

**An evaluation of Iraq's Anti-Terrorism Law  
and its implementation (2)**

Az iraki terrorizmusellenes törvény és annak  
végrehajtásának értékelése (2)

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**Abstract:** This two-part analysis looks at Iraq's Anti-Terrorism Law and how it is used in the trials of suspected members of the Islamic State (IS), identifying potential issues with the law and its application. The author concludes that the Iraqi government is unlikely to achieve stability without significant changes that address the shortcomings of this law. The second part of the analysis focuses on Iraq's effort to restabilize, identifying the specific changes that must be made to both the Anti-Terrorism Law and the country's justice system if it is to make any meaningful effort towards achieving stability, healing sectarian divisions, and preventing a future insurgency.

**Összefoglaló:** A kétrészes elemzés az iraki terrorizmus-ellenes törvényt és annak szerepét mutatja be az Iszlám Állam feltételezett tagjaihoz kötődő büntetőügyekben, valamint azonosítja a jogszabállyal és annak gyakorlati alkalmazásával kapcsolatos aggályokat. A szerző fő következtetése szerint az iraki kormány nehezen tud stabilitást elérni a törvénnyel kapcsolatos hiányosságok orvoslására irányuló változtatások nélkül. Az elemzés második része az iraki stabilizációs intézkedésekre fókuszál, azonosítva azokat a szükséges változtatásokat a terrorizmus-ellenes törvény és az ország jogrendszerének vonatkozásában, amelyek elősegíthetik a stabilitás elérésére, a szektáriánus különbségek meggyógyítására és egy jövőbeli felkelés megelőzésére irányuló lépéseket.

## INTRODUCTION

A commitment to fully engage in any and all efforts necessary to rebuild and achieve post-war stability is not sufficient if it does not coincide with a critical internal assessment of the causes of instability and a pre-emptive determination to avoid those same pitfalls. Without addressing the issues that contributed to the rise of IS and its ideology, nothing will prevent the country from falling victim to an armed non-state insurgency again.

Government officials and politicians largely [reject any criticism](#) of the way the state is handling those suspected of involvement with IS. Judges argue harsh sentences are [justifiable and appropriate](#) under domestic laws. Iraqi leaders and many citizens have thus far supported these fast-paced trials, as they feel that, by sentencing those accused of allegiance to IS, they are paying homage to the Iraqi victims and sending a [message of deterrence to sympathizers](#).

However, in the context of civil wars, historical research shows that when state forces take an indiscriminate, overtly punitive approach towards punishing suspected affiliates of violent non-state groups, it can [impede the possibility of longer-term conflict resolution](#). By casting the punishment net too wide and treating large subsections of society as suspect, governments not only fail to provide stability, but they also [risk further alienating communities](#) and pinning them against the state. In terms of the IS trials, Iraq would very likely become more stable and secure if the punishment of the worst offenders was prioritized and the [definition of terrorism was concise](#).

Amending and clarifying the Anti-Terrorism law to remove ambiguities, ensuring international standards of due process and fair trial are met, distinguishing between different categories of culpability and involvement, and including protections for vulnerable demographics are necessary steps to be taken immediately. Implementing a uniform system with clear, deliberate expectations will increase public trust while minimizing opportunities for institutional violations of rights and corrupt dealings. Additionally, according to the [European Union's Development Cooperation Instrument \(DCI\) program for Iraq](#), there must be increased judicial independence, integration of international standards of human rights into the rules and requirements of the Iraqi criminal justice system, and a renewed commitment to the rule of law.

Legal changes and efforts to rebuild the economy and infrastructure must emerge in tandem with the development of a comprehensive approach to diligently monitor and combat social and sectarian divisions within the country. Failure to do so will perpetuate the existence of the very factors that historically have inhibited Iraqi stability and integration, allowing for [a political environment suitable for extremists](#) to remain intact.

This portion of the analysis will identify and assess certain changes which would streamline and substantially improve both the validity of the trials of suspected IS members and the manner in which the criminal justice system operates.

