations. Identification of

<sup>93</sup> DFAT, ‘[Country Information Report – Iraq](#)’, (Section 4, p37), 17 August 2020

<sup>94</sup> UNAMI & OHCHR, ‘[Human Rights Violations and Abuses in...Iraq...](#)’, (p14), August 2020

forces responsible for the use of force against protesters was challenging, particularly in Baghdad, due to the multiplicity of forces involved, unclear de facto command structures, and in many cases the absence of identifying badges on uniforms.

'In response to the demonstrations, the Government appeared to predominantly rely on forces that nominally report to the Ministry of Interior, specifically the Federal Police, the Emergency Response Division and the Facilities Protection Service. At the provincial level, UNAMI/OHCHR identified the involvement of Local Police, SWAT forces (particularly in Najaf and Dhi Qar), Emergency Response Units, and, in Basra, a provincial police force known as the Al Sadma force (or Shock Forces) – all of which also fall under the Ministry of Interior. The Iraqi army was also mobilized.'<sup>95</sup>

- 9.4.6 In regards to abuses by 'armed elements', also referred to by victims and witnesses as 'militia', the same source stated:

'UNAMI/OHCHR documented patterns of human rights abuses indicating that "unidentified armed elements" intentionally targeted protesters and persons expressing political dissent or criticism of armed groups with various ties to the State.

'...between 1 October 2019 and 30 April 2020, UNAMI/OHCHR documented credible reports of the death of 109 protesters and 821 incidents of injury of protesters at protest sites from attacks and shootings by "unidentified armed elements" (including "protection guards"); 31 incidents of attempted or completed targeted killings, mostly shootings by unidentified gunmen, resulting in 22 deaths and injuries to 13 others; the abduction of at least 32 protesters, most of whom were subsequently tortured or ill-treated; and the disappearance of 20 protesters who remain missing.

'In most cases, the perpetrators acted anonymously – the incidents were unclaimed – and no suspected perpetrators have been officially identified or prosecuted. Significant challenges were encountered in gathering information on incidents involving "unidentified armed elements" due to an environment of fear and secrecy surrounding the perpetrators, frequently referred to by victims and witnesses as "militia".

"Militia" is terminology commonly used in Iraq to describe armed groups, some of which have ties to the State. A number of armed groups operating in Iraq, including groups referred to as "militia", participated in the armed conflict against Islamic State of Iraq and the Levant (ISIL) and became a part of the Popular Mobilization Forces. In 2016, the Government incorporated by law the Popular Mobilization Forces into the Iraqi security architecture.'<sup>96</sup>

- 9.4.7 For more information on subjects such as the use of lethal force and weapons, the unnecessary, indiscriminate and disproportionate use of less-lethal weapons and the deliberate shooting of demonstrators by armed elements see the full [UNAMI and OHCHR report](#).
- 9.4.8 On 19 October 2020 Al-Monitor published an article entitled 'Killing of Sunni youths prompts calls for end to impunity in Iraq' which stated:

<sup>95</sup> UNAMI & OHCHR, '[Human Rights Violations and Abuses in...Iraq...](#)', (p17), August 2020

<sup>96</sup> UNAMI & OHCHR, '[Human Rights Violations and Abuses in...Iraq...](#)', (p27), August 2020

‘The specter of a return to sectarian bloodletting in Iraq after the latest killings in the southern part of Salahuddin province has raised alarms in the Sunni-majority province northwest of the capital.

‘Gruesome photos of the corpses of eight young men from a village in the Farhatiya district near Balad, hands bound behind their backs, appeared in Whatsapp chats and then on social media on the evening of Oct.17. Twelve men had been kidnapped, but as of Monday morning, it was still unclear what happened to the other four...The young men killed were Sunnis. Locals immediately pointed the figure at Shiite-led “militias” operating in the area that are officially part of the Popular Mobilization Units (PMU).

‘In one cellphone video posted online in relation to the incident by Mishaa al-Jabouri, a prominent figure in the Salahuddin region, an elderly man with a traditional black-and-white checkered headscarf can be seen explicitly naming Brigade 42, part of the Iran-linked Asaib Ahl al-Haq (AAH).

