



مركز البيان للدراسات والتخطيط  
Al-Bayan Center for Planning and Studies

# JUSTICE AND POLITICAL STABILITY IN IRAQ

Ali Almamouri



Al-Bayan Center Studies Series



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## About

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Al-Bayan Center pursues its vision by conducting independent analysis, as well as proposing workable solutions for complex issues that concern policymakers and academics.

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**Since 2014**

# JUSTICE AND POLITICAL STABILITY IN IRAQ

Ali Almamouri\*

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## Introduction

As it is the norm with Iraqi issues, the problem of impunity overlaps at extremely complex levels, to the extent that it has become difficult for the Iraqi state institutions – which are facing structural problems in their various parts – to fulfil their duty towards this legal and humanitarian crisis in a way that is close to success or achieving justice.

In fact, the problem of impunity is not new in Iraq, and it is not related to the chaos that ISIS left behind, or to the Iraqi protests that erupted in October 2019, which claimed between 500 and 800 lives.

The repercussions of the rule of the Ba’ath Party and holding its symbols accountable, and the just, non-politicized retribution of those who committed crimes against Iraqi civilians is still an

unresolved issue. Rather, the interference of politics in this regard, and assigning justice procedures to a non-judicial body – Accountability and Justice Commission<sup>1</sup>– turned this dangerous humanitarian

1. The Supreme National Commission for Accountability and Justice replaced the Supreme National Commission for DeBaathification which was established in accordance with the constitution’s directives to ban the Socialist Arab Baath Party which ruled Iraq before 2003. According to the law number 10 for 2008 the commission’s name was changed to the aforementioned one. It specialises as mentioned in Article 3 1-6 in: preventing the return of the Baath party whether in theory, will, politics, or practice, under any name to the authority or public life in Iraq, in addition to “cleansing” the institutions of the public sector or the mixed sector and the civil society organisations as well as the Iraqi society from the Baath party, and referring its members who have been proven guilty of criminal acts against Iraqi citizens to the specialised courts....etc.

However, as we mentioned before, the work of the commission was marred by many political interferences and exceptions that were not based on legal basis but under political pressures. Just before the appointment of the prime minister Mohammed Shiyya’a Al-Sudani news leaked about his agreement with the Sunni blocs to dissolve the Commission for Accountability and Justice.

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\* researcher.

file into a new domain for political bargaining and quotas. Undesirables are excluded – on sectarian or political grounds – through de-Ba’athification, even if they are not proven guilty of crimes against civilians, and some of them have never joined the Ba’ath party. Meanwhile, special exceptions have been issued on a political or sectarian basis or in return for a fee, to officers and officials from the Baath party, whose participation in crimes against Iraqi civilians might be a confirmed fact due to them being in security positions during dangerous and chaotic periods, such as commanders of military divisions and security officers during the March 1991 uprising who later held important security positions after 2003 with special exceptions<sup>2</sup>.

The accountability mechanisms and transitional justice need a stable situation and a strong system that benefits from popular support, not to mention the consensus of the

political actors involved in it.

As for the ambiguous years that were marred by armed turmoil after 2003, they were not in the best condition with regard to the impunity of perpetrators of crimes against civilians.

The political forces in power from the different ethnicities in Iraq have participated in these crimes. Once in the form of a political struggle accompanied by operations of armed groups that claimed the lives of hundreds of civilians.

The perpetrators were not held accountable due to their participation in the political process, and the need to cove up the participants from both sides in these crimes.

Once the security situation calmed down in the country in late 2009, the issue of impunity appeared again after the civil protests that have escalated since 2010. These protests were faced with severe government repression, followed by assassinations, that activists have linked to the protests, notably the

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2. See in detail Miranda Sissons and Abdulrazzaq Al-Saiedi, *A Bitter Legacy: Lessons of De-Baathification in Iraq*, International Center for Transitional Justice, March 2013.



assassination of journalist Hadi Al-Mahdi in 2013<sup>3</sup>, whose killers have not been known until today.

Since then, the political upheaval has not stopped, and with the escalating protests in Sunni cities in 2011, which in turn witnessed tensions between the protesters and the security forces, it turned into a disaster in some places, such as the killing of a number of protesters in Hawija in 2013<sup>4</sup>.

As for what the crimes that ISIS left behind, and the harsh reactions that extended to include the families of the organization's members, and their civilian assistants; they are related to what have preceded them, complement them, and increase the complexity of their reality; thus, achieving

justice under the conditions of war, liberation and latent feelings of revenge will never be a simple matter. Moreover, the Iraqi government will not be able to demonstrate its power enough to impose legal rulings based on the foundations of criminal justice. Rather, the matter becomes more complicated taking into account that the problem of impunity is not restricted to holding direct ISIS members accountable for their criminal liability, nor it is related to expanding the criminal liability of ISIS members to include civilians associated with those members, but it must certainly include victims of this organisation who have not been redressed yet, which confuses the concerned executive bodies in light of these overlapping complexities.

Moreover, the civilian victims who fell during the October 2019 protests are still far from getting justice, holding the perpetrators accountable, and securing the lives of the death-threatened protesters who fled the capital Baghdad to the Kurdistan region or outside Iraq.

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3. For details on the protest movement in Iraq, and the suppression that accompanied it, see : Ali Abdel Hadi Al-Mamouri , " Protests in Iraq .. Roots and Actors " in : Faris Kamal Nazmi ( Editor ) The protest behavior in Iraq, individual and collective dynamics, Najaf / Beirut, UNESCO 's Chair for Interfaith Dialogue , " Intellectual Studies Series" , 2020 , p . 15.

4. See: Dozens killed in Hawija, Al-Jazeera Website, watched on 1/9/2022, at the link: <https://is.gd/ri0KWc>

These extremely intertwined complexities form the context of this paper, noting that the complexity in achieving justice and implementing legal punishment against those covered by the topic of this paper is based on a set of factors that are summarized in the following aspects:

1. Political complications.
2. Confusion of the Iraqi legal structure.
3. State's inability to implement its laws or to prove its monopoly on legal coercion.

This paper is not concerned in any way with documenting, recording and tracking cases of impunity in Iraq, but rather seeks to provide a legal and political explanation within the Iraqi social context that clarifies the causes of impunity in Iraq, which help to formulate specified and practical recommendations that assist in overcoming impunity in Iraq.

The paper starts with the assumption that politics and the repercussions of the ambiguous

establishment of the state after 2003, the large legacy of social problems, the slack legal structure in Iraq, and the establishment of the political system on the basis of consensual democracy distorted through quotas, led to weakness of the state, collapse of administrative procedures, and lack of enforcement Laws, whether through the judiciary or the security services that implement them, are the reasons behind the continuation of impunity in Iraq.

The work in this paper is based on a number of sources, as follows:

1. Workshops held by Al-Bayan Center for Strategic Studies and Planning as part of the paper writing project, with the following titles:

A. The Judiciary: Challenges of Accountability, dated /20/8/2022, and it was divided into two sessions, during which the following questions were asked:

- What are the priorities for judicial reform that can be

pursued within a realistic timetable (short, medium, and long term)?

- What are the reasons for the weak implementation of reforms in the judiciary (if any)?
- What are the challenges the judiciary faces in implementing accountability reforms?
- What challenges does the judiciary face with other authorities / institutions in the field of law enforcement and justice? and to what extent are the security services able to implement judicial orders and protect judges, especially in the face of powerful defendants?
- What is the defect in the legislation (if any) that limits the achievement of accountability and contributes to impunity?
- What is the administrative institutional defect (if any ) that limits the achievement of accountability and contributes to impunity?