## **FUTURE STABILITY CONTINGENT ON SUBSTANTIAL CHANGE**

The [American Bar Association](#) provides three recommendations concerning the improvement of the Anti-Terrorism law: (1) the definition of terrorism must be restricted to serious violent acts intended to intimidate the population or compel government action, as stated in the internationally accepted definition of terrorism; (2) the law should clarify that membership in, support for, or association with groups that are solely unpopular or critical of the government are not acts of terrorism; rather, at a minimum, intent to aid an organization engaged in violent acts or imminently threatening violence must be proven; (3) the Iraqi parliament should revise their death penalty law, either by eliminating its legality or by limiting its use to punishment for intentional acts causing death or widespread casualties. Additionally, (4) the manner in which the law is applied and the trials are conducted must be part of a calculated and coordinated state-wide approach to increase judicial independence, promote public trust in the legal apparatus, and ensure that the rights of defendants are promoted and upheld. By addressing the following four categories of changes, the country can ensure that its resources are directed against the most dangerous jihadists while also upholding democratic standards of justice and increasing public institutional trust.



## (1) RESTRICT DEFINITION OF TERRORISM

Recognizing and differentiating between various levels of involvement with Daesh is critical in ensuring that efforts to arrest, try, and sentence the most dangerous extremists are prioritized. Individuals forcibly brought into the group, falsely implicated due to baseless accusations, detained due to the involvement of a family member, or those who played minimal, non-violent roles should be classified and dealt with in a fundamentally different manner than those who most ardently believe in the message of IS. In restricting the state definition of terrorism, there is an opportunity to differentiate domestic crimes of terrorism from terror-related acts which constitute war crimes and crimes against humanity.

Iraq has failed to engage in a pre-emptive assessment of the potential outcomes while also accounting for historical precursors – a process any policy and/or legal statute as democratically controversial and punitively indiscriminate as the Anti-Terrorism Law must undergo –, and it seems to be ignoring the fact that a broad application of this law was a major factor that [led to the rise of IS in the first place](#).

While al-Qaeda in Iraq (AQI) – the predecessor of ISIS – was carrying out almost daily attacks in Baghdad in 2006 and 2007, the government [rounded up large numbers of Sunnis](#) and prosecuted them under the Anti-Terrorism Law. While some individuals tried and sentenced to death were in fact hardcore jihadists, [many innocent Sunnis fell victim to this campaign of revenge](#). As a result, numerous civilians were unjustly persecuted, and many Sunni fathers were killed. This bred a desire amongst families, loved ones, and communities of many of those who were wrongly executed to avenge the Shia-dominated state they felt was oppressing them. Feeling increasingly targeted and victimized while innocent members of their families and/or communities were killed in a campaign of retribution, many within the Sunni minority [developed increasingly extreme ideologies](#), as a result becoming vulnerable to engaging with violent non-state actors. These feelings of betrayal and desire for revenge are the paramount reasons why IS was initially able to amass power within Iraq.

Amending the law to account for the differing roles, intentions, extenuating circumstances, and culpability will help alleviate both the extreme overcrowding of detention facilities and the inundation of cases [currently overwhelming Iraqi courts](#). While the most zealous supporters who have engaged in acts of radical violence on behalf of the group should be punished severely, there should be different categories for those who pledged allegiance to the group voluntarily. Furthermore, a distinction should be made between those who (a) played an active role – for example, in funding, networking, or aiding in the development of plans – but did not engage in violent crime; (b) played minor support roles and did not commit acts of violence or have substantial knowledge of planned terrorist attacks; (c) pledged allegiance at the instruction of a

family member and/or spouse and had no violent involvement; (d) did not engage in violent crime and wanted to be liberated from IS rule; (e) successfully escaped a non-violent role in the group and surrendered.

Those who believed in the cause of the group but did not engage in violent crime on its behalf should be treated differently and given less severe sentences that are accompanied by mandatory counselling and rehabilitative exercises. Individuals who did not commit acts of violence and were either captured by IS, joined solely due to threat or coercion, remained in their homes after IS occupied the territory, paid taxes to IS, and/or were falsely implicated are inherently not guilty of terrorism. The nature of their involvement is not threatening and prosecuting and punishing them to the same extent as the most violent jihadis will cause extensive societal harm while yielding no foreseeable benefit. Shifting away from punishment and instead implementing rehabilitative measures for these individuals will help with the reintegration efforts, thus creating a viable foundation for post-war stability.

