ANTI-TERRORISM LAW APPLICATION IN IRAQ: AN ANALYTICAL STUDY

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PEMAKAIAN PERUNDANGAN ANTI-TERORISME DI IRAQ: SATU KAJIAN ANALITIKAL

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DECLARATION

I hereby declare that the work in this thesis is my own except for quotations and summaries, which have been duly acknowledged.

29 April 2016

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P75289
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First and foremost, I thank God Almighty for his blessings, care, love and giving me health, patience, knowledge, and ability to complete this thesis. On this occasion, I'm sending my greetings and salutations to our beloved prophet, Muhammad, the mercy for the creation.

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ABSTRACT

Terrorism is a contemporary problem that has a massive global impact on the people and many countries around the world. The United Nations Security Council issued resolution (1373/ 2001 (paragraph 2 (b)) to encourage all States to “take the necessary steps to prevent the commission of terrorist acts”. The Council also formed a committee to monitor the implementation of this resolution. The primary responsibility of any government is to provide protection, safety and security to its citizens. In Iraq, the Penal Code is used to fight against internal and external terrorism. However, after 2003 there is an increase in internal domestic violence that led to the establishment of Anti-Terrorism law enforced on 9th of November 2005. At this point of time, the new Iraqi government faced diverse reactions from supporters and opponents, while the country border became insecure because of the inflow of criminals that later caused the increase of criminal acts. The objectives of the study is to define and understand the concept of terrorism in Iraqi laws; its applications in the efforts to counter terrorism; the extent these legal provisions are in contradiction to anti-terrorism efforts; to study the investigation procedures that are affecting suspects and the prosecutors in the investigation process and; to examine how the laws can be improvised to ensure individual rights and freedoms guaranteed according to the Constitution and the Iraqi Laws. This thesis used qualitative Legal Analysis methodology to draw data from legal documents and reports, journal articles, books and on-line materials. The data were analysed and categorised to give meanings and findings to this thesis. Some of the findings includes (a) There are various definitions and concepts to the meaning of “terrorism” according to Iraqi laws; (b) The judiciary is seen as lacking of independence causing lack of due process that led to unfair trials; (c) Torture and ill-treatment practised on detainees; (d) Human Rights Violation is rampant and, (e) Abusive application of anti-terrorism laws in Iraq. In conclusion, Iraq anti-terrorism laws should be used to protect the people and the country from any terrorism acts but not to be used otherwise to accommodate violent practise and corruptions among judges and enforcement officials.
PEMAKAIAN PERUNDANGAN ANTI-TERRORISME DI IRAQ: SATU KAJIAN ANALITIKAL

ABSTRAK

Terorisme adalah masalah kontemporari yang mempunyai kesan global yang mempunyai impak yang sangat besar kepada rakyat dan negara-negara di seluruh dunia. Majlis Keselamatan Pertubuhan Bangsa-Bangsa Bersatu mengeluarkan resolusi (1373/2001 (perenggan 2 (b)) untuk menggalakkan semua negara untuk "mengambil langkah yang perlu bagi mencegah pelaku terorisme". Majlis juga menubuhkan satu jawatankuasa untuk memantau pelaksanaan resolusi ini. Tanggungjawab utama mana-mana kerajaan adalah untuk memberikan perlindungan, keselamatan dan sekuriti untuk rakyatnya. Di Iraq, Undang-undang Jenayah digunakan untuk memerangi keganasan secara dalaman dan luaran. Walau bagaimanapun, selepas tahun 2003 terdapat peningkatan dalam keganasan dalaman sehingga di bentuk Undang-undang Anti-Terrorisme yang dikuatkuasakan pada 9hb. November 2005. Pada ketika itu, Kerajaan Iraq yang baru (mengambil alih) menghadapi pelbagai reaksi daripada penyokong dan pembangkang. Manakala sempadan negara pula menjadi tidak selamat di sebabkan bertambahnya kemasukan penjenayah yang kemudian mengakibatkan meningkatnya perlakuan jenayah. Objektif kajian ini adalah untuk mentakrifkan dan memahami konsep keganasan dalam undang-undang Iraq; aplikasinya dalam usaha untuk menentang terorisme; mengkaji setakat mana peruntukan undang-undang bertentangan dengan usaha-usaha anti-terorisme yang di jalankan; untuk mengkaji prosedur siasatan yang menjejaskan orang kena tuduh dan pendakwa dalam proses siasatan dan; untuk mengkaji bagaimana undang-undang boleh perbaikkan (pinda) untuk memastikan hak-hak dan kebebasan individu dijamin menurut Perlembagaan dan Undang-undang Iraq. Tesis ini menggunakan kaedah Analisis perundangan secara analitikal menurut pendekatan kualitatif untuk mendapatkan data daripada dokumen dan laporan perundangan, artikel dalam jurnal, buku-buku dan bahan-bahan atas talian. Data dianalisis dan dikategorikan untuk memberi makna dan penemuan kepada kajian ini. Antara dapatan ini termasuklah; (a) Wujud pelbagai definisi dan konsep kepada makna "terorisme" mengikut undang-undang di Iraq; (b) Badan kehakiman dilihat sebagai kurang bebas sehingga menyebabkan timbul kekurangan dalam proses siasatan awal yang membawa kepada tidak adil; (c) Penderaan dan penganiayaan di amalkan terhadap orang tahanan; (d) Pelanggaran Hak Asasi Manusia sering berlaku dan, (e) Pemakaian secara penganiayaan Perundangan anti-terorisme di Iraq. Kesimpulannya, Perundangan Anti-terorisme Iraq sepatutnya digunakan untuk melindungi rakyat dan negara daripada sebarang tindakan terorisme tetapi tidak boleh digunakan secara bertentangan untuk menyokong amalan keganasan dan rasuah di kalangan hakim-hakim dan pegawai penguatkuasa.
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CHAPTER I

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Terrorism has become daily news. Almost not a day goes without news about a political kidnapping, assassination, hijacking, or bombing in various places across the world. These terrorist acts have increased in the past decade, and terrorism has attracted increasing concern among scholars.\(^1\) Terrorist acts have become more frequent since the September 11, 2001.\(^2\) The world witnessed the first terrorist attack that resulted in many casualties. Initially it was responded with shock and confusion, which later turned into feelings of hatred. These events prompted international bodies to define terrorism and become united against terrorists.\(^3\)

As response to September 11, 2001, some States increased security of their societies and restricted civil liberties to prevent terrorist activities. This counter-terrorism measures that had taken by some States undermine fundamental human rights framework such as right to liberty and security, fair trial, prohibition of incommunicado and indefinite detentions, electronic surveillance without court order and airport fingerprint from civilians of some States.\(^4\) Hence, terrorist acts are classified as crimes against humanity regardless of whether they occur in times of peace or war. To mitigate

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terrorism, the public must support authorities in classifying terrorists as offenders instead of heroes.\textsuperscript{5} Terrorism has gained international attention because of its overall effect on nation-states and societies.\textsuperscript{6} Besides, terrorism is difficult to eliminate completely because these crimes come in various forms that persist as long as some groups remain dissatisfied with their political or economic situations. Therefore, terrorism can only be addressed by minimizing its effects, which entails a long-term process to eradicate.

The governments have to protect their citizens against terrorist attacks that potentially involve their lives, and properties. The state might be addressed terrorism threats by applying series of reactions as counter-terrorism measures to protect their residents.\textsuperscript{7} It ordinarily includes specific amendments allowing the government to bypass its special legislation when combating terrorism-related offenses, on the grounds of necessity.

Terrorist acts target the supreme values of society, and their victims, in most cases, are innocent people, terrorism has become a national problem. The extent of transnational activities also makes terrorism an international issue, that is, what affects one country will have a carryover effect on another country. In other words, an act of terrorism in one part of the world will eventually spread to other regions. From this perspective, terrorism is considered a threat to international security.\textsuperscript{8}

Counter-terrorism legislations pressure governments to pass the necessary laws to combat terrorism. On September 28, 2001, the United Nations (UN) Security Council issued Resolution (1373), which posited that “acts, methods, and practices of terrorism were contrary to the purposes, and principles of the United Nations. Moreover, that

\textsuperscript{5} Aksoy, E. 2002. \emph{International Terrorism in the Age of Globalization}, Master’s Thesis, Department of International Relations, The Institute of Economics and Social Sciences of Bilkent University, Ankara, P. 27.


\textsuperscript{7} Behnam Rastegari & Dr. Rohaida Nordin. 2012. \emph{Capability of Applying Human Rights in Fighting Terrorism Process}. Conference paper of International Conference Harmonizing Legal Principles Toward Asean Community, P.3.

knowingly financing, planning, and inciting terrorist acts, were also contrary to the purposes and principles of the United Nations” and that all member states should “take the necessary steps to prevent the commission of terrorist acts”. A committee was formed to monitor and ensure the implementation of this resolution. The primary responsibility of any government is to safeguard the safety and security of its citizens. As a “shift” from the previous actions of the UN Security Council, Resolution (1373) presents a series of general rules in combating terrorism, and these rules must be enforced continuously without any limitations in space and time.9

Iraq initially adopted anti-terrorism related legislations in its penal code. However, the increasing domestic violence and other circumstances in Iraq led to the abolition of these legislations in 2003. These events prompted the Coalition Provisional Authority to issue provisions for combating domestic terrorism and the Iraqi Constitution to emphasize a ban on terrorism. In 2005, under Prime Minister Ibrahim al-Jaaferi, the Iraqi legislation passed the Anti-Terrorism Law No. 13 of 2005, which allowed security forces to detain persons on terrorism charges. This law was passed amid the presence of American forces in the country.10

In addition, Resolutions (1546), (1637), and (1723) of the UN Security Council authorized international coalition forces to detain individuals “for imperative reasons of security,” thereby prompting the U.S. military to arrest anyone in Iraq who posed a “security risk” and hold them indefinitely without filing charges or bringing these suspects to court. These practices provided a precedent for Iraqi security forces’ incommunicado detention of suspects in addition to the wide power granted by the Anti-Terrorism Law.11 Present debates on terrorism involve limited citizen involvement or dialogue. Given that terrorism is likely to remain a serious problem in the future, effective counter-terrorism strategies and tactics must be formulated immediately to


protect civil liberty. These strategies must include a strong element of criminal justice that is guided by a normative legal framework and embeded the basic principles of due process and respect for human rights.\textsuperscript{12} The role of the criminal justice system in countering terrorism is a challenging one. Indeed, the primary objective of counter-terrorism strategies must be to prevent terrorist incidents from taking place. The reality, however, is that many criminal justice systems are currently better at responding to and punishing crimes after the fact than at preventing them in the first place.\textsuperscript{13}

The need for countries to take strong actions against terrorism has raised some issues about the need to strengthen the procedures for protecting individual rights. When deploying counter-terrorism strategies, states must continue to adhere to the rule of law, including the basic principles, standards, and obligations under criminal and constitutional laws that define the limitations of permissible and legitimate criminal justice activities against terrorism. These boundaries are largely articulated in various aspects of the criminal procedural law and legislation that regulate police powers.

Thus, special counter-terrorism legislations that depart from traditional criminal law must be carefully adopted.\textsuperscript{14} Therefore, The researcher examines the Anti-Terrorism Law from the perspective of the Iraqi constitution and other relevant Iraqi and international laws out the amendment of such law are deemed non-compliant to international standards.

\subsection*{1.2 STATEMENT OF PROBLEM}

Since its implementation on February 9, 2005, Anti-Terrorism Law No. 13 has raised many questions and debates among the supporters and challengers. This act was implemented by a relatively new Iraqi government at a time when the security of the


country was compromised after the Iraqi borders were opened to everyone, thereby increasing the crime rates within Iraqi territory. Upon realizing that the existing Iraqi laws were inconsistent with the reality, the Iraqi government issued the Anti-Terrorism Law in accordance with paragraph (2) of Article 7 of the Iraqi Constitution, which states that, “The State shall undertake to combat terrorism in all its forms…”\(^{15}\)

In a preliminary assessment of Iraq’s compliance with Resolution (1373), the chairperson of the counter-terrorism committee of the UN Security Council called for the Iraqi government to review its ambiguous Anti-Terrorism Law and establish another mechanism for combating terrorism. Given that terrorist acts lack a precise definition of terrorism in Iraqi law, To prevent its misuse in future for political trials. The law also contains loose provisions, especially Article (4), which contains broad interpretations that may threaten the people. The law has been worded in such a way that anyone who challenges its orders will be brought to trial.\(^{16}\) Moreover, terrorism is loosely defined in Iraq as any activity that involves violence or threats of violence. However, the level of violence alone does not produce a useful definition of “terrorism” that includes many acts which are not usually considered terrorism, such as wars, riots, organized crimes, or simple assaults. For example, a non-life-endangering destruction of property is not considered a violent crime.\(^{17}\)

Therefore, the anti-terrorism law in Iraq has become like a sword that hangs on the necks of Iraqi citizens and influential factor in the relationship between the Iraq leaders and their people.\(^{18}\) The UN Assistance Mission for Iraq (UNAMI) and the Office of the High Commissioner for Human Rights have repeatedly emphasized the weaknesses of the Iraqi justice system. Specifically, they argue that the criminal investigations and judicial proceedings of capital punishment cases in Iraq frequently

\(^{15}\) Article 7 (2) of Iraqi Constitution of 2005, Appendix F.


violate the rights of the accused, as well as the international and constitutional guarantees of due process and fair trial. In other words, the indefinite detention and forced confession of these prisoners both violate their rights to a fair trial.  