‘...Jabouri said that he was certain, in any case, that “individuals associated with PMU brigades that are in charge of Balad and its surroundings” were involved in these latest killings.

‘...One source from the area claimed that AAH had wanted to set up a checkpoint nearby, and an argument broke out about the electricity they wanted from the village. Another claimed he had heard from locals that the AAH brigade had entered the village and locals thought they were IS and fired on them, but also that there had been an improvised explosive device attack on the AAH brigade recently.

In any case, both said the killings were in retaliation and were meant as a warning.’<sup>97</sup>

- 9.4.9 An article published on 6 November 2020 by BBC Monitoring (BBCM) entitled ‘One protester reportedly killed, seven wounded in Iraq’s Basra’ stated:

‘One protester has reportedly been killed and seven others wounded during clashes with police in Iraq’s southern Basra Province.

‘Several online users shared a video on 6 November [2020] that showed the body of what they said was Omar Fadel, a young man who joined a protest in Basra city earlier in the day.

‘Eyewitnesses said that riot police forcibly dispersed the demonstration, Kurdish Shafaq News website reported. It quoted a police source as confirming the death of one protester when security forces chased the demonstrators.

‘The website of Beirut-based, Iraq-focused Al-Sumaria TV said the security forces dispersed the demonstration in Basra, pursued the protesters out of the main square and cleared the roads.’<sup>98</sup>

- 9.4.10 An article published on 7 November 2020 by Shafaq News stated that:

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<sup>97</sup> Al-Monitor, ‘[Killing of Sunni youths prompts calls for end to impunity in Iraq](#)’, 19 October 2020

<sup>98</sup> BBCM, ‘[One protester reportedly killed, seven wounded in Iraq’s Basra](#)’, 6 November 2020

'The Director of the Relations and Information Department at the Ministry of Interior, Major General Saad Maan, announced on Saturday that the killer of the demonstrator, Omar Fadel, is an officer with the rank of captain affiliated with the Basra Police Command.

'Maan explained in a statement received by Shafaq News agency that what the officer did is only a personal behavior, adding that all legal measures will be taken against him.'<sup>99</sup>

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Section 10 updated: 21 December 2020

## 10. Avenues of redress

### 10.1 Judicial remedy

#### 10.1.1 The November 2018 EASO report citing various sources stated:

'Although civil and administrative remedies exist for human rights violations through the courts, they were not effectively implemented due to the lack of judicial independence and security-oriented interest of the executive branch. Legal mechanisms to protect human rights and institutions to guarantee constitutional rights encounter capacity problems. The government did not provide the UN with information about actual reparation and compensation ordered by the courts to be provided to torture victims.

'Acts No. 3 and No. 4 of 2006 and No. 20 of 2009 provide for financial reparations for victims of past human rights violations; however, domestic law 'does not contain a comprehensive reparation for which the State is responsible'<sup>100</sup>

#### 10.1.2 The March 2020 USSD report stated:

'Individuals and organizations may seek civil remedies for, or cessation of, human rights violations through domestic courts. Administrative remedies also exist. The government did not effectively implement civil or administrative remedies for human rights violations due in part to the overwhelming security focus of the executive branch, coupled with an understaffed judiciary dependent on the executive.

'Unlike federal law, KRG law provides for compensation to persons subject to unlawful arrest or detention; the KRG Ministry of Martyrs and Anfal Affairs handles such cases. The IHRCKR [Independent Human Rights Commission Kurdistan Region] reported that, while approximately 5,000 cases (many historical) received approval for compensation consisting of a piece of land, 10 years' salary, and college tuition for one family member, the government could not pay compensation due to budget constraints. The ministry stated there were 13,000 unlawful arrests pending compensation decisions.