Juveniles were indoctrinated and subject to abuses by terrorist organizations and should not be automatically eligible to face trial under the Anti-Terrorism Law. After distinguishing the types of activities the children engaged in and for what reasons, those who have not actively carried out violent crimes deserve to be re-educated and reintegrated into society.

Providing educational programs, vocational training, medical care, and psychological counseling will [establish a commitment](#) to the children of Iraq. Improved treatment of children in combination with national initiatives [focused on the importance of social integration](#) should both benefit the state and minimize opportunities for insurgencies to garner support. Failure to recognize that the juvenile capacity for crime is incomparable to that of adults and instead treating them as equals is very likely to cause the same grievances that emerged after the roundups of many Sunnis on assumption of involvement with AQI, breeding another generation of hardened extremists.

In the cases where children allegedly carried out violent acts as members of IS, government authorities must commit to ensuring that these children are treated in [accordance with international standards of juvenile justice](#). Most importantly, utilizing detention as a last resort and imposing sentences for the shortest time appropriate, detaining juveniles at facilities separate from adults, ensuring access to legal counsel, emphasizing the best interest of the child as the primary consideration, and ultimately [prioritizing rehabilitation and societal reintegration will move Iraqi policy into closer alignment with international standards](#).

Ratifying the Rome Statute, which established the International Criminal Court (ICC), or accepting the jurisdiction of the ICC through a declaration [creates an opportunity](#) for the most heinous violations of international justice to be tried in front of the ICC. Based on reports, interviews, propaganda videos, etc., there is extensive knowledge that Daesh engaged in a variety of crimes that extend beyond the provisions of criminality outlined in the Anti-Terrorism law.



Various foreign powers and international tribunals have formally recognized IS's systemic effort to eradicate the Yazidi Kurdish minority as [an act of genocide](#), constituting a major violation of the laws of war.

[Those who commit war crimes](#) bear individual criminal responsibility and deserve to be tried in front of the ICC. However, neither a competent court nor many of the main actors with obligations outlined under the Convention on Genocide – specifically governments – have taken a strong stance on, or have taken steps towards, ensuring that the [question of genocide by IS is heard in front of a competent court](#). [In addition to acts of genocide](#), it is common knowledge that at the hands of IS countless civilians were tortured and killed; women were subjected to acts of rape, sexual slavery, and forced marriages; children were recruited, indoctrinated, and used as soldiers and religious sacrifices by way of suicide bombings; many hostages were captured, tortured and killed; the occupied territory of an internationally recognized state was claimed as the caliphate's own; the list goes on and on.

By narrowing the definition of terrorism in the Anti-Terrorism Law, the country has the opportunity to (a) ensure that the most egregious crimes are prosecuted at the international level, through a court both capable of and equipped to try crimes of war; (b) alleviate the pressure on their own criminal justice system by focusing on a smaller subsection of suspects; (c) avoid making past mistakes which exacerbated sectarian divisions and created an environment suitable for extremism; and (d) take critical steps toward post-conflict reintegration, stabilization, and accountability.

One of the primary defences offered for having such a broad definition of terrorism is the fact that it makes it easier for the country's weak and overwhelmed criminal justice apparatus to quickly move trials along. In accord with the amendment constraining the definition of terrorism, the country will be responsible for reassessing the status and criminality of those who have been found guilty and are awaiting sentencing or are on death row. As this reassessment will inevitably require more manpower and legal expertise, the Iraqi state would benefit substantially from calling upon an international body, such as the UN, to provide in-country assistance. This not only demonstrates a commitment to democratic principles of justice, but it allows for a coordinated and calculated approach to ensuring that only those who actively engaged in acts of terrorism remain classified as criminally guilty.

Finally, the government has thus far shielded their approach by arguing that they are seeking justice for their citizenry in the way that best fits the needs and wants of the people and the state. However, a recent study indicates that the [Shia majority would accept](#) – if not prefer – the government to review its current approaches and find ways to differentiate involvement, punishing fighters more severely than family members or those playing non-violent supporting roles. While [many Iraqis would view this more nuanced approach favorably](#), international partners and international non-governmental organizations would also recognize Iraq's interest in preserving human rights and dignity standards in conducting these trials.