- What support can the judiciary receive from the international community? What are the internal reforms required for international cooperation with Iraq to prosecute the perpetrators, and achieve accountability and justice?

B. The second workshop discussed the challenges of accountability in the executive authority. It was held on 3/9/2022 and included the following questions:

- What are the specific reforms related to improving the achieving of justice and accountability of perpetrators and criminals by the executive bodies?
- What issues are likely to be politically supported in making reforms on issues that need accountability and justice?
- What are the administrative obstacles in holding perpetrators or suspects accountable?
- Is there a defect in the Iraqi legislation in force that hinder

accountability and justice?

- How can law enforcement mechanisms in executive institutions be procedurally improved?
- What programs and proposals have decision makers and advisors put forward to overcome the phenomenon of impunity of criminals or corrupt people?
- What are the obstacles or technical support required to improve accountability mechanisms and their follow-up by: (civil society, the judiciary, parliament, and the international community)?

C. The legislative authority workshop that was held on 8/10/2022.

D. The civil activists workshop held on 21-22/11/2022, which included victims concerned with the issue of impunity, families of victims of the October 2019 protests, and some of those who survived ISIS from different ethnic backgrounds who talked

about their sufferings, and what decisions should be made in order to redress the victims and prevent impunity.

2. A group of sources that dealt with facts about the issue of impunity, whether with regard to the killing of protesters in October 2019, or those who escaped punishment during the battles with ISIS, among ISIS fighters, or the factions that fought against this group.

3. Personal interviews with a group of judges and executives at sensitive security administrative levels.

Firstly: Politics and Impunity: Weak State and Institutional Structure

It may be impossible in this paper to comprehend the crisis of the state and politics in Iraq. However, this issue remains the main problem behind which lie the confusion of the political system and the weakness of legal procedures, that in the end will lead to impunity.

This paper will certainly not be enough to address the confusion of re-establishing the Iraqi state after 2003 and the problems and failures that accompanied it. Those interested in the Iraqi issue know the details of the critical process that did not subside after 2003, and the attempts made by the political forces in order to provide a system that gives the impression that participation is for everyone. Regardless of the parties' intentions, their failures or corruption, the confused process generated customary principles that became rules that hardly any of the political blocs can break or bypass even if they have great powers. They are fortified principles such as quotas, methods and attitudes to satisfy all parties, and the disregarding of the corruption of partners in the government<sup>7</sup>.

The Iraqi problem, in fact, was not born in 2003<sup>5</sup>, but its

roots extend to the beginning of the modern Iraqi state. The crisis of the state and consensus on it, accompanied the state since the beginning, and it fluctuated with fluctuations of the political systems in Iraq between the monarchy and the republic. These complex interrelated problems start with the identity crisis, and the inability of the state to prove its monopoly on legal coercion – according to Max Weber's definition of the state – through the army and other formal security services, which contributed to the repression of citizens and transformed from a consolidating factor to the power of the state into a political tool that contributed to the collapse of the state in 2003, which in turn resulted in the inability of political forces of reconstructing the state and the security services in a right way. This has led to their collapse before ISIS which in turn led to the formation of militias that represented ethnic armies, such as the Popular Mobilization Forces, the tribal mobilization, or the Peshmerga from the Kurds who

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5. Muqtada al-Sadr's attempt to form the government alone after the 2021 elections without his Shiite partners may be a very clear example of the inability to form a non-participatory government in Iraq.

have become independent of the central state since the nineties of the past century<sup>6</sup>.

In fact, the army's and other regular agencies' inability to defy ISIS, the collapse of the combat units in front of the militants of the organization, and the subsequent formation of the armed factions that eventually came under the name of the Popular Mobilization Authority have strengthened the status of these factions and their organizations and made them unaccountable. These factions – the Shiite factions and their Sunni allies in the tribal mobilization – are well armed with what enable them to protect themselves and act above the law. Moreover, other security services are no longer able to implement judicial rulings – if any – against these factions, not to mention the political authority

that is keen not to anger its Sunni allies who participated in the fight against ISIS. In summary, the Popular Mobilization factions have the weapons and the political protection that enable violators from their affiliates who commit human rights violations to escape without punishment<sup>7</sup>.

At this point, it is important to note a complex problem, represented by who joins these groups and bears collective responsibility in the end. The problem is that the turmoil that prevailed after 2003, and developmental decline, labor market deficit, explosion of ethnicities against each other, lack of consolidation of the idea of the state and identity, and recession as well as Iraq's dependence on a single commodity which is oil, made young people vulnerable to being a fuel for political turmoil. Moreover, with the emergence of ISIS and its being an existential challenge to Iraq in general and to

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6. On the fluctuations of the security services in general, and the army in particular, and its transformation from an arm of the state that proves its strength and ability, to a murderer and a victim of politics, see: Ali Abdul-Hadi Al-Mamouri, *The Army and the Irregular Factions in Iraq, The State and the Ethnic Controversy*, Imran Periodical (Arab Center for Research and Study Policies) Issue 6/22 Fall 2017, p. 117.

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7. For details: IRAQ: TURNING A BLIND EYE.. THE ARMING OF THE POPULAR MOBILIZATION UNITS, Amnesty International, 2017.

some ethnic groups in particular, the joining of these young people to armed organizations has become a natural matter, and the legal consequences of their admission is consequently part of the complexities of the law enforcement and the punishment of wilful defaulters<sup>8</sup>.

This complex structure generated a stable mechanism of impunity, which affected the ability of the judiciary to hold accountability and implement laws. The facts show that many judicial rulings did not find their way to force because the political decision disrupts the implementation mechanisms through the security services, or those rulings were cancelled based on a political deal, after which those concerned escaped punishment without any obstacles<sup>9</sup>.

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8. For details: Fight or Flight: The Desperate Plight of Iraq's "Generation 2000", International Crisis Group August 2016.

9. For example, in the case of MP Mishan al-Jubouri, who was accused during the government of Nuri al-Maliki of being a "supporter of terrorism," and al-Jubouri, in turn, did not hide his support for armed groups in several ways, including on his television

Moreover, the matter does not stop at merely disrupting the implementation of laws – that are already confused – we will discuss later in detail– but the entire legislative process in Iraq is nothing more than political agreements drawn up by a few leaders of parliamentary blocs and representatives close to political leaders. The legislation process is subject to policy calculations without measuring the legislative impact or having a legislative strategy that puts in mind the long-term effects of the legislation, but rather works to achieve their interests in the first place. In the least harmful cases, it goes behind the demands of their electoral audience, who are ignorant of the laws and seeking their personal

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channel. However, the judiciary dropped the charges and the in absentia verdict against him of 15 years imprisonment under the guidance of Prime Minister Nuri al-Maliki – as reported by reports – in 2012, and he explained this as a way to put pressure on al-Maliki's opponents from the Sunnis, and the matter did not fully settle for al-Jubouri, who left Iraq to return in 2019 with a new deal. To Baghdad, Elaph, accessed on 10/1/ 2022, at the link: <https://elaph.com/Web/news/2012/3/724839.html>



interests in the first place<sup>10</sup>.