'Those in the IKR [Iraqi Kurdistan Region] and the rest of Iraq who were imprisoned for political reasons under the former Baath regime of Saddam Hussein received a pension as compensation from the government. While

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<sup>99</sup> Shafaq News, '[Basra demonstrator's killer is an officer...](#)', 7 November 2020

<sup>100</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 7.6, p72), November 2018

the KRG political prisoners' pensions were approximately 500,000 dinars (\$440), the central government paid other Iraqis a minimum of 1.2 million dinars (\$1,050).'<sup>101</sup>

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## 10.2 Accountability and impunity

### 10.2.1 The November 2018 EASO report, citing various sources, stated:

'In June 2017, the government also created an investigative committee to review abuse allegations committed under the Mol. The government also reportedly set up a new directorate of discipline for the security forces in 2017 and an associated detention centre.

'In summer 2017, the government announced it would investigate abuses that occurred in Mosul during liberation operations and in August 2017, that "perpetrators had been referred to the judiciary". UN sources in 2018 state that authorities have admitted that violations of rights and law have been carried out by the ISF and its associated forces and announced investigations into these crimes.

'Public statements by PM al Abadi in 2017 maintained these were "individual" acts, not systematic, and that perpetrators would be punished. The government took "credible steps" to examine abuse allegations in government facilities, but the extent of the impact was unknown and such efforts remained "ad hoc" and only temporarily or locally effective. The UN also stated in June 2018, "it is unclear how effective these accountability mechanisms and the investigations conducted to date are, as it appears no legal proceedings have been opened" in relation to alleged ISF violations, specifically those that occurred in 2014 (Bani Wais village), in June 2016 (north of Fallujah, deaths of 49 people and disappearance of 643 men and boys), and in the battle for Mosul.'<sup>102</sup>

### 10.2.2 The March 2020 USSD report stated that:

'The government, including the Office of the Prime Minister, investigated allegations of abuses and atrocities perpetrated by the ISF, including a ministerial investigation of the October protests, but the government rarely punished those responsible for perpetrating or authorizing human rights abuses. Impunity effectively existed for government officials and security force personnel, including the ISF, Federal Police, PMF, and certain units of KRG Asayish internal security services.'<sup>103</sup>

### 10.2.3 On 11 May 2020 Radio Free Europe/Radio Liberty (RFE/RL) published an article entitled 'Iraq Targets Iran-Aligned Militia Over Shooting Death of Protester' which stated:

'Iraqi security forces have raided the office of an Iran-aligned party in the southern province of Basra and arrested militiamen who fired on demonstrators, killing one protester and injuring several others outside the party building.

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<sup>101</sup> USSD, '[Country Report on Human Rights Practices 2019](#)', (Section 1.E), 11 March 2020

<sup>102</sup> EASO, '[Iraq: Actors of Protection](#)', (Section 7.4, p70-71), November 2018

<sup>103</sup> USSD, '[Country Report on Human Rights Practices 2019](#)', (Exec. Summary), 11 March 2020



'The May 11 [2020] dawn raid on the Thaar Allah party office led to the arrest of five members of the group and the confiscation of weapons and ammunition, Basra police chief Rashid Fleih said.

'The arrests for the death of the protester, the first killed since anti-government demonstrations restarted during the weekend following a brief hiatus, is a rare response by authorities to violence by security forces and militia groups that has killed at least 600 protesters.'<sup>104</sup>

10.2.4 The August 2020 DFAT report stated:

'Officials have undertaken investigations into abuses perpetrated by the ISF, including a ministerial investigation of their actions in relation to the protests that began in October 2019. However, the government has not generally punished those responsible for perpetrating or authorising human rights abuses.

'In 2017, the Office of the Prime Minister announced the establishment of a committee to investigate allegations of ISF abuse during the operation to retake Mosul from Da'esh, stating that the government had arrested and planned to prosecute several ISF officers. HRW reported in April 2018 that the government had disposed of evidence of a potential war crime committed against members of Da'esh, removing an estimated 80 bodies from a damaged house in Mosul and burning the house. HRW added that at least one of the bodies appeared to have its legs bound, there was no indication that the government was collecting evidence, and government officials refused to tell its researchers where they were taking the bodies. To DFAT's knowledge, the government has not to date published specific information on judicial proceedings against any members of the security forces in this matter.'<sup>105</sup>