## **(2) LIMIT PERCEPTIONS OF GUILT BASED SOLELY ON MEMBERSHIP**

In restricting the definition of terrorism, explicitly reaffirming the individual right to freedom of expression and association ensures that protectionary measures exist to prevent future implications of guilt for those who were not deeply involved in terrorist activity. Detaining and trying all individuals implicated – including those with the lowest levels of association or those coerced into admitting involvement – not only fails to provide any stability, but it can [exacerbate cycles of violence and the alienation of sectors of society](#).

In amending the law, defining the difference between association with a terror-based organization versus violently acting on behalf of said organization's goals will provide an important distinction, preventing freedom of association from being criminalized. Many of those associated with the group – including wives; children; those who lived in an IS controlled area and were forced to pay taxes to the group; individuals who were captured; those who played non-violent support roles such as driving, cooking, or providing medical care – were not involved with the group and its goals outside of their mere association.

This category includes those who pledged allegiance to the group of their own free recognisance and/or believed the Sunni insurgency represented their beliefs better than their state government but played no role planning or carrying out violent attacks. Defining the most important characteristics of involvement, especially pertaining as to whether or not they had prior knowledge of, assisted in planning, or aided in facilitating terrorist attacks, will allow for the aforementioned definition of what constitutes terrorism to be narrowed, and it will protect the rights of those individuals who did not engage in or have substantive knowledge of terror-related activities under the guarantee of freedom of association. So long as one's association is not deemed to have directly posed a threat to the state through involvement in or knowledge of violent extremist crimes, they should not be implicated under charges of terrorism.

Expanding the category of freedom of association to include family, friends, or loved ones of individuals being tried on charges of terrorism will limit authorities' ability to infringe on the rights of those detained or imprisoned. It will also serve to alleviate the fears currently held by many regarding whether or not their association with an individual being tried will lead to their arbitrary detention. Reports contend that the rights of suspects being tried under the Anti-Terrorism Law are not being met, and that a fear of association is a key component of this. Individuals with loved ones who have been arrested fear communicating with them, or even attending the trial of the suspect, as [they themselves risk being detained](#) on grounds of association with the suspected IS member. Furthermore, defence lawyers are largely unwilling to represent anyone being tried under this law, as the attorneys themselves [may be subject to detention or persecution](#). Since July 2017, [at least 15 private lawyers have been arrested](#) on grounds of affiliation with IS, all of which occurred while they were defending individuals on charges of affiliation with IS.





[Detaining and questioning individuals](#) as suspects based merely on their relation to suspected criminals has been condemned by the UN Human Rights Committee (UNHRC) as an abhorrent use of arbitrary arrest and detention. Utilizing the vagueness of the Anti-Terrorism law to implicate and [impose punishment on families, villages, or communities](#) collectively is in violation of the laws of war and is classified as a war crime.

Until association with a terror-based organization is not classified as inherently criminal, Iraq will continue to play directly into the hands of the very extremists it aims to subdue. Instead, these individuals should be sent to mandatory rehabilitation and rebuilding facilities, where their time would be split between counselling and treatment for post-conflict trauma, as well as working within the community in the rebuilding efforts. The rehabilitative treatment will provide the support and resources to associated individuals which is needed to ease their transition back into society. Implementing government-sanctioned rebuilding projects is necessary, as a substantial portion of the country's infrastructure has been destroyed. By employing those engaged in the rehabilitative measures, the ex-affiliates have an opportunity to simultaneously represent their commitment to both the state for choosing restorative justice over retribution and to improving relationships with the communities affected by the warring by working to rebuild their regions.

Creating a legal distinction between those who fought for IS and those who were merely associated is critical in the effort to combat the distrust and perceptions of threat that foster the animosities that armed non-state groups thrive on. It is imperative that the government not only clarifies this distinction but engages in efforts to ensure that its populus knows the threats posed by division and actively works to help heal these divides.