Many women have also been detained under Article (4) of the Anti-Terrorism Law for purportedly covering up for their husbands. Women are also disproportionately targeted by the Anti-Terrorism Law because of their relationships with male family members whom the government considers suspects in terrorism cases. Punishing women as a way of reaching male suspects violate their right to due process of the law. The accused persons have limited access to lawyers, especially when they are detained by the Ministry of Interior, the Counter-Terrorism Directorate, and the Ministry of Defense. Many detainees and lawyers have complained to UNAMI that these institutions do not comply with the provision for granting legal representation after the arrest, particularly during the interrogation phase of any investigation.

The Anti-Terrorism Law does not include special provisions for these procedures and refers to the Criminal Procedure Code only, the provisions of which are an insufficient safeguard for the rights and freedom of the accused. For instance, the severe punishment policy of the Anti-Terrorism Law violates the constitutional right of the accused to human rights protection and freedom. Therefore, the Anti-Terrorism Law has been criticized heavily by legal scholars and human rights organizations.

Article (4) of the Anti-Terrorism Law completely ignores fair trial standards by granting executive and judicial authorities with broad powers to arrest and take legal procedures against the defendants. The courts often convict accused individuals solely on the basis of their confessions, which may have been forcefully extracted from them or

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supplied by secret informants. When defining terrorist acts or terrorism-related crimes, states must observe basic human rights according to the legal principle, “nullum crimen, nulla poena sine lege,” which requires precision and clarity when drafting laws and prohibits the ex-post facto adoption of a law or the retroactive criminalization of conduct. This principle of general international law is enshrined and made expressly non-derogable in Article (4) of the International Covenant on Civil and Political Rights and the provisions of regional human rights treaties.

The Anti-Terrorism Law also ignores the principle of individual criminal responsibility, in which the offender must be asked about the crime he/she has committed and not by others. As stipulated in Article (19) of the 2005 Iraqi constitution, “Punishment shall be personal.” The Iraqi constitution prohibits inhumane treatment and torture (whether psychological or physical) of prisoners. Forced confessions are also considered unreliable under the law. The victims of such activities are entitled to compensation for material and moral damages. Following the changes in the Iraqi political regime, a new generation of judges has emerged and established political harmony among various parties, albeit not professionally. However, the establishment of new courts in Iraq, especially high criminal courts that hold trials for people who are charged with terrorism, has exacerbated the problem of the Anti-Terrorism Law.

Iraqi Justice Minister Hassan Al-Shammari reported that approximately 1,400 Iraqis have been sentenced to death and are still awaiting their execution. The Iraqi government contends that such sentences are necessary to reduce the magnitude of violence in Iraq. The opponents of the government decry the “indiscriminate application of the Iraqi Anti-Terrorism Law as well as the confusions, criticisms pervading in the

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24 Article 19(Eighth) of Iraqi Constitution of 2005  "Punishment shall be personal." Appendix F.

25 Article (37: First: C) of Iraqi constitution of 2005, Appendix F

j liediciary in Iraq.” The future of Iraq as a society that is based on the rule of law depends on the establishment of a credible Iraqi criminal justice system that embodies the international standards of fairness and holds officials responsible for serious crimes, such as torture. Following the recommendations of the 2014 Report on Human Rights in Iraq, the Iraqi government must amend the Anti-Terrorism Law of 2005 to guarantee that its provisions are in line with international laws on human rights and ensure the rights of individuals to due process.

According to American Bar Association (ABA), Center for Human Rights, “Iraq’s Anti-Terrorism Law of 2005 contains broad and ambiguous terms and, as a result is conducive to arbitrary application and abuse. The breadth of the offenses and the ambiguity of key terms appear to criminalize otherwise lawful activities, including the exercise of the fundamental rights of freedom of expression and opinion, association, and peaceful assembly. The law should be amended, and greater detail and clarifying language added to remedy these problems.”

Therefore, the researcher examines the Anti-Terrorism Law from the perspective of the Iraqi constitution and other relevant Iraqi and international laws, for the amendment of such law, which the researcher deemed non-compliant to international standards.

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1.3 RESEARCH QUESTIONS

This study intends to answer a number specific research questions as follows;

(i) What are the definition and the concept of terrorism in Iraqi laws?
(ii) How successful are its applications in the efforts to counter-terrorism?
(iii) To what extent are the legal provisions in contradiction to anti-terrorism efforts?
(iv) How do the investigation procedures affect suspects in an anti-terrorism investigation process?
(v) How can Iraqi anti-terrorism law will be amended to protect the suspects’ rights?

1.4 RESEARCH OBJECTIVES

The general goal of this study is to analyze the Iraqi anti-terrorism law in Iraq and to determine how these laws applied in Iraq. Thus, the objectives of this study are as follows;

(i) To define the concept of terrorism in Iraqi laws.
(ii) To determine how successful its application in the efforts to counter-terrorism.
(iii) To examine, what extent, the legal provisions are in contradiction to anti-terrorism efforts.
(iv) To analyze the investigation procedures and how they affected suspects and the prosecutors in the investigation process.
(v) To suggest amendments to the legal provisions to ensure individual rights and freedoms guaranteed according to the Constitution and the Iraqi Laws.

1.5 SCOPE OF STUDY

The focus of the study is a thorough analysis of the anti-terrorism law and its application in Iraq. The study also stresses on its evolution stages of Iraqi legislation to combat terrorism before issuance of a special law to fight terrorism that later cause significant implication to the Iraqi people.
1.6 SIGNIFICANCE OF STUDY

Theoretical Significant: This effort provides a more humanistic approach towards the new amendment make the law.

Practical Significant;

1. The Legislator will have a new approach to the interpretation of the laws.
2. This research will help in the amendment of the laws.
3. The people will be more aware of the importance of the anti-terrorism law and able to obey the law.

1.7 METHODOLOGY OF THE STUDY

It is a library-based study. It adopts a qualitative approach and relies on materials obtained from primary and secondary sources. The primary sources include the anti-terrorism law in Iraq No.13 for 2005. Moreover, conduct a thorough analysis of the law to determine its strengths and weaknesses in it. The Iraqi Constitution and Iraqi relevant statutes (Iraq Penal Code, the Criminal Procedure Code, Iraqi National Safety Law, Iraqi Central Bank Act and Iraqi Anti-Money Laundering Law), the United Nation Convention and the Arab Convention for the fight against terrorism, and the Convention Conference Islamic anti-terrorism.

Secondary sources of data, such as reports issued by the United Nations and international organizations, such as Amnesty International and the Organization of Human Rights and the Security Council relating to law. Moreover, the human rights situation in Iraq under implementation of this law, library-based research through a literature review of books and articles in journals. Especially those on the comparison Laws that dealt with searching this topic.

The researcher will analyze a broad range of legal sources that include international conventions, Arabic laws and international against terrorism Compatibility with international standards. Alternatively, through online databases on case studies and legal opinions on the subject.
CHAPTER II

THE CONCEPT OF THE ANTI-TERRORISM LAW

2.1 INTRODUCTION

In the history of human civilization, terrorism has been used by individuals and organizations in causing terror. Undoubtedly, terrorism is the dark side of human behavior in the recorded human history.\(^{31}\) The 9/11 attacks marked a turning point in the promulgation of domestic anti-terrorism laws. However, the Iraqi situation presents a special case. The Iraqi government has been accused of funding global terrorism, thereby leading to the American occupation of Iraq in 2003, which in turn affected the perspective of the Iraqi legislature toward terrorism. Several Acts of Parliament, regulations, and rules have been implemented in Iraq to counter-terrorism. However, the latest counter-terrorism law in Iraq is dangerously excessively broad and has affected many locals, particularly peaceful protesters, and ethnic minority groups, by undermining their civil liberties and fundamental human rights.\(^{32}\)

This study examines the concept of terrorism in international and Iraqi laws, as well as its typologies. To facilitate discussion, the evolution of Iraqi anti-terrorism legislations is divided into two stages, namely, before and after the American occupation. The state of human rights in Iraq is also examined to determine how much the country respects the rights of its citizens by observing fair trial and due process. The criminalization of terrorism under Iraqi laws and the effects of terrorism on the Iraqi society are also examined.


2.2 DEFINITION OF TERRORISM

Terrorism is a controversial issue because of its definitional pluralism and perceptual ambiguity. The definition of terrorism remains inexact because such concept covers a broad range of events. Moreover, scholars are unable to reach a consensus on certain aspects of terrorism. For example, does concern terrorism attacks only on civilians or on military targets under non-war conditions? Should state actors be labeled terrorists? Scientists argue that defining terrorism objectively is impossible because “one man’s terrorist is another man’s freedom fighter.”

Terrorism is a relatively novel concept, but terrorism-related activities have been observed throughout history. Terrorism is synonymous and coterminous with human interests. Each individual or group of individuals holds various interests and devised unique ways to achieve such goals. Such interests are often egocentric and conflicting.

Terrorism has become a universal problem that affects many countries directly or indirectly. Most countries oppose terrorism, yet others completely ignore or even support such activities. According to Gregor Bruce, governments or politicians emphasize the definition of terrorism because “it can be used for public relations” or to persuade the electorate that they are taking the appropriate steps to combat terrorism and gain the acceptance of highly draconian measures or legislations.

However, under this situation, governments are granted the opportunity to introduce highly repressive laws. Although these laws are primarily targeted toward terrorism, they are often extended to other activities to increase the power of the government. Citizens accept the loss of their individual civil rights in the name of counter-terrorism. Government abuse is an overreaction to terrorism and can be followed by a backlash from citizens.


Terrorist acts aim to incite an inappropriate reaction from governments. According to Truthful, the definitions of terrorism as proposed by politicians can help reassure and educate the public about such phenomenon while preserving their civil rights. However, these definitions can also be used by politicians and governments to repress, victimize, or demonize their opponents, civilians, political bodies, and religions. This phenomenon often occurs more in authoritarian states than in democratic ones.\textsuperscript{36}

Terrorism has no universally accepted definition. Although many scholars have tried to define this concept over the years, this term is loaded with conceptual problems that hinder the formulation of a universally acceptable definition. Some of the most distinguished scholars and institutions on terrorism have proposed their own definitions of such concept, which are summarized below:

The Arab Convention on the Suppression of Terrorism (1998) defined terrorism as: “Any act or threat of violence, whatever its motives or purposes, that occurs for the advancement of an individual or collective criminal agenda, causing terror among people, causing fear by harming them, or placing their lives, liberty or security in danger, or aiming to cause damage to the environment or to public or private installations or property or to occupy or to seize them, or aiming to jeopardize a national resource.”\textsuperscript{37}

Moreover, Iraq ratified the 1999 International Convention for the Suppression of the Financing of Terrorism in 2012, which defines terrorism as: “any act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict. When the purpose of such act, by its nature, or context is to intimidate a population. Or to compel a Government or an international organization to do, or abstain from doing any act.”\textsuperscript{38}

The United Nations Security Council’s 2014 report described terrorism as: “every action envisioned to reason death or bodily damage to civilians or non-fighters with the


\textsuperscript{37} Arab Convention for the Suppression of Terrorism (Signed at Cairo on 22 April 1998).

intention of scaring a people or coercion, the government or an international organization, to do or desist from doing any action.”

Iraqi legislation did not define the term “terrorism” before enacting the Anti-Terrorism Law No. 13 of 2005. Instead, terrorism is loosely defined as an element of a crime or an aggravating circumstance that is listed in the Penal Code No. 111 of 1969. Although the term “terrorism” has been mentioned in Articles (21), (365), and (366), Iraqi legislation merely perceives terrorism as a crime, such as conspiring to change the fundamental principles of the constitution or assaulting citizens.

The Iraqi Anti-Terrorism Law No. 30 of 2005 has the following definition for terrorism: “Every criminal act committed by an individual or an organized group that targeted an individual or a group of persons or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.” The modern definition of terrorism refers to the use of terror or violence against innocent people to achieve political or ideological goals.

The American Bar Association Center for Human Rights argues that the definition of terrorism must be amended to focus narrowly on serious violent acts that are intended to intimidate the population or compel government action. Without such amendment, courts continue to criminalize violent acts that meet the internationally accepted definition of terrorism. The rest of this thesis is dedicated to clarify the concept of terrorism. By referring to its many definitions, the researcher simply defines terrorism as the use of physical and psychological force to incite fear among people and to achieve a political purpose.


40 Article 1 of Iraqi Anti-Terrorism Law No. 13 of 2005, Appendix A.


2.3 TYPOLOGIES OF TERRORISM

The typologies of terrorism must be determined after clarifying its definition. Terrorism has many categorizations and variants. The fact that extremist groups resort to terrorism to establish their political influence does not mean that all groups have equal objectives or that the relationship between their means and ends is clear to an outside observer.

Terrorist activities come in various forms, of which some are interdependent. Some terrorist acts have no clear distinction because they involve two types of terrorism namely the international and domestic. In addition, some domestic terrorist acts may have international origins or sources. Identifying the types of terrorism is a challenging process. Many researchers have generated multiple and conflicting forms of terrorism by investigating such phenomenon from various perspectives and using intellectual approaches. This study identifies the nature of terrorism by viewing the terrorist typologies from its three aspects, namely, the actor, the goal, and the scope.