10.2.5 The same source further stated that 'In-country sources report those who fall foul of a PMF group in their local area have little chance of gaining recourse or justice through official means.'<sup>106</sup> and 'In-country sources report ordinary citizens are unlikely to receive recourse through official means in cases of abuse involving police personnel.'<sup>107</sup>

10.2.6 In October 2020 EASO published a report entitled 'Iraq: Treatment of Iraqis with perceived affiliation to ISIL'. The report, citing various sources, stated:

'According to Human Rights Watch's reports, since 2016, "authorities in Baghdad and in the Kurdistan Region have done little to punish officers implicated in enforced disappearances." Moreover, "despite requests, the government failed to disclose which security and military structures have a legal mandate to detain people, and in which facilities." Regarding extrajudicial killings and torture, the same source noted that despite commitments by the Iraqi government in 2017, "authorities apparently took no steps in 2019 to investigate these abuses."

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<sup>104</sup> RFE/RL, '[Iraq Targets Iran-Aligned Militia Over Shooting Death of Protester](#)', 11 May 2020

<sup>105</sup> DFAT, '[Country Information Report – Iraq](#)', (Section 5, p56-57), 17 August 2020

<sup>106</sup> DFAT, '[Country Information Report – Iraq](#)', (Section 5, p58), 17 August 2020

<sup>107</sup> DFAT, '[Country Information Report – Iraq](#)', (Section 5, p59), 17 August 2020



'In May 2020, Geneva-based human rights NGO Alkarama noted in their submission to the UN Human Rights Committee, that "allegations of torture are rarely considered in court and investigated, medical expertise is almost inexistent, and perpetrators are usually left unpunished". The same source observed that Iraq's legal framework "contributes to impunity" as "the Anti-Torture bill does not establish a minimum prison sentence, except if the torture leads to death. The Criminal Code, in its Article 332, determines that a public official who cruelly treats a person may be punished by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars, or by only one of those penalties."

'Human Rights Watch reported in April 2019 that Iraq's High Judicial Council investigated 275 complaints regarding the use of torture against investigative officers by the end of 2018 in both terrorism and non-terrorism cases and resolved 176 of the cases, however, it remained unclear what the outcomes of these investigations were.'<sup>108</sup>

10.2.7 The same source further stated:

'In December 2019, in its report on Kirkuk governorate, CIVIC wrote that, regarding complaint mechanisms for civilians, there was a "lack of adequate channels for civilians to report incidents of civilian harm." Civilians who were interviewed by the NGO affirmed that "their work has not led to changes in policy or any disciplinary action against officials in violations."

'In Kirkuk, due to numerous security actors, civilians were reportedly "confused" and did not know "to whom they should report concerns". According to CIVIC, "civilians rarely use these mechanisms because they are not familiar with them, because they believe they are ineffective, or because they fear retaliation if they denounce a member of the security forces".'<sup>109</sup>

10.2.8 The joint UNAMI & OHCHR report published in August 2020 outlined the Iraq governments response to the widespread human rights violations by security forces that took place during protests across Iraq from the end of 2019 onwards. The report stated:

'On 12 October [2019], the Prime Minister established by executive order a Ministerial Investigative Committee mandated to investigate death, injury and other violations that occurred in the context of the demonstrations from 1 to 8 October 2019. While the report of the Committee identified 44 members of the security forces with varying degrees of involvement in the killing and injury of protesters, including some of high rank, it concluded that most were implicated for "losing control over their units", and most recommendations referred to disciplinary or administrative punishment. Very limited judicial investigations and few prosecutions appeared to have taken place following the publication of the report. No information is available on whether individuals were referred to boards of inquiry or their findings and recommendations.