The core political reason behind impunity will become clear by noting the crimes that have occurred against activists in the Iraqi protests since 2010, whether those who were detained for long periods without judicial warrants, or those who were kidnapped by armed groups linked to powerful political forces, or those who were attacked physically or sexually, as well as multiple assassinations, and death threats that led to the escape of dozens of activists outside Iraq or to the Kurdistan region. In all these cases, the perpetrators who escaped punishment, were protected by political forces, and the judiciary turned a blind eye to the crimes they committed, because the leaders of these armed groups, are in the end the ones who nominate the incumbents of the major executive positions in Iraq. Moreover, the matter is not limited to the share of one sect over the other for the main positions that are divided between

10. A summary of the discussions of the Legislative Authority workshop that was held at Al Bayan Center on October 8 2022.

the Shiite, Sunni and Kurdish forces, but extends to the rest of the positions, given that the selection of incumbents of special grades is carried out according to a single basket mechanism that requires the consent of all parties to the incumbent. The conclusion is that, perpetrators of violations who belong to armed groups are not punished because of the official political protection, in which the incumbent of the government position needs the support of the leaders of these groups<sup>11</sup>

On the other hand, civil society organizations in Iraq are still – even after two decades since they became active in 2003 – confused in their work, with a great lack of experience, and weak organizational mechanisms, although some of these organizations have gained good flexibility with regard to the human rights. However, at the same time they suffer from multi-

11. For details: Civilian Activists under Threat in Iraq, Ceasefire Centre for Civilian Rights and Minority Rights Group International, December 2018.



level problems, both internal and external. These organizations are still unable to reach decision makers and influence them effectively. Furthermore, they are subjected to oversight and accusations by government security agencies and armed factions of being agents for the donor organizations. Not to mention the organizational problems and suspicions of corruption in the work of these organizations<sup>12</sup>. As a result, the supposed oversight by civil society over government institutions and committing them to hold the negligent accountable and to end cases of impunity by putting pressure on the government through various means, publicly and institutionally, became weak and unable to push the government to do its duty in this aspect.

As a result, the stability of the political system governed by democratic mechanisms is an important condition for consolidating the rule of law and

preventing impunity. The process of state-building and democratic transformation, and the associated effective civil society is necessary to achieve justice, and understanding this syndrome also falls on the shoulders of the influential international actors in Iraq, in particular the Western powers<sup>13</sup>.

In summary, a stable state, with an active political system, cannot be established in the presence of a legacy of violations, and victims for whom reparation has not been achieved. The issue does not stop at compensations, which are executable. Reparation can only be achieved by restoring the human dignity lost with human rights violations, and achieving justice and redress for the victims, to reach the extent that “citizens can trust each other again” and by adhering to the ruling values that establish the political system, by confirming the commitment of rulers and the ruled to those values, through their application

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12. For details:

The Voice of Civil Society in Iraq An Assessment, National Democratic Institute For International Affairs, January 2011.

13. Osama Gharizi, Supporting Transitional Justice in Fragile Environments: Lessons from IraqPost-ISIS, seen in 29/9/2022; <https://is.gd/P8ZMfX>

of legal rules alike, achieving justice for the victims, and holding the perpetrators accountable<sup>14</sup>.

### Secondly: The Legal Aspect

The problem of impunity which is manifested in this aspect through the legal defect, the application of laws or their enactment alike, greatly overlaps with the political problem in Iraq, which governs everything and manifests in every government sector<sup>15</sup>.

The legal structure of Iraq has suffered throughout the modern state from ideological reversals, social contradictions, and political conflicts, not to mention the years of the bloody transfer of power that accompanied the modern Iraqi state until 2003, and caused a legal imbalance extending to the spirit of the legislation itself, and containing retaliatory measures

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14. Clara Sandoval and Miriam Puttick, *Reparations for the Victims of Conflict in Iraq.. Lesson learned from comparative practice*, Ceasefire Centre for Civilian Rights and Minority Rights Group International November 2017 ,p6

15. Summaries of the judiciary's workshop held by the Bayan Centre, the information received without attribution in this paragraph is due mostly to the discussions raised in this workshop.

rather than rules that seek justice for society<sup>16</sup>.

Iraq suffers from slack legislation, through the accumulation of laws and orders that have the force of law during more than half a century, in a way that led the World Bank to classify the effectiveness of Iraqi laws at a low rate that does not exceed 20%. Despite Iraq has signed a memorandum of cooperation with (USID) for the purpose of completing the legislative guillotine project, the project remains stalled until today<sup>17</sup>.

At the same time, with these slack and conflicting laws, the courts suffer from a severe deficiency in the Iraqi legal system, related to contemporary cases that were not subject to legal problems in the past decades, including the conflict of powers between the regions, and the governorates and the centre, as well as terrorism

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16. For details: Iraq: Legal History and Traditions, The Law Library of Congress, Global Legal Research Center, June 2004

17. Testimony of a member of the Iraqi State Council in the workshop of the Al-Nahrain Center for Strategic Studies, held in March 2019.

cases, and other problems that emerged after 2003, and did not find a clear legal way out for it, which means that the problem is a twofold with regard to Iraq's legislations and laws.

In general, the Iraqi legal system consists of three types: the laws enacted before 2003, the orders of civil governor Paul Bremer, which were enacted during the direct US occupation, and the laws enacted by the Legislative Authority after 2003.

This system includes a wide range of legislations, the orders of the dissolved Revolutionary Command Council, and the presidential orders. In general, these laws conflict with each other, and their provisions also contradict each other. This gives those in charge of their implementation discretion in understanding and applying the law, and choosing the ruling or decision that they consider appropriate according to their viewpoint. From here begins the portal of corruption which is the most important pillar

behind impunity through the Iraqi legal system.

For example, although the Legal Committee in the House of Representatives was tasked with reviewing and evaluating the decisions of the Revolutionary Command Council, its work stalled greatly. Once due to the objection of the bodies concerned with cancelling a certain decision, and their claim that it represented the core of their work, and once because of political pressure, and at other times because of the objection of The General Secretariat of the Council of Ministers. Moreover, some bodies do not even know that certain decisions related to their work have been cancelled, and they inform the Committee of the validity of the decision, to later be informed by the office of the President that they were cancelled. During the five years of the work of this committee, approximately 40 out of thousands of decisions issued by the dissolved Revolutionary Command Council were cancelled<sup>18</sup>.

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18. Summaries of the Legislative Authority and

The negative repercussions of the political situation do not stop at this point. Judicial reform collides with the political reality. The legal structure of the state, and the judiciary, are linked to the confused Iraqi political situation. In fact, the term judicial reform is ambiguous in Iraq, and it is not known whether it is intended to reform the judicial structure, legislations or laws. The word reform is completely rejected by the judicial body. Moreover, the judicial authority answers the question about reforming that it is not possible at the present time and we look forward to it in the future, that is in the best of circumstances.

In fact, the judicial situation is very confused. There is no actual protection for judges that enables them to work in a stable environment in which they do not fear the consequences of their legal decisions in case of uncontrolled weapons whose bearers go unpunished, even the

Supreme Judicial Council was almost overrun and its archive was almost lost by the Sadrist protests in August 2022. At the same time, there is no clear authority or mechanism for accountability to the judiciary, the judicial oversight body does not exercise its actual role, and the head of the council is not subject to any form of accountability. In practice, there is no one who is able to hold the president of the council accountable who also appoints the heads of the criminal and appeal courts and the members of the Court of Cassation. These vast powers are extremely dangerous as there is no legal text that clarifies how to deal with their consequences. There are also no mechanisms to hold the council's president accountable and specify his direct responsibility of it. The Iraqi legislation is devoid of any text to hold the head of the Supreme Judicial Council or members of the Court of Cassation and the Federal Court accountable by the Supreme Court. This confused

situation is based on the existence of a structural defect in the judicial institution in Iraq, caused by politics, as seen by the judges who were hosted in the judicial symposium within the draft of this paper.