Figure 2.1 Typologies of Terrorism

Source: Jmel Hзам Yahya Al–Faqeeh, the concept of terrorism in international law

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2.3.1 Terrorism Based on the Actor

In this typology, terrorism can be classified as state terrorism and individual or group terrorism. However, these two types may be interconnected. For instance, a single state may commit state terrorism by itself or by collaborating with other individuals or groups to weaken its competitors.

a. **State terrorism**: is as controversial as the concept of terrorism itself. Despite the conflicting arguments on the existence of state terrorism, the public remains firm in their belief that state terrorism exists. Despite the facts that some states commit terrorism to incite aggression instead of fear and that some states commit terrorism by themselves or by collaborating with internal or external groups, the existence of state terrorism remains widely accepted. State terrorism often takes the form of using extra force and allowing custodial deaths. State Sponsors may use their own directly recruited and controlled terror squads or may work through proxies and client movements. They almost invariably work covertly to conceal their involvement in such activities.\(^{45}\)

b. **Individuals or Groups Terrorism**: Involves individuals or organizations that incite terror among civilians to change certain political positions.\(^{46}\) Groups of individuals may also commit terrorism with different ideological persuasions who challenge the authority of the state. Inpatient groups who want to demoralize the government, dramatize a cause, gain support, inspire followers, provoke regime violence, or dominate a wider and stronger resistance movement often resort to terrorism.\(^{47}\)

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Terrorist groups in Iraq attack various infrastructures within the country, such as electrical stations and refineries, and then blame their actions on the Iraqi government. Such attacks have rendered not only the Iraqi government incapable of providing essential services but also hindered the development of the Iraqi economy. These attacks also aim to weaken the public and international support for Iraq.48

2.3.2 Terrorism Base on the Scope:

This typology can also be divided into domestic and international terrorism:

a. **International Terrorism**: refers to situations in which the members, victims, intended audience, and target locations of a terrorist group are from various states. International terrorism may be conducted in various ways, such as taking hostages, hijacking planes, and attacking international figures and such actions have all attracted special attention from international legislations. International terrorism is mostly conducted by international and regional conventions. Terrorism usually involves an external objective that is connected to a specific place, person or interest. Transnational terrorism is essentially political in character with an additional dimension of transcending national boundaries. This type of terrorism is subtle and powerful because its promoters have access to funds, weapons, and shelter.49

b. **Domestic Terrorism**: Refers to situations in which all participants, including the terrorist groups, victims, and audience, reside in or focus their grievances toward the same country.50 The effects of domestic terrorism are limited within the


boundaries of the concerned state while its causes are attributed to the problems within the state. In other words, domestic terrorism is committed by and affects the locals of a specific state. Domestic terrorism is often driven by the desire to change the government system or to gain power. This terrorism can be practiced by individuals and groups alike. Domestic terrorists may form death squads, support paramilitary or vigilante groups, or prosecute other groups that target the opponents of the present government or are perceived to be highly dangerous.\textsuperscript{51}

We can see this type clearly through Table (2.1) below that offers the number of deaths from violence in Iraq between 2003-2015.

Table 2.1 Monthly Civilian Deaths From Violence, In Iraq Between 2003-2015

<table>
<thead>
<tr>
<th>year</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>3</td>
<td>2</td>
<td>3977</td>
<td>3435</td>
<td>545</td>
<td>598</td>
<td>646</td>
<td>825</td>
<td>566</td>
<td>516</td>
<td>487</td>
<td>525</td>
<td>12,125</td>
</tr>
<tr>
<td>2004</td>
<td>610</td>
<td>663</td>
<td>1004</td>
<td>1303</td>
<td>655</td>
<td>909</td>
<td>834</td>
<td>878</td>
<td>1042</td>
<td>1033</td>
<td>1676</td>
<td>1129</td>
<td>11,736</td>
</tr>
<tr>
<td>2005</td>
<td>1222</td>
<td>1297</td>
<td>905</td>
<td>1145</td>
<td>1396</td>
<td>1247</td>
<td>1526</td>
<td>2352</td>
<td>1444</td>
<td>1311</td>
<td>1487</td>
<td>1141</td>
<td>16,583</td>
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<tr>
<td>2006</td>
<td>1546</td>
<td>1577</td>
<td>1957</td>
<td>1804</td>
<td>2277</td>
<td>2584</td>
<td>3298</td>
<td>2865</td>
<td>2565</td>
<td>2996</td>
<td>3804</td>
<td>2898</td>
<td>28,451</td>
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<td>2565</td>
<td>2844</td>
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<td>1387</td>
<td>1324</td>
<td>1124</td>
<td>996</td>
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<tr>
<td>2008</td>
<td>858</td>
<td>1092</td>
<td>1667</td>
<td>1315</td>
<td>914</td>
<td>750</td>
<td>659</td>
<td>704</td>
<td>612</td>
<td>594</td>
<td>540</td>
<td>586</td>
<td>10,271</td>
</tr>
<tr>
<td>2009</td>
<td>372</td>
<td>407</td>
<td>438</td>
<td>589</td>
<td>428</td>
<td>563</td>
<td>431</td>
<td>655</td>
<td>343</td>
<td>441</td>
<td>236</td>
<td>478</td>
<td>5,559</td>
</tr>
<tr>
<td>2010</td>
<td>267</td>
<td>303</td>
<td>336</td>
<td>385</td>
<td>387</td>
<td>383</td>
<td>488</td>
<td>520</td>
<td>254</td>
<td>315</td>
<td>307</td>
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</tr>
<tr>
<td>2011</td>
<td>389</td>
<td>254</td>
<td>311</td>
<td>289</td>
<td>381</td>
<td>386</td>
<td>308</td>
<td>401</td>
<td>397</td>
<td>368</td>
<td>279</td>
<td>392</td>
<td>4,153</td>
</tr>
<tr>
<td>2012</td>
<td>551</td>
<td>358</td>
<td>377</td>
<td>392</td>
<td>304</td>
<td>529</td>
<td>489</td>
<td>422</td>
<td>400</td>
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<td>253</td>
<td>299</td>
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<tr>
<td>2013</td>
<td>357</td>
<td>360</td>
<td>403</td>
<td>545</td>
<td>888</td>
<td>659</td>
<td>1145</td>
<td>1023</td>
<td>1306</td>
<td>1180</td>
<td>870</td>
<td>1125</td>
<td>9,851</td>
</tr>
<tr>
<td>2014</td>
<td>1096</td>
<td>971</td>
<td>1027</td>
<td>1036</td>
<td>1098</td>
<td>4078</td>
<td>1568</td>
<td>1542</td>
<td>1464</td>
<td>1729</td>
<td>1054</td>
<td>1190</td>
<td>17,653</td>
</tr>
<tr>
<td>2015</td>
<td>1449</td>
<td>1612</td>
<td>1121</td>
<td>1990</td>
<td>1254</td>
<td>1327</td>
<td>1580</td>
<td>1335</td>
<td>1181</td>
<td>1150</td>
<td>949</td>
<td>1056</td>
<td>16,204</td>
</tr>
</tbody>
</table>

\textbf{Source:} Iraq Body Count, “Documented civilian deaths from violence, monthly table”\textsuperscript{52}


\textsuperscript{52} Iraq Body Count, “Documented civilian deaths from violence, monthly table”. Available online \url{http://www.iraqbodycount.org/database/}, [15-01-2016].
2.3.3 Terrorism Base on the Goal

The objectives of terrorist organizations vary across the world and range from regional to transnational issues.\(^{53}\) Therefore, terrorist movements can be classified according to their goals, which may be ideological, separatist, or criminal. Ideological terrorists desire to change the present political, social, and economic systems. They are less durable than the well-established nationalist groups and are highly prone to internal splits. When a group follows an ideology that is superior to another in the evolutionary world, fundamentalist tendencies tend to be generated among its members who seek to propagate their ideas through terror.\(^{54}\) This typology can be divided into three types of terrorism, namely: Revolutionary Terrorism, Sub-revolutionary terrorism and Religious terrorism;

a. **Revolutionary Terrorism**: is conducted through violent means because the regime usually ignores peaceful political protests.\(^{55}\) These groups seek to overthrow or replace established systems with a new political or social structure. Revolutionary terrorism is usually associated with communist political ideologies. Other political movements can also resort to revolutionary methods to achieve their aims.\(^{56}\)

b. **Sub-Revolutionary Terrorism**: employs extra normal forms of political violence to change the structural–functional aspects of the present political system. Sub-revolutionary terrorists aim to change instead of abolishing the current political structure. Groups or movements that are indigenous to a specific political system usually employ sub-revolutionary terrorism,


although other parties that are outside the geographical boundaries of the same system may also utilize sub-revolutionary methods.\textsuperscript{57}

c. Religious terrorism: is presently the predominant model for political violence because ideology and nationalism remain strong catalysts of extremist behavior. Religious extremism has become a central issue for the global community as many religious fanatic groups continue to proclaim the superiority of their religion over others.\textsuperscript{58}

The propagators of religious terrorism are devoid of logic, rationale, or reason. They thwart all efforts that are aimed at an objective analysis of world religions, including their own, and promote an extreme cult in which religious co-existence is ruled out. This form of terrorism seeks to coerce followers of other religions into accepting the supremacy of their religion. Any challenge to religious terrorism is not tolerated, and its challengers are usually killed. On a smaller scale, single-issue fanatics are obsessed with the desire to change a specific policy or practice within a specific society.\textsuperscript{59}

After 2003, Iraqi civilians remained under attack because of their religion, ethnicity, and affiliations. Several large-scale attacks were directed toward Shi’ite pilgrims and their places of worship. Religious terrorists also target Christian communities, as were members of the Turkoman community, and members of other ethnic and religious minorities, such as Yezidi, Sabian Mandaean, Shabaks, and Manichaeans. These religious fanatics also kill members of sexual minorities despite the widespread sanctions against discrimination and the


presence of Iraqi security forces and other government institutions who are failing to protect them.\textsuperscript{60}

2.4 STAGES OF THE EVOLUTION OF ANTI-TERRORISM

2.4.1 First Stage

Before issuing a special counter-terrorism law, the Iraqi legislation, similar to most international and regional laws, used the Penal Code No. 111 of 1969 to deal with terrorism-related offenses.\textsuperscript{61} An Iraqi legislator reported the expression terrorist crimes in article (21 paragraph 1) enumerated offenses are not considered political offenses, even if committed with a political motive, including the replacement of the death penalty to life imprisonment and not to deprive the offender of civil and political rights and not be considered a precedent in the habitual crime. Which states: “A political offence is one which is committed with a political motive, or that violates the political rights either of the public or the individual. All other offences are considered to be ordinary. However, the following offences are not considered to be political even though they are committed with a political motive: (e) Terrorist offences…."\textsuperscript{62}

The Iraqi Penal Code also stipulates the criminalization of certain acts that it considered a terrorist and put it, is sentence prescribed, for example, Article (156) states that: “Anyone who knowingly commits an action with intent to encroach upon the independence of the state or its unity or the security and that action, leads to such violation is punishable by life imprisonment.”\textsuperscript{63}


\textsuperscript{61} Hasan Aziz Nour Al Hilou. 2007. \textit{Terrorism in International Law - A Comparative Study}, Master’s Thesis, Arabic Academy in Denmark, p. 46.

\textsuperscript{62} Article 21(1) of Iraqi Penal Law No. 111 of 1969, Appendix E

\textsuperscript{63} Article (156) of Iraqi Penal Law No. 111 of 1969, Appendix E
In Article (190) offers that “Any person who attempts to overthrow by force or by the use of violence the constitutionally appointed Republican regime or change the constitution of the State or the formation of the government is punishable by life incarceration or incarceration for a term of years. If the offence is committed by a group using bombs, dynamite or other explosives or firearms, the penalty will be death or life incarceration. The penalty will be death if the offence results in any fatalities.”64

Article (191) states that: “Any person who, with criminal intent, takes command of part of the armed forces or a military post or port or town without authorization from the government is punishable by death or life incarceration. The same penalty applies to any person who remains in a position of military command in contravention of the orders given to him by the government and to any commander who maintains his units under arms or mobilized after the government has ordered their demobilization or disbandment.”65

Article (192) provides that;

(1) “Any person who attempts to incite armed rebellion against the constitutionally appointed authorities or who is a member of a conspiracy or group aspiring to that end is punishable by imprisonment.

(2) If such rebellion occurs, then the penalty is life imprisonment.

(3) If such resistance results in an armed confrontation with the armed forces of the State or fatalities or if the offender is the commander in charge of an armed force, the penalty will be death.”66

Article (194) that's punishable by death “any person who organizes, directs or assumes command of an armed group that attacks any sector of the population or has, as its objective, the prevention of the rule of law, the invasion of territory or the

64 Article (190) of Iraqi Penal Law No. 111 of 1969, Appendix E

65 Article (191) of Iraqi Penal Law No. 111 of 1969, Appendix E

66 Article (192) of Iraqi Penal Law No. 111 of 1969, Appendix E.
appropriation by force of property belonging to the State or a group of people or who resists with the use of arms members of the public authorities. However, anyone who joins such a group without participating in its formation or assuming control of it, is punishable by life imprisonment or imprisonment for a term of years.”

Article (195) that “Any person who has as his objective incitement to civil war or sectarian fighting by arming the population or by encouraging one section of the population to arm itself against another or by urging them to fight is punishable by life imprisonment. The penalty will be death if the objective is realized.”

Article (196) provides that “Any person who attempts to occupy with the use of force or menaces any public property or building or building belonging to a government agency or departments or public utility or general establishment or to take control in any way of such property or prevent it from being used for the purpose for which it was intended. If the offence is committed by an armed group, the penalty will be life imprisonment or imprisonment for a term of years for its members or death or life imprisonment for the person who formed the group or assumed the leadership or command of that group.”

Article (197) after 14 March 2010 amendment, provides that;

(1) “Any person who willfully destroys, demolishes, spoils or severely damages a public building or property or property belonging to a government agency or department or public utility or general establishment or property belonging to associations considered by law to be for the public welfare or oil installation or any other state industrial installation or hydroelectric power station or means of communication or bridge or dam or public waterway or place set aside for public use or recreation or any public property of significant importance to the national economy with intent to overthrow the

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67 Article (194) of Iraqi Penal Law No. 111 of 1969, Appendix E.
68 Article (195) of Iraqi Penal Law No. 111 of 1969, Appendix E.
69 Article (196) of Iraqi Penal Law No. 111 of 1969, Appendix E.
constitutionally appointed regime is punishable by death or life imprisonment.