### *(3) RESTRICT USE OF THE DEATH PENALTY*

**A**fter a fair trial – which does not use summary judicial processes, requires adequate legal representation, and evidence which indicates guilt beyond a reasonable doubt – only those found guilty of committing acts of violence on behalf of IS should be eligible to receive the death penalty. Beyond those who killed, only those who ardently believe in the cause of IS and are determined a threat to society for their dedication to extremist ideology should be eligible to receive the death penalty. It is important that provisions are put in place that ensure that the determination of who constitutes a legitimate societal threat is the responsibility of a professional who studies extremist behaviour, making it more difficult for judicial authorities to arbitrarily deprive people of their right to live.

Most critics ultimately favour the eradication of capital punishment, viewing it as an arbitrary deprivation of life and thus a human rights abuse. However, regarding the difficulty of the task at hand, critics would likely settle for the continued use of the death penalty if the law was amended to ensure that

only those who pose a threat or those who committed crimes punishable by death under Iraqi law were subject to such a punishment. In addition to substantially curbing the use of the death penalty, judges should not be confined to either life imprisonment or the death penalty as their only sentencing options, as this constraint inhibits the judicial capacity to consider the relevance of extenuating circumstances. As a result, judges cannot be reasonably expected to deliver justice in a just manner.

Within Iraq, the death penalty is still viewed as an appropriate, if not favourable, sentence for especially heinous crimes. Certain groups affiliated with the Popular Mobilisation Forces (PMF) in Iraq have gone as far as to criticize the [current judicial process as too lenient](#), arguing that death sentences must be carried out more quickly. Additionally, these groups have alleged that some suspects have been [granted unwarranted release](#) thanks to corrupt dealings by certain judicial and law enforcement officials. This lack of trust plagues the legitimacy of Iraqi institutions at various levels, and it is regarded as the driving force behind some Iraqi soldiers in Mosul [carrying out extrajudicial executions](#) of their own accord.

A [recent study](#) indicates that the Shia majority would accept, if not prefer, the government to review its current approaches and find ways to differentiate involvement, punishing fighters more severely than family members or those playing non-violent supporting roles. While [many Iraqis would view this more nuanced approach favourably](#), international partners and international non-governmental organizations would also recognize Iraq's interest in preserving human rights and dignity standards in conducting these trials.

In terms of the IS trials, the state of Iraq would [very likely experience increased security and stability](#) if they chose to prioritize punishment of the worst offenders while applying the definition of terrorism less broadly. It is reasonable to conclude that groups like the PMF would prefer a system that emphasized the harsh and definite punishment of the worst offenders, rather than attempting to punish countless people and mistakenly allowing some of the most dangerous jihadists a paid escape. The shift of the Shia majority towards being more open to only the most serious offenders facing trial and the possibility of death under this law indicates an opportunity for the government to take initiative, both in amending the law and in bettering its legal system. If the country felt more confident in the governmental approach to trying and punishing members of IS, it follows that fewer individuals would feel compelled to take the law upon themselves and engage in extrajudicial killings.

#### ***(4) IMPLEMENT NATIONWIDE LEGAL COORDINATION STRATEGIES***

**T**he fragmented operations of the Iraqi judicial apparatus clearly indicate the absence of a clear and coordinated state-wide approach to the law, as well as its implementation. Clear expectations surrounding the treatment of prisoners, the consequences of engaging in corruption, and an improved



mechanism of communication between Iraqi and KRG forces are essential steps that would both move Iraq's system toward one of democratic justice and gain a more favourable reputation among the populus.

Torture cannot be tolerated in any system that wishes to claim that their judicial system upholds human rights and dignity. Eliminating the use of summary judicial processes and shifting the focus towards detaining and prosecuting the most dangerous offenders, interrogators can work to uncover important evidence instead of feeling pressure to appease government desires by obtaining as many admissions of guilt as possible. Accompanying these clear-cut expectations should be a zero-tolerance policy for those who continue to use torturous or coercive techniques which infringe upon the rights of the prisoner. The current system allows for these abuses to go unreported and remain an aspect of the system that is perceived as inevitable. Changing this culture depends on the government clearly conveying expectations surrounding the treatment of prisoners and the consequences of violating these guidelines.

Corruption plagues all levels of Iraqi institutions, and if the government hopes to achieve any sort of stability, it has to address the distrust fostered by corruption, and it could benefit from assembling an apolitical assembly responsible for monitoring this issue. Removing Saddam Hussein and his Baath party regime from power in 2003 did not bring about the necessary reforms to Iraqi governance, it failed to reduce corruption, and it did not establish an effective and just rule of law. In fact, according to Transparency International's CPI, Iraq received its [most favourable rating in 2003](#), and while it [matched that score again in 2005](#), it has [not exceeded that score](#) in any year since.