On the other hand, the aforementioned expert judges believe that the curriculum in the Judicial Institute does not produce real judges who are able to understand the spirit of legal texts. All that the institute does is to prepare judges to deal with laws only. However, as for the esteemed judge, he can achieve this by his personal effort only. The Supreme Judicial Council does not provide continuous training for judges and does not allow them to specialize due to the large number of transfers between the competent courts<sup>19</sup>. The conclusion in this aspect is that a good judge can produce a good judicial decision even in the absence of a good legal text.

In addition, there are no clear and specific criteria on which judges are selected for leadership positions in the Supreme Judicial Council, starting from the council's headquarters up to the heads of the judicial councils. The criteria are subject to the discretionary authority of the president of the council or the heads of the councils. Here, the issue is also related to the superiority of the judge and his sense of great authority that in his hands, and the way he deals with it in the absence of real accountability, in addition to the difficulty of confronting any judge with regard to his behaviour and integrity, as by simply mentioning the mistakes of a certain judge from a civil body, there is a danger of being held accountable through the contents of the Judicial Authority Law No. 26 of 1963<sup>20</sup>. Furthermore, associating the Judicial Oversight Commission with the Council itself is the reason behind the Council's dominance

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19. The guest judge believes that a good judge must have a philosopher's mind and a poet's sense.

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20. See: The law is on the Iraqi Legislation Base website – accessed on 10/1/ 2022, at the link: <https://is.gd/RhOSiL>

and the obstruction of oversight and accountability.

As a result, the judiciary considers itself as an unaccountable authority, which weakens the ability to reform it, because it does not find itself at fault under any circumstance. The lack of responsibility leads to weak oversight. Furthermore, if any employee objects to a judge, he will be transferred as no one is allowed to criticize judges.

As for the Public Prosecution, its actual function is disabled. Linking it to the Supreme Judicial Council, and transforming the prosecutors into other judges, has greatly damaged the function of the Public Prosecutor. The prosecution lost its supposed independence which makes it able to open cases that are related to corruption, or to law enforcement in general, not to mention the overlap in the work between the bodies related to corruption, such as the Integrity Commission, the courts and the Public Prosecution. Moreover, the dissolution of the

offices of the general inspectors in the ministries, and the inability of the public prosecution to reach the details of administrative work led to a great void, in the absence of civil society institutions concerned with legal oversight, such as the Bar Association, which does not interfere in the matter of non-enforcement of laws, impunity or integrity.

The Public Prosecution, for example, is legally responsible for prisons, but prosecutors are not easily allowed to enter Iraqi prisons. However, as for the Integrity Commission, it is the clearest example of the overlap between the work of the judiciary and the ambiguity of the administrative decision that affects the overall system of the state's work in accountability. Furthermore, the commission differs by the nature of its work from of its global counterparts, the Integrity Commission is supposed to work to prevent corruption, not to investigate it and play the role of the judiciary and the Public Prosecution, which

caused confusion in the cases and impunity in the commission's early investigative stages.

Granting investigative powers to the commission that allow it to trim and prepare investigative files before referring them to the judiciary, is wrong. These are the powers of the competent investigative judge. The commission's work in combating corruption is a purely judicial matter.

Even the efforts to seek the assistance of the international community in this regard were mere a formality in Iraq. They were limited to delegations and other formalities. In fact, the international community and international law will not solve Iraq's internal problems unless the institutional defect in Iraq is fixed internally.

As for the problem of the old legal texts that no longer keep pace with the present Iraqi situation, it combines with the legislative laxity that was previously mentioned. This confusion led to the Court

of Cassation issuing decisions that took their way to the legal body and took the power of legislation. Some judges argue that the court today bridges the legislative defect. However, this behaviour has great risks, no matter how positive it seems to fill the deficiency in Iraqi laws. Nevertheless, these discriminatory jurisprudence may be the building block for reform in the upcoming laws, due to the judges' experience and their daily interaction with the raised issues and the best law to treat them.

On the other hand, the Court of Cassation during the last period did not settle in its decisions on one legal principle, on the basis that the decisions of Cassation differ and are subject to the jurisprudence of the court, but they must be in accordance with established principles. This was accompanied by failure to choose the competent judges for the court, which affected the resolution of cases that needed a discriminatory decision based on jurisprudence, which generated a contradiction in the court's decisions.



These with other factors encouraged impunity through the judiciary. For example, the Illicit Gain Law was emptied of its content and the text was interpreted literally to serve corrupts. Limiting the role of judiciary to criminalizing the corrupts, is not enough. It must extend to the assets of the looted funds and their gains and not merely paying the original amounts as the resulting gains are much greater than the looted ones.

Although the concerned experts believe that there are good Iraqi laws, but the flaw is in their application and the political effects on judges. Even at the political level, there are legislations that have been approved in the House of Representatives which are based on political deals, and others based on the personal interest of some MPs.

The great overlapping of politics with the issue of impunity is evident by tracking what is related to the laws of general and

private amnesty. Special amnesty decisions are not published as supposed for legal texts and orders that have the force of law such as republican decrees and others. This means that there are defects in them as well as illegal political effects. Regarding general amnesty decisions, they are also linked to complimenting the masses and have political purposes. They are literally recycling criminals.

The conclusion is, it is wrong to issue a general amnesty law periodically, like what is happening in Iraq<sup>21</sup>.

21. For example, the son of the former governor of Najaf, Louay al-Yasiri, who was convicted of drug trafficking, escaped with a special amnesty, while it was said that it was a deal between him and Muqtada al-Sadr, according to which al-Yasiri agreed to resign so that the position would be granted as a proxy to a Sadrist governor with the complicity of Prime Minister Mustafa al-Kazemi, as well as issuing a special amnesty for the deputy convicted in absentia with the bombing of the Iraqi parliament building, Muhammad al-Dayni, for whom a special amnesty was issued in March 2016 by a special republican decree, similar to the one that happened with Luay al-Yasiri's son, and these are two examples of dozens of such special pardon models.

On the Al-Yasiri case, see the news published on the Al-Arabiya website, accessed on 9/18/2022, at the link: <https://is.gd/a8e4vP>, and on the Al-



The overlapping of politics with the law, and the complexity of their work, caused the loss of many rights, and the escape of the guilty from liability before the judiciary. We mention here that out of the 582 victims who fell in the October 2019 protests, the charges were only proven against those who were responsible for the killing of only four of these victims.

#### The Police and the Judiciary: The Corruption Syndrome and Overlapping of Responsibilities

The judicial system relies on the preliminary investigation by the police. The police force in Iraq is among the most corrupt agencies since its establishment in the early stages of the Iraqi state. The Iraqi police today find themselves above the judiciary, and its officers—both corrupt and impartial—deal with investigative papers before judges.

In general, the Iraqi police at present are the essence of the

experiences of the Iraqi security services at all levels, with all their repression and humiliation of citizens, and protection of the dictatorship and their implementations of orders to kill, torture and persecute on the basis of opinion. This will be evident by knowing that in spite of dissolving the oppressive security services, some of their members and officers returned to service in different ways after obtaining exceptions, or joining under the protection of strong political parties involved in the political process. Moreover, in light of the confused Iraqi legal system, and lack of oversight, the methods of repression, extortion and physical and psychological violence returned to find their way to the Iraqi security services that were established after 2003, whether among the police or others<sup>22</sup>.