(2) The penalty is death if the offender uses explosives in the commission of the offence or if that crime leads to the death of any person found in such place.

(3) The penalty is life imprisonment or imprisonment for a term of years if the crime is committed in time of civil unrest or riot or with intent to spread panic among the population or create anarchy but without the offender intending to overthrow the constitutionally appointed regime.

(4) The penalty is imprisonment for a term of years for any person who willfully contributes to the destruction of anything mentioned in Sub-Article (1) or to the obstruction of the ordinary course of its operation.

(5) The offender will in all cases be ordered to pay for such damage or destruction.”

Article (198) also states punishment with imprisonment of incitement for the crimes mentioned in previous articles;

(1) “The following persons are punishable by a term of imprisonment not exceeding ten years;

(a) Any person who incites the commission of an offence stipulated in Articles (190 to 197), and nothing results from such incitement.

(b) Any person who invites the commission of such offences by providing material or financial assistance without intending to participate in their commission.

(2) If such incitement or encouragement is directed at a member of the armed forces, the penalty is life imprisonment.”

70 Article (197) of Iraqi Penal Law No. 111 of 1969, Appendix E.

71 Article (198) of Iraqi Penal Law No. 111 of 1969, Appendix E.
Article (365) says that: “Any person who infringes or attempts to infringe with the use of force, violence, intimidation or menaces or by any other illegal means the right of a public official or agent to carry out his employment is punishable by detention plus a fine or by one of those penalties.”\(^{72}\)

Article (366) also mentions that: “In circumstances other than those described in the preceding Article, any person who uses force, violence, intimidation, menaces or another illegal method against the right of another to carry out his employment or the right to employ or refrain from employing a person is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars. The provision of this Article also applies if any illegal method is used in respect of the spouse, ancestor or descendant of the victim of the offence.”\(^{73}\)

2.4.2 Second Stage

Iraq has witnessed increasing acts of armed violence because of the deteriorating security after the American occupation in 2003. During this stage, foreign individuals participated in armed resistance, and sectarian violence began to emerge. Therefore, many Iraqis were abducted and provoked into violence. Since April 2003, many laws and orders have been enacted to prevent terrorist acts either directly or indirectly. These laws are described as follows;\(^{74}\)

1. **Coalition Provisional Authority Orders**\(^{75}\)

To counter various acts of violence and suppress terrorist acts, the Coalition Provisional Authority issued several orders, which included amendments to some provisions of the Penal Code. The most important orders are listed as follows;

\(^{72}\) Article (365) of Iraqi Penal Law No. 111 of 1969, Appendix E.

\(^{73}\) Article (366) of Iraqi Penal Law No. 111 of 1969, Appendix E.


\(^{75}\) Following the invasion of Iraq by US-led Coalition Forces, a Coalition Provisional Authority (CPA) was established as the interim authority in Iraq. On 1 May 2003 US diplomat Paul Bremer was appointed to head the CPA.
a. **Order No. 3, 2003:** Arms control to restore public order and safety in Iraq, which under Article (6) states, “Any heavy weapons, except hand grenades or explosives, shall be turned into Coalition Forces at designated Weapons Control Points on specifically announced dates. Instructions will be issued by the relevant Coalition Forces authorities as to the procedures for handling in such weapons. Any person handing in weapons during the designated time period will not be subject to the penalties set out in Section (7) of this Order.” In addition, it imposed punishments in Section (7) on the possession of weapons without a license.\(^{76}\)

b. **Order No.14, 2003:** Prohibiting media activities that lead to abuse, encourage violence, or disturb public security. It was decided penalties under section (5), Which states “(1) Any media organization found to be broadcasting, publishing, or attempting to broadcast or publish prohibited material in violation of this Order may be detained, arrested, prosecuted and, if convicted, sentenced by relevant authorities to up to one year in prison or a fine of up to USD1,000.00…….” \(^{77}\)

c. **Order No. 26, 2003:** Establishment of the Department of Border Enforcement within the Ministry of Interior to (1) safeguard the security and safety of the Iraqi people and others who are legally residing in Iraq, (2) monitor and control the movement of individuals and goods to, from, and across Iraqi borders, (3) monitor the border-related functions that were formerly exercised by the Ministry of Defense, the Ministry of Foreign Affairs, the Ministry of Finance, and the Presidential Office, (4) supervise the activities of the customs police, border police, customs inspectors, immigration inspectors, and coastal patrol, (5) protect the border port of entry facilities, and (6) enforce detention, deportation, customs processing, airport immigration, passport issuance, inspection, and civil affairs functions. The Ministry of Foreign Affairs has


limited authority over the issuance of diplomatic and official passports that are necessary for official travel.\(^{78}\)

d. **Order No. 27, 2003:** Establish body protection facilities to assist the Iraqi people in finding secure and stable living conditions. The Facilities Protection Service is composed of trained, armed, and uniformed entities who provide security for ministries, governorate offices, government infrastructures, and fixed sites that are under the direction and control of governorate administrations and governmental ministries.\(^{79}\)

e. **Order No. 28, 2003:** Establish a temporary emergency and security service agency, such as the Iraqi Civil Defense Corps, to complement the operations of the Coalition military forces in countering organized individuals and groups that use violence against the Iraqi people and infrastructures.\(^{80}\)

f. **Order No. 54, 2004:** In compliance with the trade liberalization policy, prevent the import of non-military explosive materials that are used for industrial purposes or other materials that can be used in manufacturing explosive materials. “Items and technologies listed in the following international nonproliferation regimes (that are not otherwise prohibited under United Nations Security Council Resolutions or CPA Orders) cannot be imported in any quantity unless the Ministry of Trade issues a license authorizing the import.”\(^{81}\)

g. **Order No. 79, 2003:** Prevent the proliferation of technologies and expertise that are related to nuclear, chemical, or biological weapons of mass destruction as

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well as motivate those individuals who are employed, skilled, and knowledgeable in the creation, production, or development of such weapons to redirect their expertise to transparent peaceful civilian activities that contribute to the technological, scientific, and economic development of Iraq.  

**h. National Safety Law No. (1) in 2004:** Impose a state of emergency in the event of a terrorist attack that endangers the lives of the Iraqi people. This order is implemented in consideration of the risky security conditions in Iraq, the necessity to prosecute terrorists and violators of the law, and the aim of the temporary government to protect the rights of its citizens to live a peaceful life and enjoy their rights. In Article (1), it is stated that: “The Prime Minister has the right (after majority approval of the Presidential Commission) to declare an emergency state in any area in Iraq where the Iraqi people are exposed to danger which threaten the life of individuals resulted from a continuous campaign of violence by any kind of people….”

**i. Order No. 13 2004:** Establishment of the Central Criminal Court of Iraq where it is mentioned that: “the Central Criminal Court should focus its resources when exercising its judicial authority in cases related to: (a) Terrorism, (b) Organized crime, (c) Governmental corruption, (d) Acts intended to destabilize democratic institutions or processes, (e) Violence based on race, nationality, ethnicity or religion; and (f) Instances in which a criminal defendant may not able to obtain a fair trial in a local court”.

**j. State Administration Law for the Transitional Period 2004:** Included in Article (27 paragraph E), that: “The Iraqi Transitional Government shall respect and implement Iraq’s international obligations regarding the non-proliferation,

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82 Section (1-2) of Coalition Provisional Authority (CPA), Order No. 79, 2004. [http://www.iraqcoalition.org/regulations/][20-12-2015].

83 The necessity reasons of National Safety Law No. 1 of 2004, Appendix B.

84 National Safety Law No. 1 of 2004, Appendix B.

non-development, non-production, and non-use of nuclear, chemical, and biological weapons, and associated equipment, material, technologies, and delivery systems for use in the development, manufacture, production, and use of such weapons.”

2. Criminalization of Terrorism in Iraqi Constitution 2005

The Iraqi Constitution, which was passed by the National Assembly on August 8, 2005, included numerous provisions that criminalized and expressly prohibited terrorism. The preamble states that terrorism will not stop the people of Iraq from building a nation of law. According to Iraqi Constitution 2005, article (7):

First: “This proves that: Any entity or program that adopts, provokes, assists, elevates, hips, or justifies terrorism, etc.”

Second: “The Government will assume to fight terrorism in all its practices, and will work to defend its lands from being a base, passageway, or field for terrorist doings.”

Furthermore, the article (21- Third) from Iraqi Constitution 2005, states that: “Political asylum shall not be granted to a person accused of committing international or terrorist crimes or to any person who inflicted damage on Iraq.”

In addition, the article (73 - First) from Iraqi Constitution 2005, states that “the President of the Republic must assume the power to issue a special pardon on the recommendation of the Prime Minister, except for anything concerning a private claim and for those who have been convicted of committing international crimes, terrorism, or financial and administrative corruption.” While the Article (132- second) states that:"

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87 The preamble of the Iraqi Constitution of 2005, Appendix F.

88 Article 21 (third) of Iraqi Constitution of 2005, Appendix F.

89 Article 73 (first) of Iraqi Constitution of 2005, Appendix F.
the State shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts.” 90

3. Anti-Terrorism Law

In 2005, the Iraqi Parliament passed the Anti-Terrorism Law, which allowed security forces to detain persons on broad terrorism charges. The law was passed at a time when American forces were in charge of security matters in Iraq. Before and after the passage of this law, the U.S. military often detained suspects without formally charging them with a crime. 91

The law has only six articles. Article (1) defines the concept of terrorism, while Article (2) cites specific acts of terrorism, including violence or threats, causing fear or endangering the lives of others, using violence to damage property, inciting sectarian strife, organizing terrorist gangs, and using explosives to kill and others. Article (3) defines terrorism as “crimes against state security” that include “any act” that threatens the safety of society and national unity, the use or attempted use of force to overthrow the government, takeovers or coups, impeding the orders of government, or inciting armed rebellion. Article (4) lists the punishments for those convicted of the offenses. The participants or main perpetrators of any of the offenses that are defined in Articles (2 & 3) are sentenced to death while those who are convicted of harboring a perpetrator of a terrorist act or intentionally covering up a terrorist activity as stated in Articles (2 & 3) are sentenced to life imprisonment. Article (5) allows the mitigation of these punishments in case the accused provides information that leads to the prevention of a terrorist action or the arrest of additional suspects. Article (6) mandates the confiscation of items and funds that are used in the preparation or execution of a terrorist act and provides other final provisions.

90 Article 132(second) of Iraqi Constitution of 2005, Appendix F.

Since its implementation on February 9, 2005, Anti-Terrorism Law No. 13 has raised many questions and debates between its supporters and challengers. This act was implemented by a relatively new Iraqi government at a time when the security of the country was compromised after the Iraqi borders were opened to everyone, thereby increasing the crime rates within Iraqi territory. Upon realizing that the existing Iraqi laws were inconsistent with the reality, the Iraqi government issued the Anti-Terrorism Law in accordance with paragraph (2) of Article (7) of the Iraqi Constitution, which refers to the state's commitment to fighting terrorism in all its forms.\textsuperscript{92} This law is active until now.

As a rationale for passing the Anti-Terrorism Law, the National Assembly (Iraqi legislation) contended, “The size and volume of damages resulting from the terrorist operations are threatens to order, and national unity, stability, and security. Thus, it becomes compulsory to issue a law that puts an end to and limits terrorist acts, in addition to reducing the interaction between those who execute them and those who support them on the other side.”\textsuperscript{93}

2.5 CRIMINALIZATION OF TERRORISM

The criminalization of various terrorism-related acts is a prerequisite for the intervention of the criminal justice system. Criminalization is not only a legal obligation for state parties to counter acts of terrorism but also a prerequisite for effective international cooperation. Under their domestic laws, state parties are expected to list some offenses that are called for by the conventions and protocols that relate to terrorism and other related forms of crime. They must also ensure that such offenses are punished appropriately according to their gravity.\textsuperscript{94}

\textsuperscript{92} Article 7(2) of Iraqi Constitution of 2005, Appendix F.

\textsuperscript{93} Iraqi Anti-Terrorism Law No (13) 2005. Appendix A.

As stated in the report of Iraq to the Counter-Terrorism Committee of the UN Security Council in 2002, Iraqi laws prohibit any economic or financial activity that is aimed at financing terrorist acts. Making, contributing in, and abetting offense are subject to strict punishments as stated in Iraqi Penal Law No. 111 of 1969,\(^\text{95}\) some Iraqi laws that monitor and punish terrorist activities are reviewed below;

### 2.5.1 Iraq Banking Law No. 94 of 2004

The main regulatory objectives of the Iraqi Banking Law are to maintain the confidence of the people in the banking system, promote the understanding of the community about the banking system by providing appropriate information, maintain an appropriate degree of protection for depositors, and help in reducing financial crimes, including fraud, money laundering, and financing of terrorist activities.\(^\text{96}\) The Law also contains provisions that ensure the control and supervision of all transactions and fund transfers to banks. The Law also guarantees the supervision of the movement of foreign currency both inside and outside of Iraq Articles (5, 13, 47, 51, and 59)\(^\text{97}\) to establish a strong legal guarantee against the use of funds for financing terrorist actions.

### 2.5.2 Anti-Money Laundering Act No 93 of 2004

Money laundering has become extensive because such acts involve the use of sophisticated techniques to penetrate most banking systems. Legislators of many countries have collaborated with one another to combat this phenomenon.\(^\text{98}\)

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\(^\text{96}\) Article 2(first) of Iraqi Central Bank Act No. 94 of 2004, Appendix C.

\(^\text{97}\) Iraqi Central Bank Act No. 94 of 2004, Appendix C.