Iraq's extensive corruption is recognized both by global actors and the Iraqi citizens. According to the World Bank's 2017 Systematic Country Diagnostic (SCD), recent polls indicate that Iraqi citizens and business owners believe [corruption is the single most important policy challenge](#) facing the country, ahead of both economic and security concerns. This level of corruption exists due to the [country's weak legal framework, and its enforcement mechanisms](#) which are not capable of effectively fighting corruption. "Corruption is a system of poor governance, and bureaucratic corruption, bribery, and nepotism are all major problems in Iraq [...] [the lack of confidence in public institutions that has arisen because of corruption is profound](#)." Corruption [has and will continue to erode state stability](#), and since authorities in Iraq thus far cannot find a way to take meaningful steps toward its institutional eradication, international organizations like the World Bank have the responsibility to ensure that the funds being contributed to the country are not lost to corrupt dealings. Stability cannot and will not exist as long as corruption plagues every level of Iraqi institutions.

Finally, it is extremely important that the Iraqi and KRG forces increase their coordination and communication in order to prevent re-arrests, ensure national legal uniformity, and use their resources to prioritize the most dangerous offenders.

It is unacceptable for people to be re-arrested after having been cleared in another jurisdiction in the country, and increasing information sharing and communication could easily solve these problems. Despite the autonomy of Iraqi Kurdistan, the two governments have the obligation to work together in prosecuting suspected IS members in the same manner they worked together to reclaim state land from the group. Lastly, more collaborative efforts would decrease the amount of work the Iraqi government and the KRG do individually, allowing them to focus their efforts and resources on tracking, prosecuting, and punishing the most serious offenders.

## CONCLUSION

While Iraq survived the IS insurgency that ravaged the country and its populus, it is likely that the rebuilding and restabilization efforts will fail if the country is unable to address the problems that led to the initial rise of IS. Currently, the [Shia majority is unlikely to promote legal and institutional reforms](#) that will shift the focus from all suspected IS affiliates to only the worst offenders. However, the aforementioned survey of Shias indicates that it is [highly improbable that the government would face public backlash from the Shia majority](#) if it moved to revise its approach to those suspected of IS involvement.

Any reconciliation efforts must be preceded by changes that [provide a renewed sense of security for minorities](#), due to their marginalized position in society and their fear of falling victim to the majority. Jihadists have repeatedly engaged in [efforts to foment a sectarian war](#) between the Sunni and Shia populations of Iraq, believing that spreading sectarian violence is a way to undermine the government, while also acting in ways that manifest their hate for Shia Islam. The insurgency has coalesced around both Iraqi nationalism and Islamic extremism, becoming a method of [waging a war of ideology](#).

Lack of trust regarding the impartiality and the intentions of the government and state-run institutions is widespread among the ethnic and religious minorities in Iraq. This is especially true for the Sunni perception of the criminal justice system and the way they feel the [Anti-Terrorism Law has targeted them unjustly](#) in recent history. Amending the law to include a specific definition of terrorism and which types of behaviours constitute this offense will significantly reduce the number of individuals facing terrorism charges, facilitating an important shift away from vengeance and towards stability. Additionally, by engaging in a comprehensive and coordinated effort to restructure the culture, expectations, and intentions of the criminal justice sector, the state both acknowledges its previous shortcomings and focuses on implementing the measures necessary to combat systemic abuses and corruption.



It is in the best interest of Iraq to place as much emphasis as possible on reintegrating its population and working to foster a renewed sense of trust amongst its citizens, government officials, and between the citizenry and the authorities. Thus far the country has focused its efforts and resources on rebuilding its infrastructure; however, these undertakings alone will not increase Iraq's chance of attaining stability.

The current state of the Iraqi criminal justice system hinders any meaningful recovery and rebuilding that must occur, and the possibility of a restabilized Iraq is now contingent on the government's willingness to reflect on its shortcomings, to swallow its pride and take swift action to combat the most problematic aspects of its own system.