22. Not only did the junior employees and officers return and disappear in the lower ranks of the security system, but some officers of the Security Directorate, which were known for their suppression of the communists, Islamists and nationalists opposing Saddam Hussein and the Kurds alike. The interests of the United States and these groups and the political parties participating in the political process in this

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Dayni case, the Ultra Voice report is viewed at the link: : <https://is.gd/VpjdZB>

Moreover, due to the investigative methods that include torture, financial extortion and forcing defendants to confess to crimes they did not commit, as well as the lack of an effective evidence-gathering mechanism and officers are not being held accountable in cases of corruption, the preliminary investigation done by the police, which forms the basis of the judicial investigation, is fundamentally defective, tainted by defects and incomplete or forged. This combines in a way with the momentum gained by the judges so that people are involved in crimes they did not commit, or suspects are smuggled

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context met by establishing the special groups led by Colonel James Steele. In the end, those responsible for repression and torture in the previous regime escaped before 2003 and returned to practice torture and murder against detainees, and again impunity under a political cover. For more, see: Ali Abdel Hadi Al-Maamouri, *National Security Policy In Iraq*, Beirut: Arab House for Science Publishers, 2016, p. 244, and regarding de-Baathification and the exceptions that occurred, see:

IRAQI VOICES..Attitudes Toward Transitional Justice and Social Reconstruction, the International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley, May 2004.

through forging evidence after paying bribes to police officers in the preliminary investigations.

The matter does not stop with the police, the multiplicity of security services and the overlapping of their competencies, not to mention the political problems that were reflected in the performance of the security services, and led to the formation of armed factions, that do not obey the orders of the Commander in Chief of the Armed Forces except orders that they see as fit, and control the liberated land, and their submission to extreme religious ideologies, with the presence of a bloody enemy such as ISIS, all of these factors led to bloody reactions, and violations that affected civilians without real evidences.

The problem is aggravated by the fact that all detainees that are accused of joining ISIS are all Iraqi Sunnis, which is related to the core of the political problem in Iraq, and the mutual exclusivity between the two parties<sup>23</sup>. In

23. Al Tuma, Ali, *A Will to Punish*, The

fact, the lack of legal standards, or the weak ability to distinguish between those who joined ISIS wilfully and those who had to deal with the organization in one way or another, the lack of an accurate measure that shows the estimated danger posed by each of these two categories to the Iraqi national security, and in combination with the legal problems that the study elaborated on, the result was the detention of thousands of people on charges of belonging to the organization without differentiating between them<sup>24</sup>.

Returning to the problem of legislation in Iraq, the legislative defect crystallizes in this context by noting the Anti-Terrorism law that Sunnis in Iraq have long complained about, and was considered in previous periods as

Shia View of Dealing with ISIS Suspects, in the Hands of Iraqi Justice, United Nations University, July 2018, p3.

24. For details on the issue of detainees and the lack of discrimination between them and the confusion of legal procedures, not to mention the convictions against minors, see:

Mara Redlich Revkin, The Limits of Punishment..Transitional Justice and Violent xtremism..iraq case study, institute for integrated transitions, May, 2018.

a sectarian law that enables the security services and the Popular Mobilization factions to commit legal violations, random arrests, and displacements, without those affected by the law being actually guilty, which means that the perpetrators of the violations escape from punishment through legal legislation that is supposed to protect Iraqis, not to accuse them wholesale<sup>25</sup>.

The internal political situation, and the regional and international complications related to the clash of interests in the region, whether in Syria or Iraq – the two countries most affected by the problems of ISIS – greatly impede the implementation of justice, whether by imposing punishments on the guilty, or by releasing innocents accused of suspicion of joining ISIS. To make matters worse, neither Iraq nor Syria has signed the Rome statute, which constitutes the legal basis for the International Criminal Court.

In fact, the clash of international interests has wasted the rights

25. Al Tuma, Ali, op. cit. P6-7.

related to ISIS crimes in the noise of political demands and the contradiction of international alliances. Russia and China have used their veto power against a project to refer the Syrian crisis to the International Criminal Court in May 2014. This decision would have constituted an important entry point for holding the organization's members who fled from Iraq or Syria accountable. At the same time, it could have been an entry point for holding the political system in Syria accountable. Thus, this eventually led to the continuation of the impunity for the organization's members<sup>26</sup>.

In addition, the European countries did not want to bear the burden of receiving members of the organization of their nationalities<sup>27</sup>, so those members joined hundreds of displaced families that were distributed in refugee camps far from their original areas of residence.

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26. ISIS fighters and their families facing justice: Eight options and four principles, Ceasefire Centre for Civilian Rights, March 2019, p3.

27. Ibid, p5.

Some of them escaped from clan persecution that holds families responsible for the crimes of their sons, and others preferred to stay in the camps away from police extortion. The situation of the camps in general is an important material for blackmail and bargaining, whether at the political level, or at the level of executive departments that benefit from bribery taken from the displaced and from organizations working in this field. This has turned these camps into huge complexes of injustice, where rights are lost in, and killers hide in it at the same time due to weak investigative procedures and negligence<sup>28</sup>.

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28. In general, the obstacles to achieving justice through the non-return of the displaced are due to several reasons, including the problem of stigmatization of joining ISIS, economic restrictions imposed on the return of the displaced, and the placement of paramilitary forces and the tribal mobilization over their property and agricultural lands, not to mention the home destruction of some of them, and the slow paced reconstruction operations and poor quality of services. for more see:

WEST MOSUL PERCEPTIONS ON RETURN AND REINTEGRATION AMONG STAYEES, IDPS AND RETURNEES, IOM IRAQ, JUNE 2019.

The Overlap between Political Parties and Crimes in the Private Sector as a Feature of the System of Corruption Leading to Impunity

One of the problems that Iraqi law is still unable to overcome is who is covered by corruption. Iraqi law defines corruption crimes as ones occurring among public servants, and does not mention the corruption of private companies. The corruption of the private sector in Iraq is definitely associated to the political parties that dominate the state. This makes it linked to the public sector, but the law stands incapable of accountability.

At the same time, the legal effect of the international agreements signed by Iraq has not been taken advantage of. The crime of bribery, which Iraqi law only imposes on employees in the public sector, is a crime in the international anti-corruption convention that includes the private sector as well, which obligates Iraq to impose it in the private sector too.

There is also a defect in the

legislation within the Iraqi Penal Code in force. For example, with regard to intentional damage, the penalties are weak in this aspect; about 143 articles are punishable by non-strict detentions or fines only. This requires amending the Penal Code and tightening the crimes related to intentional damage.

Accountability and Reparation: between the Availability of Intention and the Inadequacy of laws

Despite all that have been mentioned, it does not mean that Iraq does not have the intention to compensate and achieve justice in some way, even at the minimum level of compensation. Iraq has issued Compensation Law No. 20 of 2009 amended in 2015 regarding victims of military operations and mistakes<sup>29</sup>.

29. Iraq has a long history with regard to compensation due to the many problems it has experienced, but as is common in Iraq, the availability of legal legislation does not guarantee its application in the correct manner, and for more information we can return to:

Clara Sandoval and Miriam Puttick, op. cit, p17.