The Anti-Money Laundering Act No. 93, which aims to improve the living conditions of the Iraqi people by combating terrorism, fraud, and financial crime, requires the development of rigorous controls that aim for the prevention of these illegal activities, while considering the necessity for an adequate legal framework that regulates financial transactions, including those that are intended to finance terrorist acts.\(^99\)

Paragraph (2) of Article (4) stipulates punishments for anyone who provides or invites another person to provide property, support or financial aid, or other related services that are intended to be used or has knowledge that it will likely be used in whole or in part to benefit a terrorist group. The law also criminalizes any act or omission that is intended to kill or seriously harm a civilian. Any person who is not actively participating in an armed conflict yet intends to intimidate the public, an international organization, or the government may also be penalized.\(^100\)

Central Bank of Iraq established the Money Laundering Reporting Office, which retains reports about many actions related to financing of terrorism and other actions that the Anti-Money Laundering Law of 2004, Article (12) sees as:

1. “Participate in implementing Iraqi policy on preventing money laundering, financing of crime, and financing of terrorism.” \(^101\)

2. “Interact and cooperate with and exchange information with Iraqi state authorities, competent bodies of other states and international organizations on money laundering, financing of crime, and financing of terrorism.”\(^102\)

3. “Represent Iraq, according to the established procedure, in international organizations dealing with preventing money laundering, financing of crime, and financing of terrorism.”\(^103\)

\(^99\) Article 2 (9-b) of Iraqi Anti-Money Laundering Law of 2004, Appendix D.

\(^100\) Article 4 of Iraqi Anti-Money Laundering Law of 2004, Appendix D.

\(^101\) Article 12 (1-b) of Iraqi Anti-Money Laundering Law of 2004, Appendix D.

\(^102\) Article 12 (1-c) of Iraqi Anti-Money Laundering Law of 2004, Appendix D.
2.5.3 The Financial Supervision Act (No. 31 of 2011)

The Financial Supervision Act subjects all public payments to the supervision of the Office of Financial Supervision even if these payments come from the general budget of the state. The financial activity of the public and private sectors, including their spending methods, is also being supervised. The Act assures that these payments are not being used for illegal purposes. The Office of Financial Supervision regularly reports to the Parliament to ensure that the money of the citizens is being used correctly.104

In addition, the International Convention for the Suppression of the Financing of Terrorism (1999), refers terrorist financing as: 1- “Any person committing an offence within the meaning under this Convention, and that person by any means, wilfully and unlawfully, directly or indirectly provides or collects funds with the aim that they would be used or in the knowledge that they are to be used, fully or partly to carry out:

a. An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

b. Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”105

103 Article 12 (1-d) of Iraqi Anti-Money Laundering Law of 2004, Appendix D.


2.6 HUMAN RIGHTS IN IRAQ

Human rights and security are important in civilized societies. However, some serious tensions are observed between these two political norms. For instance, a state or international community may not easily reconcile well-intentioned acts to maintain security and preserve human rights.\(^{106}\) The Iraqi government has ratified many treaties and conventions which contend that human values must not be ignored or violated in international communities.

Individuals who are accused of terrorist crimes are often held in prison for long periods before they are put on trial. These prisoners are unlikely to be released on bail before their trial and tend to be segregated from the inmate population. They also have limited contact with the outside world or with their suspected accomplices. Nevertheless, all persons who are deprived of their liberty because of their suspected participation in terrorist activities must, in all circumstances, be treated with due respect to preserving their human dignity and rights.\(^{107}\)

Iraq has pledged to protect human rights by giving every Iraqi citizen the rights to due process of the law, a fair trial, protection from arbitrary detention, and liberty. Iraq is also a follower of international human rights treaties that guarantee the observance of human rights across the world.\(^{108}\)

Following the change in the Iraqi regime on April 9, 2003, Iraqi citizens had hoped to live in a modern state where their human rights would be protected under international agreements and charters. However, such objective is difficult to attain because changing the state of law requires much effort. Moreover, achieving this aim


will remain restricted and inefficient unless the national law conforms to international standards.\textsuperscript{109}

In securing justice as a simple human right, the Universal Declaration of Human Rights enshrines the fundamental principles of equality before the law, the presumption of innocence, the right to a public hearing and fair trial by an impartial and independent tribunal, and the guarantees that are necessary for defending people with a penal offense.\textsuperscript{110} The capital punishment “can only be carried out pursuant to a final judgment rendered by a competent court”. It has been understood that the death penalty cannot be imposed in an approach that is contradictory to the other rights guaranteed by The International Covenant on Civil and Political Rights, which provides due process rights, such as freedom from being compelled to confess to an offence and the right to be given the chance to get ready an adequate defence.

The Iraqi Constitution provides that “every individual has the right to enjoy life, security, and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority.”\textsuperscript{111} The deliberate or indiscriminate targeting of civilians, the use of civilians as shields, and prevention of civilians from accessing humanitarian assistance or zones of safety constitute gross violations of the law of Iraq, international humanitarian law and international human rights law. The Government must do all it can to protect civilians and to ensure that the perpetrators of such crimes are brought to justice.\textsuperscript{112}


\textsuperscript{111} Article 15 of Iraqi Constitution of 2005, Appendix F.

2.6.1 Respects for Due Process

The International Covenant on Civil and Political Rights prohibits arbitrary arrest and detention, as well as stipulates that any person who is detained or arrested on a criminal charge must be brought to trial without delay before a judge or any other officer who has the legal right to exercise judicial power or to release. Therefore, the Iraqi government is obliged to ensure that detained individuals are oriented promptly and appropriately about their charges.\(^{113}\)

International law on these issues is clear. The General Assembly of United Nations stated that: “prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.”\(^{114}\) In the same way, the international convention for the protection of all persons from Enforced Disappearance requires that “No one shall be held in secret detention.”\(^{115}\)

Article (19) of the Iraqi Constitution labels detention and arbitrary arrest as “unlawful detention” and mandates that authorities submit preliminary documents to a competent judge within (24) hours of arrest, a period that may be extended only once. In addition, the Criminal Procedure Code of Iraq requires that a person can be arrest only on a jurisdictional warrant (other than in exceptional circumstances). The court can extend the pre-trial detention period by up to six months. With regard to offences punishable by death, Article (109) of the Criminal Procedure Code allows authorities to detain a defendant lawfully for as long as necessary to complete the judicial procedure.\(^{116}\)

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\(^{113}\) Article 9 & 14 of International Covenant on Civil and Political Rights (Adopted 16 December 1966, entered into force 23 March 1976).


\(^{115}\) Article 17(1) of International Convention for the Protection of All Persons from Enforced Disappearance (Adopted 20 December 2006, entered into force 23 December 2010).

\(^{116}\) Section (6) of Coalition Provisional Authority Order No 31/ 2003 states, “Notwithstanding the bail provisions contained in Article (109) of the Criminal Proceedings Law No. 23 of 1971, the reviewing judge may order a person suspected of committing an offense punishable by life imprisonment to be held without bail until trial.”
The initial detention period, during which the investigation report must be provided within 48 hours, it is often extended to more than the required period. Some detainees have not been presented before a magistrate at all. The detainees, if found not guilty by the courts, are often prevented from leaving the prison without paying substantial fines. Table (2.2) below includes the number of detainees at the Ministry of Justice, the Ministry of the Interior, the Ministry of Defense and the Ministry of Labour and Social Affairs, who were imprisoned in pre-trial detentions as well as convicted prisoners.

<table>
<thead>
<tr>
<th>Name of Ministry</th>
<th>Detainees in pre-trial detention</th>
<th>Convicted prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Ministry of Justice</td>
<td>7,302</td>
<td>22,903</td>
</tr>
<tr>
<td>The Ministry of Interior</td>
<td>4,002</td>
<td>1,254</td>
</tr>
<tr>
<td>The Ministry of Defence</td>
<td>791</td>
<td>-</td>
</tr>
<tr>
<td>The Ministry of Labour and Social affairs</td>
<td>147</td>
<td>906</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12,242</strong></td>
<td><strong>25,063</strong></td>
</tr>
</tbody>
</table>

**Source:** United Nations Assistance Mission for Iraq

The UN General Assembly has emphasized the pervasiveness of corrupt practices in the Iraqi criminal justice system. The UNAMI Human Rights Office often receives claims from detainees and their families that they are being asked to bribe the authorities to be cleared of their charges. The Office also receives some videos that were filmed covertly by the families. Detention facility officials and senior police officers in Baghdad advise the families to hire lawyers who can represent their detained relatives and to pay a fee that typically does not go below USD 100,000 to ensure that their relatives are cleared and released. These detainees often observe the lack of respect for due process. Individuals are often arrested without an explanation on the charges against them. Some

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detainees have been imprisoned not for violating the law, but for their failure to bribe security officials or other reasons.\textsuperscript{118}

Some people suffer arbitrary arrest and detention for political and religious reasons. They are usually prevented from contacting their relatives, lawyers, or doctors for long periods before trial. Some people are arrested outside the judicial process and held for prolonged periods without a charge or trial. Under such circumstances, these prisoners are tortured by their captors.\textsuperscript{119} Below is an example of cases reported regarding this matter;

Case No (1).

**Name & Age & Job:** Ali Ahmed (Not really his name), 55, a former staff member at Mosul University.

**Please & Date of Detention:** 30 September 2009 in Mosul.

**Charges:** No charges

**Date of Release:** 13 April 2010.

**Descriptions of Case:**

Members of the Nineweh Operations, a police anti-terrorism unit, burst into his family home in Mosul on 30 September 2009 and seized him and his 26-year-old son, Hussain. They took them to a stadium in Mosul, where beneath it stands a secret detention facility. The father and son were crammed into a small room with 67 other detainees that were brought in earlier. Police interrogators then took away five or six detainees at a time, beating and insulting them, before transferring them the next day, blindfolded with their wrists bound, in military vehicles to a prison in Baghdad’s al-Mansour area which is controlled by Central Military Intelligence. He said the detainees were held there for 45 days, during which they were not permitted visits or contacts with family members. However, delegates of the International Committee of the Red Cross were able to visit the prison and they were not generally ill-treated there. He said he and the others were then moved in three batches to a secret prison at al-Muthanna, which contained a long


single story building with windowless rooms measuring approximately 5 x 4 m. Each of these rooms held some 25 detainees. He was released on 13 April 2010, along with about 84 other detainees, just one day after they were transferred to Al-Rusafa Prison. No charges were brought against him. Throughout the seven months of his detention, the authorities did not permit him to receive family visits or to have access to a lawyer.\textsuperscript{120}

\subsection*{2.6.2 Fair Trial Standards}

The right to a fair trial is a basic human right. The international community has developed a wide range of standards to ensure fair trials, which are designed to guarantee the rights of the detainees from the moment they are arrested, during pre-trial detentions, throughout the duration of their trials and until their final appeal. Breaching of these rights is a serious violation and causes a major concern for Amnesty International.

The right to a fair trial is clearly indicated in the Universal Declaration of Human Rights. The UN General Assembly has also mandated all governments across the world to respect such right. Article (10) states: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him.” Article (14) of the International Covenant on Civil and Political Rights stipulates that all persons are equal before the court, that court or judicial hearings must take place in an open court and before a competent, independent, and impartial tribunal, and that all judgments or rulings must be made public.

These obligations apply to all judicial processes, including both criminal and civil hearings, and to all courts and tribunals. In line with this concept, criminal trials are obliged to protect the rights of the accused to a fair trial, protect the presumption of innocence, and prohibit double jeopardy.\textsuperscript{121} Article (14) also stipulates that the accused

\textsuperscript{120} Human Rights Watch. 2014. \textit{No One is Safe - The Abuse of Women in Iraq’s Criminal Justice System}. \url{https://www.hrw.org/report/2014/02/06/no-one-safe/abuse-women-iraqs-criminal-justice-system}, p. 17.

\textsuperscript{121} Article 14 of International Covenant on Civil and Political Rights (Adopted 16 December 1966, entered into force 23 March 1976), which provides that: “...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”
must be tried in the presence of the covenant and that the accused can defend himself/herself personally or through his/her selected legal representative. The defendants also have a right to obtain free legal assistance. Article (15) prohibits the retrospective imposition of criminal penalties and the prosecution of individuals by ex-post facto law.

Article (16) requires states to recognize everyone as a person before the law. Article (26) ensures that all persons are equal before the law without discrimination on gender, race, ethnic, religious, or other grounds. Article (2) requires that the rights that are protected by the covenant must be recognized, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” while Article (3) ensures that these rights are enjoyed equally by women. Governments are subjected to the jurisdiction of the Covenant without discrimination.

Iraqi Constitution of 2005, states in Article (19 paragraph 4): “The right to a defense shall be secured and guaranteed in all phases of investigation and trial.” Also, Under Article (123) of the Criminal Procedure Code allows an arrested person to be represented by a lawyer for the duration of the pre-trial period and to have a free, court-appointed lawyer if they do not have enough money for a lawyer of their choice. The detaining authorities must also inform the detainees of these rights before questioning. Iraqi Constitution prohibits the use of torture or any means of force to obtain a “confession” from an individual. Any forced confession is considered undependable.

Article (37- First- C ) of Iraqi Constitution states “ All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made by force, threat, or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law.”

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124 Article 123(B) of the Iraqi Criminal Procedure Code No. 23 of 1971, Appendix G.
Article (218) of the Criminal Procedure Code declares, “An admission must not be given as a result of moral or physical coercion.” Also, it offers that “The court has absolute authority in evaluating the accused’s admission and acting upon it whether it was given in front of the court, in front of the investigative judge, during other court hearing of the same case or in another case, even if the witness subsequently withdraws his statement. The court can accept his admission to the investigator if there is enough evidence to convince it that the investigator did not have sufficient time to present the accused to the judge so that his admission could be recorded.”