'Only one case of prosecution of those identified in the October Committee Report was documented. On 1 December 2019, the Criminal Court of Wasit

<sup>108</sup> EASO, '[Iraq: Treatment of Iraqis w/ perceived affiliation to ISIL](#)', (Section 3, p30), October 2020

<sup>109</sup> EASO, '[Iraq: Treatment of Iraqis w/ perceived affiliation to ISIL](#)', (Section 3, p31-32), October 2020

convicted two SWAT personnel for premeditated murder in relation to the killing of demonstrators. One was sentenced to death and the other to a seven-year term of imprisonment. A third officer was released due to insufficient evidence and a fourth officer was awaiting trial for the same charges at the time of finalizing this report.’<sup>110</sup>

10.2.9 The same source further stated:

‘On 1 December 2019, the High Judicial Council issued a public statement announcing the issuance of an arrest warrant and travel ban by the Dhi Qar Appeals Court for a senior General for the crime of premeditated murder based on the issuance of orders to kill, in reference to the killing of at least 42 protesters and the injury of over 380 others on 28 and 29 November 2019 in Nasiriyah. Information obtained indicates that 267 individual criminal complaints have since been filed against this person by injured protesters and the families of killed protesters.

‘...Around the first week of June 2020, the Dhi Qar Court of Appeal issued arrest warrants for 11 police officers (reportedly SWAT forces) based on premeditated murder charges in connection with their alleged involvement in the unlawful killing of demonstrators in Nasiriyah in October 2019. Of concern, the arrest warrants have reportedly not been executed by the security forces for unknown reasons.’<sup>111</sup>

10.2.10 The October 2020 Al-Monitor article regarding the killing of a number of Sunni youths by suspected PMF groups mentioned previously stated:

‘Prime Minister Mustafa al-Kadhimi made a highly publicized visit to the area the following day and spoke to residents in an attempt to assure locals that there would be consequences for those who committed the crime.

‘Many noted, however, that progress has apparently not been made in the cases of several other assassinations of prominent figures in the country in recent months, such as that of well-known counterterrorism expert Hisham al-Hashimi in July, and expressed doubt that the perpetrators would be punished.’<sup>112</sup>

10.2.11 On 7 November 2020 BBC Monitoring published an article entitled ‘Iraq arrests protester’s killer, PM vows firmness with security men’ which stated:

‘Iraqi Prime Minister Mustafa al-Kadhimi has announced the arrest of the killer of a protester in Basra Province, vowing no leniency with security personnel who exercise violence against protesters.

“The state will not be lenient with any security personnel who violate orders to not use bullets against protesters, as with what happened in Basra,” Kadhimi said in a Tweet on 7 November, in reference to protests that took place a day earlier and during which a protester was killed.

‘He added: “We have arrested the [perpetrator] accused of killing Omar Fadel and he will receive his fair penalty. We have confidence in our people,

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<sup>110</sup> UNAMI & OHCHR, ‘[Human Rights Violations and Abuses in...Iraq...](#)’, (p22-23), August 2020

<sup>111</sup> UNAMI & OHCHR, ‘[Human Rights Violations and Abuses in...Iraq...](#)’, (p23), August 2020

<sup>112</sup> Al-Monitor, ‘[Killing of Sunni youths prompts calls for end to impunity in Iraq](#)’, 19 October 2020

our security forces and our heroic army, and together we will overcome the challenges”.

‘The prime minister did not provide further details on the identity of the protester’s killer or if he is, in fact, a security officer.’<sup>113</sup>

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<sup>113</sup> BBCM, [‘Iraq arrests protester’s killer, PM vows firmness with security men’](#), 7 November 2020

# Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Security apparatus
  - Iraqi Security Forces
  - Police
  - Popular Mobilisation Forces
  - Asayish
  - Peshmerga
- Arrest and detention
  - Legal rights
  - Arbitrary arrest and detention
- Capabilities of the security forces
  - Effectiveness
  - Corruption
- Human rights violations
  - Torture and ill-treatment
  - Disappearances
  - Extra-judicial killings
- Rule of law and the judiciary
  - Structure
  - Independence
  - Fair trial
  - Effectiveness of the judiciary
  - Legal aid and other assistance
- Avenues of redress
  - Judicial remedy
  - Accountability and impunity

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# Version control

## Clearance

Below is information on when this note was cleared:

- version **1.0**
- valid from **22 December 2020**

## Changes from last version of this note

First version of this note.

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