See the amended Law No. 20 of 2009 on

However, the complications that surrounded the application of this law did not stop at the mechanisms of submission for compensation, or bureaucracy and corruption that dominates the institutional structure in Iraq. Rather, they overlap with several other problems such as the judiciary due to the fact that the head of the committee responsible for compensations must be a judge. They also overlap with the political differences between the Kurdistan region and the centre due to the membership of a representative of the Kurdistan region of Iraq in the committee. Moreover, It branches into committees in the governorates. Complications also involve bureaucracy, corruption, political complications, quotas, false news and false evidence, not to mention that the formation of a committee rather than a fixed institution means slow procedures, and the lack of a full-time commitment for

the purpose of achieving the goals of the committee, compensating the affected, and ordering that defaulters be held accountable<sup>30</sup>.

Although the law includes the victims of military mistakes made by the Popular Mobilization and the Kurdish Peshmerga, the main obstacle to including these two institutions with an effective investigation of their mistakes outside the battlefield is mainly subject to politics, and the victims' fear of the reaction of these two institutions that play political roles and contribute to political repression, arrests of protesters, kidnappings, and disappearances. The light may not be sufficiently shed on the Peshmerga and its complete submission to the political decision in the Kurdistan region of Iraq, but some of the Popular Mobilization factions have covered their roles in violating the rights of protesters in Baghdad, the centre and the south of Iraq, and in the liberated areas north and west of Iraq<sup>31</sup>.

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Compensation for Those Affected by War Operations, Military Mistakes and Terrorist Operations on the Iraqi Legislation Leaders website at the link: <https://is.gd/ZULfmN>

30. Clara Sandoval and Miriam Puttick, op. cit, p19.

31. Because of the great media blackout, and

This reinforces that Law No. 20, taking into account the circumstances in which it was written, it cannot cover at present the violations committed during the liberation battles. It regulates the process of granting financial compensation to those affected by terrorist operations and military mistakes but the types of violations that can be included in accountability are not detailed such as political targeting, or sexual assault, not to mention kidnappings and random arrests, which amounted to thousands <sup>32</sup>.

ignoring restriction of freedoms within the Kurdistan region by the press and civil society organizations, not to mention the international institutions, it is not possible to obtain accurate information about what is happening inside the Kurdistan region, and this disregard can be explained by the desire to sustain the region as a safe haven for the aforementioned organizations, which work towards areas outside the region freely in exchange for regardless of what happens within the Kurdistan Region of Iraq, however, the report below provides an overview of some of the violations that occur within the Kurdistan Region of Iraq:

Iraqi Kurdistan: No safe haven for human rights defenders and independent women, Gulf Center for human rights, December 2014.

32. For details see:

pp. 22 onwards. From: Clara Sandoval and Miriam Puttick, op. cit,

If this is the situation for the large ethnic groups in Iraq, and taking into consideration that the accountability procedures are subject to the political mood, clan tensions and others, then the situation with regards to minorities and impunity is still very complicated, in light of the inability to completely eliminate ISIS, and that large numbers of minorities are missing, as women were enslaved, and men were killed, especially for the Yazidis. For other minorities such as Shiite Turkmen even women were not excluded from the killing, unlike the Yazidis whose women were enslaved by the organization, not to mention overlooking the withdrawal of the Peshmerga forces from Sinjar leaving the Yazidi civilians face their fate in front of the brutality of the members of the organization<sup>33</sup>.

33. Attempting to explain the status of minorities in Iraq will lead to a lot of prolongation, which is not our intention here. The problems of ethnic minorities in Iraq do not stop at the extent to which minorities have been exposed to by the organization, and extend to restricting some religious groups and preventing them from practicing their religion openly, such as the Baha'is, or looting them. The property of



At the core of the overlapping between politics and impunity, it is important here to note that transitional justice, and more specifically the process of preventing impunity, can only be achieved by the presence of efficient and effective governmental institutions capable of working to enforce laws. Thus, the stability of government institutions which is associated with the political stability is still a necessary condition for achieving justice and preventing impunity. If executive bodies are strong, then they will enjoy political support from the active forces, become Independent of political differences and quotas – the core crisis in Iraq – and more effective.

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minorities in safe areas, such as the property of Christians in Baghdad, through threats and other methods of intimidation, not to mention the behavior practiced by the minorities themselves within their group, such as the difference in views regarding the roots of the Kaka'i, many of whom have merged with the Popular Mobilization Authority, while other individuals see that they are an independent religion, in any case, you can refer to the sources that dealt with the subject in detail, for example:

Crossroads: The future of Iraq's minorities after ISIS, IILHR, MRG, NPWJ and UNPO, June 2017. Printed Brussels, Belgium.

Moreover, they can benefit from international training and advice in this field, to become more efficient in holding the negligent accountable and preventing impunity<sup>34</sup>.

### **Conclusion and Recommendations**

In essence, there is a number of complex reasons behind impunity in Iraq, which all revolve around the weakness of the state, its absence from practising its active role, and its inability to monopolize legal coercion.

Although the interests of the political parties, and their international and regional connections stand behind maintaining the weakness of the state, they do not fabricate problems out of nothing. The crisis of the present Iraqi state is

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34. In fact, this topic overlaps here greatly with transitional justice procedures in general, the implementation of laws and the prevention of impunity, and the theoretical discussion on this issue will not serve the paper much, you can refer to the following source for details:

Dr. Vasuki Nesiah, Transitional Justice Practice: Looking Back, Moving Forward, Scoping Study, Impunity Watch 2016, p32.



related to many factors which their root extend to the beginning of the modern Iraqi state. It includes the crises of the traditional emerging political system in post-colonial countries, starting with the crisis of identity, acceptance, and the ability to obtain public satisfaction through a fair and disciplined distribution to resources, within laws that demonstrate the state's power and ability to impose its authority on its own.

These crises were reflected on the entire political system institutions. They were clearly manifested in the Iraqi legal structure, which remained subject to the opinion of politics and those who dominate it, in the various regimes that fluctuated in Iraq. As a result, these problems were passed to the political system that was established after the American occupation in 2003.

Ethnic concerns, and regional and international interventions, interacted with the inherited problems in the Iraqi institutional structure. This produced more

problems and crises through political conflicts between forces that were not experienced in democratic work, and were unable to re-establish a complex state like Iraq, and build a comprehensive political system, capable of performing its functions and protects the state. The result was developmental and political failures at various levels. They were manifested in a way related to this paper on the issue of weak laws, and politics interference in judiciary work and control over the executive institutions, eventually leading to cases of wholesale impunity, as shown in the paper.

To overcome this problem, we present these recommendations, which are the essence of the expertise of the participants in the workshops held to enhance this paper, and as a result of a survey of experts' opinions in the various state institutions. These recommendations could be a way to help the Iraqi state and the international community to end or reduce this phenomenon that

afflicts Iraq and threatens its future.

### **Recommendations**

It is difficult, in light of today's political crisis in Iraq, to start an initiative for a comprehensive political reform which requires amending the constitution and a comprehensive political reconciliation which is unlikely at present. The paper seeks to present several executable legal and administrative recommendations which may constitute a social and legal basis for the political reform, through achieving public satisfaction firstly, and increasing the collective consciousness and developing pressure mechanisms according to effective legal and social paths. This will force the political forces to comply at the end with the political system reforming. The recommendations – which were general in nature– produced a work plan which is executable and can be supported by local and international mechanisms.