However, in some cases, courts have accepted pre-trial confessions despite medical evidence of torture of defendants, who alleged that such confessions were forced out of them. In August 2010, for example, the Anbar Criminal Court (Case No. 525 of 2010, First Branch) sentenced 11 men to death under the Anti-Terrorism Law after convicting them of participating in a fatal bomb attack in Hit. The court noted: “the confessions of the defendants are sufficient and clear and detailed and supported by other evidence such as the inspection of the scene and the death reports of the victims and the medical reports of the injured,” although the only evidence linking the 11 men to the bombing were the confessions that they repudiated in court. The court also failed to give weight to the findings of medical examinations carried out on 10 of the 11 men at Ramadi Hospital in May 2010, four months after they were arrested and detained incommunicado at the Directorate of Counter-Terrorism in Ramadi. Reports indicated that all 10 detainees “showed inability to move their shoulders,” a finding consistent with their allegations that one of the torture methods used against them was being suspended by their arms in such a way that their shoulders had to support their full body weight. According to a sister of one of the defendants who attended their trials, her brother and other men pointed out marks on their bodies that they claimed had been caused by electric shock and other forms of torture they were subjected to by interrogators, to force them to make self-incriminating statements. The medical examinations also revealed long scars on the backs of six of the defendants and other injuries. Despite this, the court sentenced all 11 to death, and the Court of Cassation subsequently confirmed their convictions and sentences.

125 Article 217 of the Iraqi Criminal Procedure Code No. 23 of 1971, Appendix G.

2.7 PROHIBITION OF TORTURE

Torture is a traditional phenomenon that is still being practiced on a large scale. Before the nineteenth century, torture was considered a legal means of questioning and obtaining confessions from an individual. However, any forced information is proven unreliable. Moreover, torture violates basic human rights and harms an individual physically and spiritually.\textsuperscript{127} The International Covenant on Civil and Political Rights stipulates that individuals who are charged with a crime are not to be compelled to testify against themselves or to confess their guilt.\textsuperscript{128} The UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment also prohibits the use of forced confessions or statements as evidence.\textsuperscript{129}

In 2011, Iraq ratified the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Convention on Article (12) states, “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”\textsuperscript{130} Anyone who attempts to commit torture and any other act that constitutes complicity or participation in torture will be penalized by law. These crimes are given penalties according to their gravity. All allegations of torture must be promptly and impartially investigated by competent authorities.

Besides, the International Covenant on Civil and Political Rights under Section (7) prohibits torture, which states “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected


\textsuperscript{128} Article 14(3-g) of International Covenant on Civil and Political Rights (Adopted 16 December 1966, entered into force 23 March 1976).

\textsuperscript{129} Article 15 of International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (Adopted 10 December 1984, entered into force 26 June 1987).

\textsuperscript{130} Article 12 of International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (Adopted 10 December 1984, entered into force 26 June 1987).
without his free consent to medical or scientific experimentation.” The UN Human Rights Committee translates such stipulation into a general obligation to investigate allegations of violations as soon as possible. Article (5) of the Universal Declaration of Human Rights also prohibits torture “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article (218) of the Criminal Procedure Code declares, “An admission must not be given as a result of moral or physical coercion.” The Iraqi Criminal Procedure Code stipulates that the court have absolute authority to evaluate whether the presented confession is admissible despite repudiation by the defendant. 131

Trial judges fail to protect defendants from torture in various ways, such as accepting forced confessions and prohibiting defendants from proving their allegations of torture. In this way, judges sustain a culture in which police and intelligence forces rely on torture to obtain confessions. This culture creates a vicious cycle in which the police and investigative judges are encouraged to resort to torture instead of performing appropriate forensic investigations. 132 Below are some related cases.

Case No. (2).
Name, Age & Job: Samir Naji ‘Awda al-Bilawi, 38, a pharmacist.
Please & Date of Detention: early September 2012 in Ramadi.
Date of Trial & Court Decision: Death caused by torture.
Descriptions of Case:

Samir Naji ‘Awda al-Bilawi, 38, a pharmacist and father of seven children, was detained with his teenage son, Mundhir, 13, when security forces stopped their vehicle at a checkpoint in early September 2012 in Ramadi. Days later, the authorities informed his family on 12 September that he had died in custody. Next day, his brother told Al-Sharqiya TV that he had seen marks on the deceased’s body that apparently caused by beatings. The TV station and other media published images showing those marks and other injuries on the dead man's head and hands. Mundhir al-Bilawi told Al-Sharqiya TV

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131 Article 217 of the Iraqi Criminal Procedure Code No. 23 of 1971, Appendix G.
that after his release from detention the security forces had first taken him and his father to a police station in Ramadi, where they were both assaulted. Later, they were taken to the Directorate of Counter-Crime in Ramadi. There, he said, they were tortured with electric shocks, and he was induced by interrogators to implicate his father in terrorism, including in front of an investigating judge. Members of his family told Amnesty International that they had received anonymous threats after lodging a formal complaint with the authorities. An autopsy conducted by the Forensic Medical Institute in Baghdad reportedly found that the detainee's death was caused by torture, including electric shocks. In January 2013, lawyers representing the family said that a judicial request to disclose the identities of the officers responsible had been rebuffed by the Anbar Province police authorities.133

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Case No (3).

Name & Age & Job: Sabah Hassan Hussein, 43 years, a journalist.

Please & Date of Detention: 29 February 2012, in Baghdad.

Date of Trial & Court Decision: 23 January 2013/ Release.

Descriptions of Case:

Sabah Hassan Hussein was reportedly arrested when she went to the offices of the Army’s Fifth Brigade to collect a car belonging to one of her relatives that the authorities had confiscated. She was detained and told that she was a suspect in a murder. Then she was transferred to the Directorate of Major Crimes (Mudiriyat al-Jara’im al-Kubra) in Tikrit, where she was held incommunicado for around two months during which, she claimed she was tortured. Her family told Amnesty International of her allegation of being forced by her interrogators to undress in front of male police officers, of being doused with icy cold water and burnt with cigarettes. On 26 November 2012, the Journalistic Freedoms Observatory (JFO) reported that she had identified the police officers responsible for her torture and that their names had been submitted to the Ministry of Interior. The Criminal Court of Resafa acquitted her from charges brought

under the Anti-Terrorism Law on 23 January 2013. Another defendant charged with her, though, was convicted and sentenced to death. Despite her acquittal, she remained in prison until 18 February 2013. Sabah told Amnesty International that she had filed a formal complaint with the authorities about her torture and other ill-treatment while in detention. Even though Amnesty International was alerted of her torture allegations even during her detention in November 2012 but no steps have been taken to bring the interrogators to justice. 134

2.8 PHYSICAL AND PSYCHOLOGICAL EFFECTS OF TERRORISM ON IRAQI SOCIETY

The physical destructiveness of terrorism is in total minimal, regardless of the tragedy it may reason for individuals victims. Furthermore, there is some feeling that the significance of terrorism has been exaggerated, maybe as an outcome of the media's adoption of international terrorism as a news issue. Whether because of the basic drama of terrorist violence or because of television and press hyperbole, kidnappings, hijackings, and other terrorist assaults have created large community concern. 135

On the other hand, the psychological effects of violence on people is the determining factor of the political efficiency of terrorism. Terror is incited by acts of violence that are performed with maximum harshness. Each terrorist act is planned to affect a large audience. Terrorists also attack national symbols to demonstrate their power and to shake the foundation of the state or society that they oppose. Economic stagnation, widespread poverty, high unemployment, environmental degradation, and lack of basic services continue to affect many people. 136


Terrorism has a straightforward effect on many human rights, specifically on the rights to life and freedom. Specifically, terrorist activities weaken regimes or the public, endanger harmony and safety, and threaten communities and economies, all of which directly affect the enjoyment of human rights.137

Armed conflict negatively affects civilians and infrastructures, thereby disrupting public access to basic services and resulting in injuries and arbitrary loss of life. Civilians continue to be the victims of violent campaigns waged by armed opposition groups and insurgents. The deliberate targeting of civilians seriously violates domestic criminal, international human rights, and international humanitarian laws. Some civilians have also been killed by Iraqi security forces and/or their allies during their operations. 138

The acts of terrorism in Iraq have economic, political, and social implications. The tourism, agriculture, and oil sectors of the country have been severely affected by such actions. The number of terrorist activities in Iraq has increased after the American invasion. Armed violence and acts of terrorism severely affect Iraqi children, women, and men both directly and indirectly. Fear of violence severely impairs the freedom of civilians to move by restricting their activities outside of their homes or neighborhoods. Therefore, civilians are unable to access their workplaces and avail basic services, including education and healthcare. Furthermore, terrorism strongly impacted the womenfolk.

According to interviews with female prisoners, lawyers, and judges, the authorities are detaining over 100 women under Anti-terrorism law. Many women are unfairly targeted because of their relationship with male suspects in terrorism cases. Targeting women is apparently a technique used by the government to force male defendants to admit to committing offences, which violates their right to due process.139


Many civilians have also become secondary victims of violence, particularly those whose family members have been killed or wounded. In addition to emotional suffering, the death or injury of family members affects the livelihoods of their relatives and often deprives households of their breadwinners. The families of those who are injured or physically challenged by acts of violence must bear significant costs to ensure constant medical care and support for their affected family members. The psychological toll of ongoing violence on children and juveniles cannot be underestimated.\textsuperscript{140}

In the last decade, terrorism is the cause of most death in Iraq. In 2013, terrorism related death covers 35 per cent of total death in Iraq. According to Global Terrorism Index 2014 (measuring and understanding the impact of terrorism). Iraq gets a first rank in the highest impact of terrorism in the world. Furthermore, Over 80 per cent of the lives lost to terrorist activity in 2013 occurred in only five countries - Iraq, Afghanistan, Pakistan, Nigeria and Syria. (as shown in figure 2.2).

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure2.2}
\caption{Largest Increases In Death From 2012 to 2013}
\end{figure}

\textbf{Source:} The Institute for Economics and Peace. Global Terrorism Index 2014\textsuperscript{141}


The total number of deaths in these five countries has also increased by 52 per cent in 2013 compared to 2012. Iraq is also the state most affected by terrorism with about more than 4,000 victims of terrorism is recorded in 2013 compared to the year before.\textsuperscript{142}

In countering terrorism, states must use all legitimate means at their disposal. However, counter-terrorism measures that ignore or damage human rights are self-defeating and unacceptable in societies that are guided by democratic values and the rule of law. Human rights are universal values and legal guarantees that protect individuals and groups against the state’s actions and omissions that interfere with their fundamental freedoms, entitlements, and dignity as humans. Human rights are universal, interdependent, and indivisible. However, counter-terrorism efforts and enforceable human rights standards are incompatible.\textsuperscript{143}


CHAPTER III

CRIMINALIZATION OF TERRORISM

3.1 INTRODUCTION

Terrorism is one of the main global security threats of the 21\textsuperscript{st} century. It exhibits an upward trend in all its typologies, which is manifested by the increase in public fear of the consequences of terrorist acts, the increased number of terrorist acts, endangered human lives, and the considerable destruction of material goods, among others.\textsuperscript{144} A secure society is a fundamental human right, and the protection of individuals is, accordingly, the primary obligation of the state. Therefore, governments have an obligation to protect the human rights of their citizens by taking active measures to protect them against terrorist threats and bringing the perpetrators of such acts to justice.\textsuperscript{145}

In Iraq, the Penal Code and other relevant laws have been adopted to punish crimes against the security of the state and public order. These laws, which have a wide coverage, can include terrorist offenses. However, without defining “terrorism,” many measures to ensure security or to counter-terrorism will not be within the rule of law, and consequently, may affect human rights. Despite Penal Code provisions that protect the right of suspects to be free from arbitrary arrest and detention, along with the right to


\textsuperscript{145} Office of the United Nations High Commissioner for Human Rights. Human Rights, Terrorism And Counter-Terrorism, Fact Sheet No. 32. \texttt{http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf}.
a fair trial, the Anti-Terrorism Law of Iraq is frequently used to circumvent these protective measures.\textsuperscript{146}

Criminal Procedural Law constitutes one of the chief safeguards of the rule of law and offers concrete legal protection to the rights of all individuals under the criminal justice system. It plays the dual role of providing social protection during the prosecution process and protecting the accused by allowing him or her to defend himself or herself. It also ensures the reliability of the criminal procedure, particularly, the criminal trial, and thus, provide a fair justice system.\textsuperscript{147} In this study, the researcher will examine the classification of terrorism and the general elements of the terrorist crime in the Anti-Terrorism Law of Iraq. Finally, the punishments for terrorism under the Iraqi Anti-Terrorism Law.

### 3.2 FORMS OF TERRORIST CRIMES

There are two forms of in crimes of terrorism mentioned in the Anti-Terrorism Law No. 13 of 2005, namely, terrorist crimes in nature, terrorist crimes by law.

![Figure 3.1 Forms of Terrorist Crimes](source)

**Source:** Maaz Jassim Mohammed & Aqeel Aziz Auda, Terrorism and its fighting in Iraqi Criminal Law\textsuperscript{148}

\textsuperscript{146} Human Rights Watch. 2014. *No One is Safe - The Abuse of Women in Iraq’s Criminal Justice System*. [https://www.hrw.org/report/2014/02/06/no-one-safe/abuse-women-iraqs-criminal-justice-system], p.36.


3.2.1 Terrorist Crimes in Nature:

This form of human behavior in crimes of terrorism, contained under Article (2), defines specific acts of terrorism, which include:\textsuperscript{149}

1. Violence or threat which intention to bring about fear among citizens or expose their lives, freedoms and security to danger and their money and properties to damage regardless of its purposes and motives that takes place in the execution of a terrorist action, individually or collectively organized.

2. Work with threat or violence to deliberately wreck or sabotage, ruin or damage buildings or public property, government interests, institutions, state departments, the private sector or public utilities and public places prepared for public use or public meetings for the public or public funds, and an attempt to occupy it or to seize it or expose it to danger or prevent its use for the purpose for which it was prepared with the aim of disrupting the security and stability.