These recommendations can gain the support of many forces

within the three authorities; some of them agree with the desires of the active political blocs and some agree with the ambitions of the authorities concerned with developing their structure.

1. Although political reform in Iraq is a complex crisis, one of the most important things that enhance the sustainability of the political experience in Iraq is the separation between politics and the judiciary, and not linking judicial reform to the crisis of the political system. In this context, we can suggest the following:

a. A whole and complete distinction must be made between the Federal Supreme Court, the Supreme Judicial Council and the Public Prosecution.

b. The permanent ban on judges to run for the political field or the parliament, even after retirement.

c. Reconsidering the procedures for acceptance in the Judicial Institute, to not be limited to passing the exam, but

to consider the condition of the person's nature and origin as well, and the activation of the judicial supervision system.

d. Activating the role of the Judicial Development Institute, and obligating judges to devote themselves for a full year to present a specialized research which was adopted in the past decades. Judicial reform includes a professional aspect that enables the judge to be creative in understanding and applying laws, and an ethical aspect that focuses on integrity. Specialization process for judges should start from the judicial cradle. Judges must be guided to the advanced interpretation of laws. They must develop their competence through attending training workshops in cooperation with international bodies. Moreover, not transferring judges between different specializations; transfers should be to different courts not different specializations.

e. Providing more security for judges to enable them to make

rulings in a safe work environment. We suggest a political agreement between political forces in which they comply with supporting the judges' stance even if decisions were made against influential individuals among these political forces.

f. Choosing the assigned council from the qualified lawyers and not the inexperienced ones, and paying them appropriate wages, in order to ensure that everyone obtains justice and equality before the law, and ensuring that accused politicians are followed up by qualified lawyers who can extract rights.

g. E x c e p t i o n a l circumstances require exceptional solutions. With regard to recovering the looted funds from the corrupt, which requires finding new mechanisms to bring back the accused and fugitives who fled Iraq. At the forefront of these mechanisms is concluding bilateral international agreements with the countries that harbour these fugitives and linking the

relations and commercial interests between the two countries with the recovery of these fugitives and the looted funds. Double nationality is considered one of the most important causes of impunity, and we recommend here concluding agreements in which the second country does not protect the holder of its nationality when accused of crimes of corruption and murder in Iraq.

h. The Supreme Judicial Council should instruct the various courts that corruption crimes are not restricted to public service employees; they include their partners in the private sector alike. This will weaken the political blocs' ability to avoid corruption laws by using the private sector.

i. Transformations to the specialised judiciary, at least in relation to major corruption crimes that result in great public harm. The judge shall investigate them for corruption crimes by himself and not through the police or others.

j. Time is the defining limit in the judiciary, and postponement should not be repeated in major cases related to corruption and human rights violations without valid reasons. Postponement is an exception and should not be the norm in rulings. The value of time is important because lengthening the trial time causes losses.

k. Occupants of special grades should be exempted from suspending the implementation of sentences, which makes them constantly wary of violations.

l. A court specialized in major crimes for example major corruption crimes among politicians and the crimes of killings of the protesters in October 2019 and others, must be formed, and a specialized executive body other than the police is linked to it for example, Special Forces can be used to to executive the court's decisions.

m. To resolve the work conflict between the Integrity Commission and the Supreme Judicial Council, we suggest that

the Commission be attached to the Supreme Judicial Council and make it the competent judicial body, which is a proposal that is consistent with the previous one.

n. The origin of the funds should be pursued, not the added value on the stolen funds.

o. In case of a legislative deficiency – such as with regard to corruption in the private sector – that the international agreements signed by Iraq be activated to fill this deficit, as these agreements are part of the Iraqi legal structure.

p. Investigative papers must be kept with the judicial investigator alone. Police or security agencies must be prevented from investigating. Police should only have the authority to filing, and should be prevented from conducting investigations.

q. Activating the Public Prosecution which was never activated in Iraq, disengaging it from the Supreme Judicial Council, and granting public prosecutors the privileges allocated

to them in the judicial system, and protecting them to enable them to work professionally and with a high ability to carry out their duties and prosecute the accused.

r. Providing full protection for complainants; many of them are threatened in the first stages of complaints. A mechanism to ensure their security should be imposed through specialised committees that guarantee confidentiality.

2. With regard to the legislative deficiency, the confusion of laws, and the inability of the executive bodies in the political system to perform their duty regarding the implementation of laws, we suggest the following:

a. Draft laws must undergo an in-depth study prior to the legislation, not only by legal experts and jurists, but also taking the opinion of government institutions concerned with the draft law itself.

b. Iraqi legislation should

aim to criminalize the legal person in the public cases, and not be limited to the criminalization of the direct responsible individual. For example, in the fire incident of a particular hospital due to lack of safety procedures or infrastructure deterioration, responsibility should not fall on the shoulders of the director of the mentioned hospital alone, rather, it must extend to the institution which is the responsible legal person, in our case, the Ministry of Health.

c. Activate the legislative guillotine to address the legislative slackness in Iraq, and benefit from international support and expertise in this field.

d. Establish a governmental mechanism that ensure that ordinary citizen understand the legal text and knows his rights and duties and what relates to them.

e. Take advantage of the opportunity to review laws to adapt them to human rights obligations, gender perspectives, and Iraqi diversity.

f. Involving civil society organizations and specialized research centres in supporting and implementing the legislative guillotine. Establish a mechanism to ensure equality and justice in the participation of civil society organisations in the legislation in way that prevent the exclusion of certain organisations on a political basis.

g. Providing technical support to the staff of committees in the House of Representatives, because they are the cadre that stays after the change of electoral cycles. International organizations focus on representatives only. It is necessary to include new representatives in courses that qualify them to exercise their legislative role, but focusing on employees is also important.

h. The Iraqi House of Representatives has already completed in cooperation with international organizations (Guide to Legislative Drafting), but this guide is neglected, and not taken into consideration. We

suggest activating it, and making it a mandatory reference for the members who are involved in the legislative process.

i. In order to address the delay in issuing legislations, and the slow enactment of laws, it is necessary to set a specific time limit for the completion of legislations according to the circumstances of each one.

j. The legislative defect can be bridged by returning to the international conventions ratified by Iraq that have become part of the Iraqi legal body, such as the International Convention against Corruption, by which the corrupt in the private sector—which are not mentioned by the current Iraqi law—can be prosecuted. In order to include those accused of crimes against humanity in Iraq who fled outside the country we emphasize here the need for Iraq to ratify Rome Statute of the International Criminal Court.

k. Call for the adoption of special laws related to crimes of a special nature, for example, a

special law to hold accountable those who are responsible for the crimes committed during the October 2019 protests.

l. It is necessary to enact new laws regarding protests and demonstrations, because they are still subject to the instructions set by the Coalition Authority, which are strict and incompatible with the spirit of democracy.

m. Setting a time limit for implementing the justice procedures, and not leaving them without deadlines as it wastes the rights and perpetuates the problem.

n. Iraqi legal jurisprudence needs development and amendments to suit contemporary jurisprudence, such as what is related to electronic crimes, and the extension of punishment to the legal personality.

o. Activating the Iraqi Parties Act in an effective way that will deprive them of the ability to obstruct laws and intimidate those who hinder them.

p. With regard to the amended Compensation Law No. 20 of 2009, we propose amending it to include the victims of protests and the mistakes of the security forces in dealing with protesters, and to transform it from a central committee to committees at the governorate level, with close central oversight.

q. Modifying the law of female survivors to include the victims of forced marriages to members of ISIS from the Sunni sect.