3. Any person who organized, chaired or participated in an armed terrorist gang that plans and practices for terrorism and also participates and contributes in this act.

4. Use violence or threat to stir up sectarian strife or civil war or sectarian infighting by arming people or by encouraging them to arm themselves and by funding or incitement.

5. Assail with firearms police officers and army, volunteer centers, security offices and assault national military troops or their reinforcement, communication lines or their camps or bases, with a terrorist motive.

6. Assault with firearms, with a terrorist aim, diplomatic entities and embassies throughout Iraq in addition to all Iraqi institutions, foreign and Arab companies

\textsuperscript{149} Article 2 of Anti-Terrorism Law No 13 of 2005, Appendix A.
and institutions, and governmental and non-governmental and international organizations operating in Iraq in accordance with a valid agreement.

7. Use, with terrorist motives, incendiary devices and explosive designed to kill people, and possess the ability to do so, or to spread fear among the people, either through blowing up or releasing or spreading, or planting or bubbly trapping equipment or human bodies, irrespective of their forms or through the effect of poisonous chemicals or biological agents or similar radioactive materials or toxins.

8. Detain or kidnap of individuals or impede their freedoms either for financial blackmailing for sectarian, political, national, religious or racially beneficial purposes that threaten security and national unity and promote terrorism.

3.2.2 Terrorist Crimes by Law

Actions that are considered as “crimes against state security” under Article (3) include;\textsuperscript{150}

1. Any act with terrorist intentions, that threatens the national unity, the safety of society and affects the State security and its stability or weakens the capacity of the security services in defending and protecting the security of people, their properties, State borders and its organizations either through armed confrontation with State forces or any other act that deviates from the freedom of expression which is guaranteed by the law.

2. Any act that includes the attempt to use violence or force to overthrow the form of government or the regime as outlined in the Constitution.

3. Anyone who led, for a criminal goal, a branch of the armed forces, military checkpoint, airport, a harbor, or any military site or city without being authorized by the government.

\textsuperscript{150} Article 3 of Anti-Terrorism Law No 13 of 2005, Appendix A.
4. Anyone who tries to incite an armed rebellion against the authority established by the Constitution or a gang formed or participates in a conspiracy for the same goal.

5. Any act by a person who had authority over persons in the military and asked or charged them to impeding orders of the government.

The Iraqi legislator considered the special state security crimes as terrorist crimes if they would threaten national unity, compromising the security and stability of the state, or undermine the ability of security forces to maintain the safety of citizens under Article (3). Terrorist crimes with distinct nature of state security crimes, but are cited by Iraqi legislator as state security crimes under Article (3) of the Anti-Terrorism Law is originated from the Penal Code and known as state security crimes.

The crime of insurrection classified jurisprudence, within the purely political crimes. However, Iraqi legislator in Article (3 paragraph 4) of the Anti-Terrorism Law No. 13 of 2005, remove it from the scope of political offences and insert it in the range of terrorist crimes, which is under Article (6) of the Law. It is from regular crimes against the honor, which is punishable under Article (6) of the same law the capital punishment. These articles suggest that the terrorist act may be through (violence, or the threat of it), or through (incitement) (work unaccompanied by violence).\(^{151}\)

### 3.3 GENERAL ELEMENTS OF THE TERRORIST CRIME

The liability for serious offenses requires proof that the accused is guilty of the crime. The state has the moral authority to punish its citizens only if they deserve it.\(^{152}\) Terrorism is defined under Article (1) of Anti-Terrorism Law as “Every criminal act committed by an individual, or an organized group that targeted an individual, or a group of individuals or groups or official or unofficial institutions and caused damage to public...”

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\(^{151}\) Article 3 (4) of Anti-Terrorism Law No 13/ 2005, Appendix A.

or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals." \(^{153}\) In general, for an act to be regarded an offence in the Iraqi Anti-Terrorism Law, two elements must be present: actus reus, which includes criminal behavior, result, and causation; and the mental element to achieve terrorist goals.

### 3.3.1 Criminal Act (Actus Reus)

Terrorism is principally a psychological act that is communicated through violence or the threat of violence. \(^{154}\) The core element of criminal liability is some form of prohibited conduct. In general, this prohibited conduct will involve a wrongful act. Therefore, identifying an action is an essential task for the prosecution. Although exceptions exist, if the defendant has not committed a crime, then he or she will generally not be liable. This principle is known as “act requirement.” \(^{155}\)

An actus reus can be more than just an act; it comprises all the elements of a crime other than the state of mind of the defendant. Depending on the offense, an actus reus may include the circumstances in which the crime has been committed and the consequences of the crime.

#### a. Criminal Conduct

A criminal behavior requirement should fit precisely within the definition of criminal behavior under the Iraqi Penal Code. “The criminal behavior involved in the commission of a criminal act stipulated by the Code or failure to carry out an act stipulated by the Iraqi Penal Code.” \(^{156}\) The actus reus of terrorism is the

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\(^{153}\) Article 1 of Iraqi Anti-Terrorism Law No 13,2005, Appendix A.


\(^{156}\) Article 28 of Iraqi Penal Code No 111 of 1969, Appendix E.
conduct of the offender, which may be positive, called commission, or negative, known as omission. This behavior results in aggression against rights or interests protected by law; presupposing the existence of a relationship between the conduct and outcome of such behavior is called causation.

Dr. Tariq Harb states that the new law was different from the Iraqi Penal Code, was unsuccessful in his definition of terrorism. This law requires a criminal act to be organized to be regarded as terrorism; however, it did not indicate the legal position of the law if an act is not organized.157

Behavior is the knowledge of the offender who is assaulting an interest protected by law. The physical element of the Iraqi Anti-Terrorism Law requires that a criminal act occurs in the sense that an action may be provided for criminalization and punishment under the internal or international law. Despite this definition, the law does not explicitly refer to the methods used in the criminal act; however, a review of the actions is outlined in Article (2).

Moreover, for terrorism, it must be an official implementation of projects which the criminal terrorists organized individually or collectively. Iraqi legislator made these requests under Article (2) (first paragraph), which states:“Violence or threats which aim to bring about fear among people or expose their lives, freedoms and security to danger and their money and properties to damage regardless of its motives and purposes which takes place in the execution of a terrorist act, individually or collectively organized.”158

According to Hassan Al-Hilou, Iraqi legislation had been successful at this point. An act has to be organized(planned) to qualify as terrorism. The lack of organization does not indicate that such act is permitted, but then, it can be ruled out of the procedure of terrorism into the procedure of criminal act, which


158 Article 2 (1) of Iraqi anti-terrorism law of 2005, Appendix A.
derived its elements from Penal Code No. 111 of 1969 according to Article (6) of the Anti-Terrorism Law.\textsuperscript{159}

b. The Result

The result is the effect of a criminal behavior in the form of aggression against an interest protected by law. In general, the result is criminal, is the change that is happening in the outside world as tracers for criminal behavior, and aggression reflected in a right or interest protected by law. Terrorism generally results in damages to public or private properties and induces horror and fear among the public.\textsuperscript{160}

c. Causation

In the legal sense, causation refers to the element of a crime that requires the existence of a causal relationship between the conduct of the offender and certain harmful consequences. If a crime has a harmful result and would not have occurred if not for the conduct of the defendant, then the defendant is criminally liable. It must be the outcome of that behavior to establish any causal relationship between them. A link between two phenomena is established, in which the former causes changes in the latter.

A person who is aware that he or she has created a hazardous situation and did nothing to prevent it may be criminally liable, with the original act being regarded as the actus reus of the crime. Sometimes, this section of the law is called the doctrine of supervening fault. This principle can impose liability on defendants who do not exhibit mens rea when they commit the original act but exhibit it when they fail to stop the harm they have caused.\textsuperscript{161}

\textsuperscript{159} Hasan Aziz Nour Al Hilou. 2007. \textit{Terrorism in International Law - A Comparative Study}, Master’s Thesis, Arabic Academy in Denmark, p. 51.

\textsuperscript{160} Article 1 of Iraqi Anti-Terrorism Law No. 13 of 2005.

An Iraqi legislator stated that this is acknowledged under Article (29) of the Iraqi Penal Code “A person is not responsible for an offence that did not result from his criminal behavior, but he is responsible for that offence if, together with his criminal conduct, some other prior, contemporaneous or subsequent cause, even though he was unaware of it, played a part in its commission. However, if that reason alone is sufficient to effect the consequence of the offence, then the offender, in this case, is only responsible for the act that he has committed.”162

### 3.3.2 Criminal Intent (Mens Rea)

A second element that characterizes terrorism concerns the purpose of the law. The objective of terrorists may be to spread terror among the population, to force the government to perform an action, or to destroy the structure of a country.163 Terrorist crimes differ from common crimes in terms of motives and goals. Notably, if the motivation for a crime is not any of these, then a crime is not considered a terrorist act even if it was committed to cause harm. Moreover, if a person commits the same act with political or ideological motivation, then the act is regarded as a terrorist act.164

The task of formulating laws to govern the subjective element of a crime has remained extraordinarily difficult. This difficulty is not only attributed to the abstract nature of the involved notions but also because such laws must consider the inevitable link between subjective and objective criteria because the human mind remains inexplicable except when conduct reveals it.165

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162 Article 29 of the Iraqi Penal Code No 111 of 1969, Appendix E.


Under the Iraqi Penal Code, criminal intent refers to: “the existence of the mind of the offender of a purpose to commit the criminal act to (or “intending to”) realizing the consequence of the crime that has occurred or any other criminal consequence. Intent may be simple or premeditated.”\(^{166}\) Criminal intent or purpose has two basic types:

a. **General Intent**: A general intent is an intent to commit the actus reus or the criminal act. Prosecutors are not obligated to demonstrate that an offender possessed the intent to violate the law, a consciousness that the act is an offense, or that the act will cause a particular type of harm. The proof of the general intent of the defendant is typically inferred from the nature of the law and the surrounding circumstances.\(^{167}\) It is intent to do the act or to try to do the act. Specific intent refers to any other requirement of criminal intent. The general intent is less sophisticated than specific intent. Hence, offenses with general intent are easier to prove and can severe warrantless punishments. An essential definition of general intent is the intent to perform the criminal act or the actus reus.\(^{168}\)

b. **Specific Intent**: Specific intent distinguishes a terrorist act. Moreover, the criminal act involved in terrorism must achieve a particular result; that is, “disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.”\(^{169}\) The duty of formulating laws to govern the mental elements of offense has remained problematic. Given the abstract nature of the involved notions, the human mind remains inexplicable except when the behavior reveals it.\(^{170}\)

\(^{166}\) Article 33(1&2) of Iraqi Penal Code No 111 of 1969, Appendix E.


\(^{169}\) Article 1 of Anti-terrorism law No. 13 of 2005, Appendix A.

The analysis showed that proving that the offences were related to an attack on the civilian population is necessary. In addition, the accused must know that his or her crimes were related. Furthermore, the fact that the alleged attack perpetrated on such basis and under such plan or policy is sufficient to take the risk of participating in causing damage or harm knowingly.\textsuperscript{171}

3.4 ATTEMPTED OF CRIME

An attempt to commit an offense under Article (30) of the Iraqi Penal Code is translated as: “This is the initiation of an act with intent to commit a felony or misdemeanor which is prevented or frustrated for reasons unrelated to the intentions of the offender. An attempt to commit an offence is considered to include all acts that are impossible to carry out and which are attempted with intent to commit a felony or misdemeanor whether or not it is for a reason relating to the object of the offence or to the means by which it is committed as long as the offender does not believe as a result of misconception or total ignorance that it is within his power to achieve the result of the offence. Merely the intention to commit an offence or preparations to do so is not considered an attempt unless otherwise stipulated by law.”\textsuperscript{172}

The Anti-Terrorism Law of Iraq explains criminalize initiate in Article (3 second and fourth paragraphs) as: “Any act that includes the attempt to use force or violence to overthrow the regime or the form of government as outlined in the Constitution.”\textsuperscript{173} In addition, “Anyone who attempts to incite an armed rebellion against the authority established by the Constitution or participates in a conspiracy or a gang formed for the same purpose.”\textsuperscript{174} Hence, the Iraqi Anti-Terrorism Law criminalizes. Accordingly, the crime initiates of Iraqi Anti-Terrorism Law takes two forms;

\textsuperscript{171} Karaman, H. 2012. \textit{Terrorism as a Crime Against Humanity.} Strategic Outlook., p8.

\textsuperscript{172} Article 30 of Iraqi Penal Code No 111 of 1969, Appendix E.

\textsuperscript{173} Article 3( second) of Iraqi Anti-Terrorism Law No. 13 of 2005 , Appendix A

\textsuperscript{174} Article 3 (fourth) of Iraqi Anti-Terrorism Law No. 13 of 2005 , Appendix A.
First form: Use of force or violence to overthrow the regime or the form of government as outlined in the constitution. Incitement may occur through speeches made during meetings or in public places or by publishing writings, images, or logos, or sending messages over satellite channels, radio stations, newspapers, or the Internet, etc.

Second form: “attempting to incite an armed rebellion against the authority established in accordance with the constitution or participates in a conspiracy or a gang created for the same purpose.” Disobedience denotes disobeying public authorities in conducting the affairs of the state in various fields. It aims disobedience to plot that purpose to overthrow the government or impose a particular direction or position it. Hence, it is a crime that involves taking part in a conspiracy or joining a group formed to incite an armed rebellion against the existing powers under the Constitution. Moreover, Crime of insurrection directed against the State as a legal personality. Disobedience involves acts that goes against the constitutional authorities of the State or any such act directed toward the entity of the State and all institutions. The authorities include the executive, the legislature, and the judiciary.