3. With regard to public censorship, and the accession of young people to armed groups as a result of the decline in development and the rentier economy in Iraq, we propose the following:

A. Activating Executive Order No. (406), which includes the establishment of vocational training centres with French support, and activating the proposal of the Iraqi National Security Chancellery, which included several executive paragraphs,

including the provision of cultural/ knowledge training on democracy and peaceful coexistence, and an explanation of the skills that must be included in the training in economically leading sectors, and supporting it with initiatives that absorb the outputs of training camps such as the housing initiative and so on.

B. We propose launching a project to activate and unify the work of civil society organisations which includes

- training courses about the oversight of legislation and the enforcement of laws.

- media campaigns to pressurise the executive authority.

C. Reconsidering the current philosophies behind compensations. The fiscal grants and the distributed lands have caused imbalances in society without an actual economical return. For the accumulating contracts we suggest reconsidering the mechanisms of compensations and reparations and putting the



affected in vocational training courses and promoting their work by providing small projects within the private sector and helping them through tax exemptions and administrative facilities that provide them with a sustainable resource that helps them to move on, while achieving criminal justice. Establish developmental programs to improve the affected areas, which include programs for mental and social support.

D. Eliminate differences in rights and privileges between different categories of victims, such as educational privileges granted to some students, adopt a more inclusive approach that would compensate all victims of international crimes in an equalitarian manner, and adopt inclusive language that does not identify the perpetrator or ethnic victim in the new reparation mechanisms or those that are being amended.

E. The government needs as a proof of its seriousness to adopt symbolic policies of reparations,

parallel to other policies of reparation and impunity, represented by a formal apology to the victims and their families, a national day to commemorate them, and naming some streets, schools after the names of some victims.

## Proposed work plan

Recommendation	Who can support it?	Its importance	How does it support the government?
Activating the legislative guillotine in Iraq and to be within the current government	<p>Some MPs who focus largely on enforcing laws and dealing through legal mechanisms to solve problems and prosecute those guilty of criminal cases of a public nature, such as MPs Mustafa Sanad and Basem . Khashan</p> <p>Sunni political forces can greatly support the issue because it solves the problems of suspected cooperation with terrorist organizations</p> <p>The international community ( some international organizations already have cooperation with Iraq in this regard, such as ( USID ))</p>	The defect in achieving criminal justice in Iraq and impunity is closely related to a double-fold problem, the slackness in Iraqi legislation, and the lack of legislations that cover contemporary issues	The more specific and clear the Iraqi law is, the more the judiciary is able to enforce the laws, which reduces the legal loopholes that enable corruption and impunity

<p>Activating the role of research centers and civil society organizations related to the process of drafting legislation</p> <p>This can be done by including it in the legislative drafting guide and making it a binding guide for .MPs</p>	<p>Independent blocs in parliament</p> <p>Parliament Speaker Muhammad al-Halbousi, in line with his initiative to involve civil society in reviewing draft laws</p>	<p>The lack of civil society's ability to influence political decisions can be compensated by a real involvement in legislation, which will lead to indirect influence on the government's general policies, including those related to impunity</p>	<p>It is difficult at present to talk about political reform in light of the zero-sum political conflict between the political parties, but the influence on the work of the government may in the future lead to political reform that supports the democratic transition</p>
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<p>Compensation for the victims of the October 2019 protests And review the complex legal system related to protest to allow protest without allowing the regime to suppress protesters</p> <p>M a k i n g reparations more comprehensive by documenting all violations and the contribution of civil society in their .development</p> <p>Including other groups in the Law of female survivors .other than Izidis</p>	<p>The Prime Minister designate can support this demand, because he presented a p r o g r a m through which he is trys to rescue what can be saved from the political system and to correct the mistakes of the political blocs that agreed to .his candidacy</p>	<p>Political problems since 2019 are linked with what the demand s of the October protests such as holding the corrupt accountable, ending impunity, and compensating the victims, this means adopting a new philosophy of governance that goes towards trying to correct previous .mistakes</p> <p>Also, holding the negligent accountable will form part of the reform process of the executive security body, which was discussed in the study on the issue of .police and corruption</p>	<p>Compensating the victims of the protests will create g e n e r a l satisfaction w i t h government policies, and facilitate its .work</p>
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<p>Legislation of the Law of Transparency</p>	<p>The Prime Minister designate is greatly concerned with the issue of corruption and reducing it, as the ministerial curriculum contains paragraphs related to transparency and prevention of corruption</p>	<p>There are many institutions in Iraq that deal with corruption cases after they have been committed, but there is no legal framework to prevent corruption. The Transparency Law can provide this legal cover according to the classification of governmental and non-governmental institutions such as: (the judiciary, security and military institutions, economic institutions and bodies, service institutions and bodies, civil society organizations, parties and media, and others). This legislation is supposed to provide the legal obligation to disclose information and move towards a government that is open to citizens. Legislation of the Transparency Law will greatly make it difficult for corruption to occur, and pave the way for strengthening the Iraqi legal structure to prevent impunity. This recommendation is consistent with the conclusions of the workshops that pointed at the absence of measures to prevent corruption, and the laws are limited to holding the corrupt accountable after the crime has been committed.</p>	<p>The government needs an urgent issue that can be adopted in order to achieve rapid public approval that lengthen the life of the government, and paves the way for the re-election of the Prime Minister designate for a second time</p>
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<p><b>A c t i v a t i o n</b> <b>of the Public</b> <b>P r o s e c u t i o n</b> <b>Service</b></p> <p>:in two ways</p> <p><b>Pressure on-</b> <b>the judiciary to</b> <b>separate judges</b> <b>.from prosecutors</b></p> <p><b>E n c o u r a g i n g -</b> <b>the separation of</b> <b>the prosecution</b> <b>service from the</b> <b>judiciary</b></p>	<p><b>In the</b> <b>(ministerial</b> <b>curriculum)</b> <b>presented by</b> <b>the prime</b> <b>minister, many</b> <b>p a r a g r a p h s</b> <b>m e n t i o n e d</b> <b>P u b l i c</b> <b>P r o s e c u t i o n</b> <b>and its role in</b> <b>achieving them,</b> <b>and in other</b> <b>paragraphs it</b> <b>touched on</b> <b>its adoption</b> <b>for solving</b> <b>legal problems</b> <b>in which</b> <b>the Public</b> <b>P r o s e c u t i o n</b> <b>was not</b> <b>mentioned, but</b> <b>it is the default</b> <b>path to solving</b> <b>them</b></p>	<p><b>the prosecution system</b> <b>was never activated</b> <b>in the history of Iraq.</b> <b>After 2003 its role was</b> <b>significantly obstructed</b> <b>by turning prosecutors</b> <b>into judges</b></p> <p><b>Nowadays it is</b> <b>possible to demand</b> <b>the separation of the</b> <b>prosecution from the</b> <b>judiciary</b></p>	<p><b>The Public</b> <b>P r o s e c u t i o n</b> <b>will be</b> <b>responsible for</b> <b>overcoming</b> <b>many of the legal</b> <b>complexities</b> <b>related to the</b> <b>initiation of</b> <b>cases related to</b> <b>human rights,</b> <b>major crimes</b> <b>and corruption,</b> <b>which will</b> <b>shorten the</b> <b>procedures for</b> <b>the government</b> <b>and investigative</b> <b>.bodies</b></p>
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