3.5 PUNISHMENTS OF TERRORISM CRIME

An Iraqi legislator endeavors to deter terrorism and crimes against state security. Therefore, the adoption of a stricter sanction with the unification of the original offender penalties and the partner. As well as the crimes assistance or facilitating its commission. The anti-terrorism law provides the following penalties under Article (4);

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175 Article 3 (fourth) of Iraqi Anti-Terrorism Law No. 13 of 2005, Appendix A.

3.5.1 Death Penalty

Article (4) of the Iraqi Anti-Terrorism Law, which is considered the most well-known and widely used in the Iraqi judiciary, includes two items called, “punishments.” Article (4 paragraph 1) states that acts of terrorism are punishable by death: “Anyone who committed, as a chief perpetrator or a participant, any of the terrorist acts stated in the second and third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as a chief perpetrator.”177

Article (4) also states that other individuals, in addition to the original actor and partners of terrorist acts, can also be punished. They include the instigator, who plan and finance terrorist acts, and all those who made the conduct of crimes possible; the penalty for the original actor is death. Furthermore, the fact that a person belongs to a violent political group that is responsible for acts of violence committed by the group, regardless of their actual involvement in actions, can be sentenced to death. The punishments stipulated range from a death penalty to forced labor for life.

Article (194) of the Iraqi Penal Code imposes the death penalty on leaders of armed groups and life imprisonment on members. While Article (3 paragraph 2) of the Iraqi Anti-Terrorism Law imposes the death penalty not only on leaders of “terrorist armed groups,” but also on members, who participated in terrorist activities.

3.5.2 Confiscation

Article (6 paragraph 2) of the Iraqi Anti-Terrorism Law states that “All funds, seized items, and accessories used by the criminal actor in preparation for its execution shall be confiscated.”178 Confiscation is an infinite punishment and is not temporary; it involves the transfer of funds to state ownership. Confiscation includes balances allocated to commit a criminal act. Although Article (6) does not require the balances of societies,

177 Article 4 (1) of Iraqi anti-terrorism law No. 13 of 2005, Appendix A.

178 Article 6 (2) of Iraqi anti-terrorism law No. 13 of 2005, Appendix A.
organizations, or individuals to be confiscated after conviction via a court decision, it allows the confiscation of materials predisposed for a criminal act. Moreover, Article (6) of the Iraqi Anti-Terrorism Law provides complementary punishments imposed on perpetrators of terrorism. According to this article, “the crimes stated in this law are considered regular crimes involving moral turpitude.”

This statement leads to denying the perpetrators of their civil rights in addition to preventing a term in government positions or the practice of social activities. The practical significance of this ruling is limited because sanctions imposed on most of the crimes under this law is the death penalty. Therefore, the importance of governance lies in cases where the penalty of life imprisonment is imposed by applying one of the cases of exemption or mitigation measures that will be discussed later.

3.6 EXEMPTIONS, EXCUSES AND CIRCUMSTANCES

Legal exemptions, excuses, and circumstances from punishment are the reasons included in the law that will exempt the offender from the punishment prescribed for the offense under the ruling issued by the court, regardless of the crime and the availability of the terms of responsibility. The offender delivers the accused himself or herself and provides authorities with information that will help in the arrest of other offenders; in this case, the Iraqi law authorizes the judge to consider it a mitigating excuse for the perpetrators of terrorist crime. Exemption of Punishment, Legal Excuses and Circumstances in the Iraqi Anti-Terrorism Law covers;

1. “Anyone, who provides to the competent authorities before a crime is discovered or during its planning, information that contributes to the arrest of the criminals or prevents the execution of the operation, shall be pardoned.”

2. “Information, offered voluntarily by a person to the competent authorities after a crime is committed or after it is discovered by the authorities and before the person is arrested which leads to the arrest of the other participants, shall be

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179 Article 5 (1) of Iraqi Anti-Terrorism Law No. 13 of 2005, Appendix A.
considered an extenuating excuse for reducing the penalty stated in the second article of this law and the punishment shall be imprisonment. »\textsuperscript{180}

3.7 APPLICATION OF THE LAW

Anti-Terrorism Law No. 13 of 2005 was implemented on the 9th of November, 2005. This Law allows security forces to detain people for terrorism full charges. The parliament passed the legislation at the time when the US forces were responsible for the security of Iraq. In addition to the US military, both prior to and following the passage of the law, suspects are frequently detained without being formally charged with a particular crime.\textsuperscript{181}

The government of Iraq established a Higher Committee for Fighting Terrorism led by the Ministry of Foreign Affairs and with members that included representatives of all relevant Iraqi ministries and institutions. This committee aims to combat terrorism in one form or another, prepare reports on the steps that Iraq must take to fight terrorism for submission to the security council in applying Resolution 1373 of 2001. It also intends to study the issue of Iraq’s ratification or accession to international treaties to fight terrorism, whether concluded within the framework of the Organization of the Islamic Conference, the United Nations, and the League of Arab States, to submit appropriate recommendations to competent Iraqi bodies.\textsuperscript{182}

Article (1) of the Anti-Terrorism Law of 2005 mandatorily imposes the death penalty on those convicted of committing or threatening to commit acts of terrorism, including those who incite, plan, aid or abet (before or after the fact), or finance such acts either as principals or as accomplices. This Anti-Terrorism Law provides a broad

\textsuperscript{180} Article 5 (2) of Iraqi Anti-Terrorism Law No. 13 of 2005 , Appendix A.


definition of terrorism that is susceptible to a wider interpretations: “any Criminal act undertaken by an individual or a group of people or by official or unofficial groups or organizations that causes damage to public or private property with the aim of upsetting the security situation or stability and national unity or of producing terror, fear and alarm among the populace or of provoking chaos in the pursuit of terrorist aims”.

Article (2) describes acts that fall within the definition, whereas Article (3) specifies crimes against state security, which are classified as acts of terrorism under the law. Among the wide range of activities defined as terrorist acts, many do not satisfy the threshold of “most serious offenses” under international human rights law. Such activities include using violence or threats to expose the lives of citizens to risks, acts that destroy public buildings, participation or members in a “terrorist group” that plans acts of terrorism, inciting or encouraging people to commit insurrection or arming civilians to carry out such acts, and kidnapping for financial gain as a means of supporting or inciting terrorism.

Authorities are inclined to apply the Anti-Terrorism Law in cases that have no connection to terrorism. This is of particular concern as defendants convicted under Article (4) of the Anti-Terrorism Law No. 13 of 2005 faced the death penalty.183

Most of the death sentences carried out since the reintroduction of the death penalty in 2004 were executions related to convictions for offenses under the Anti-Terrorism Law of 2005. Others included a conviction for crimes under the Iraqi Penal Code.184 Since late 2012, many Iraqi civilians, mostly from the northern and western governorates, have expressed grievances concerning alleged government’s failures to respect due process and fair trial standards, perceived abuse in implementing the Anti-Terrorism Law, and mistreatment of detainees and prisoners.185

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Many individuals engaged in committing terrorist acts in Iraq are motivated by an extremist ideology and are prepared to die to realize their objectives. Hence, they do not view the death penalty as a deterrent.\textsuperscript{186} In many cases, judges and investigating officers conspired to extort bribes from detainees and their families to secure their release. In other cases, judges accepted bribes from security forces to issue or extend detention and arrest orders as well as ignored charges of abuse committed by security officials on detainees.\textsuperscript{187}

A significantly high number of executions were carried out between 2009 and 2014. The level of armed insurgencies and terrorist violence markedly increased during this period. Table (3.1) below shows that the highest number of executions since 2005 was registered in 2013, which was parallel with the largest number of civilian casualties since 2008.

**Table 3.1 The Death Penalty Between 2005 – 2014**

<table>
<thead>
<tr>
<th>Year</th>
<th>Males</th>
<th>Females</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>11</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>2006</td>
<td>52</td>
<td>2</td>
<td>54</td>
</tr>
<tr>
<td>2007</td>
<td>41</td>
<td>0</td>
<td>41</td>
</tr>
<tr>
<td>2008</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2009</td>
<td>120</td>
<td>4</td>
<td>124</td>
</tr>
<tr>
<td>2010</td>
<td>18</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>2011</td>
<td>64</td>
<td>3</td>
<td>67</td>
</tr>
<tr>
<td>2012</td>
<td>118</td>
<td>5</td>
<td>123</td>
</tr>
<tr>
<td>2013</td>
<td>174</td>
<td>3</td>
<td>177</td>
</tr>
<tr>
<td>2014*</td>
<td>60</td>
<td>0</td>
<td>60</td>
</tr>
</tbody>
</table>

**Source:** United Nations, Office of the High Commissioner for Human Rights, Report (2014)\textsuperscript{188}


\textsuperscript{188} United Nations, Office of the High Commissioner for Human Rights. 2014. *Report on the Death Penalty in Iraq*. (* Figure for 2014 is current as at 31 August 2014).*
Misuse of the law, which makes it flexible, is observed in sectarian and political conflicts, the exclusion of political opponents, the arrest of national figures, the destruction of the middle class, and isolation from the management of state institutions, polished professionalism, and independence. At the request of the Iraqi National Commission on Human Rights, the American Bar Association Center for Human Rights reviewed Anti-Terrorism Law of Iraq to determine its compliance with international standards and good practices.

The review concluded that the law was vague, excessively broad, and criminalized otherwise legal acts that were not connected to terrorism. The law must be studied to avoid misuse and must be used judiciously by the courts to avoid the arbitrary detention and punishment of individuals engaged in legal actions, and to allow them to exercise their fundamental rights to freedom of expression and joining associations and assemblies.\footnote{American Bar Association (ABA) Center for Human Rights. 2014. \textit{Compliance of Iraq’s Anti-Terrorism Law (2005) with International Human Rights Standard}. Memorandum to Iraq National Commission on Human Rights, p. 6.}

Security forces conduct mass and random arrests of females that amount to the collective punishment of women for alleged terrorist acts committed by their male family members, frequently their husbands. In addition, authorities have exploited vague provisions under the Anti-Terrorism Law to settle personal or political scores by detaining, charging, and trying women based on their relationship to a sect, tribe, or a particular individual. Moreover, according to statistics provided by an official from the Office of the Prime Minister,\footnote{Human Rights Watch. 2014. \textit{No One is Safe - The Abuse of Women in Iraq’s Criminal Justice System}. \url{https://www.hrw.org/report/2014/02/06/no-one-safe/abuse-women-iraqs-criminal-justice-system}, p. 4.} (4,257) women are detained in the facilities of the Ministries of Interior and Defense.

Abusive practices in the application of the Anti-Terrorism Law violate Iraqi legislation and international standards for arrest and detention. However, the passing of the law has raised and is still raising a wide range of issues concerning the provisions of the law that affect fundamental rights and freedoms or that it do not contain special
procedural provisions similar to those in other Arab and non-Arab legislation on counter-terrorism. The definition of terrorism in the Anti-Terrorism Law and a list of crimes considered acts of terrorism are ambiguous and appear to include also lawful activities. Under the law, an accused may be detained for exercising his or her fundamental rights, such as criticizing the government, when the State decides that such criticism reaches the level of threatening “national unity,” which is not defined in the act.

Moreover, an accused individual may face life imprisonment for minor offenses, such as property damage, which will subject him or her to significantly less detention time when “terrorist motive”, which is another term not clearly defined in the act, is absent. Consequently, detention under this law being arbitrary under international standar
CHAPTER IV

FINDINGS AND SUGGESTIONS

4.1 INTRODUCTION

Terrorism, as a war crime in humanitarian law, has a narrower scope than the notion considered in the entire body of the general international law of peace. Prohibited conduct arguably consists of any violent action or threat of such action against civilians or other individuals who are not directly involved in armed hostilities.\textsuperscript{191} Iraq is faced with a significant terrorist threat and is among the many countries that have adopted legislations and policies whose purpose is to deter, investigate, and penalize terrorism acts.\textsuperscript{192}

The right of citizens to live in peace, freedom, and security is threatened by the risk of terrorism. Iraq has endured many years of authoritarianism, followed by a difficult transition marked by an international presence, and continued violence and unrest resulting in thousands of citizen casualties. Despite positive steps toward building a constitutional republic, this period has witnessed a wide range of human right violations, including forced disappearances, arbitrary detentions, reprisal killings, shortcomings in due process and fair trial standards, lack of accountability, and failure to deliver many essential services. Since 2003, countless suicide attacks carried out by terrorist groups have killed thousands of civilians in Iraq.\textsuperscript{193}


The Anti-Terrorism Law of Iraq is the primary means of prosecuting terrorism offenses. Iraqi courts use various provisions of the Iraqi Penal Code, No.111 of 1969, to address crimes that do not fall exactly within the Anti-Terrorism Law. The future of Iraq as a society based on the rule of law depends on funding a stable Iraqi criminal justice system that embodies international standards of fairness in addition to holding responsible officials accountable for serious offenses, such as torture.

The aforementioned legislation has raised numerous questions on how well it conforms to international rules and standards of respect for freedoms and basic human rights, as well as on its efficiency and success in preventing or reducing acts of terrorism. The Anti-Terrorism Law requires both the study of jurisprudence issues raised by its implementation and its application and reconsideration of methods used. It mainly includes broad and loose provisions. The findings of the data analysis are presented in this chapter. Data were collected and then processed in response to the problems posed in Chapter 1. Five major objectives directed the collection of data. These objectives include developing a base of information regarding the application of the Anti-Terrorism Law in Iraq and determining if the existing law complies with the international human rights and fundamental freedoms.

4.2 FINDINGS

4.2.1 Definition and the concept of terrorism is not clearly addressed.

Criminal legislations in various countries worldwide is attempting to address the problem of terrorism. Most of these legislations are unable to determine the status of a particular definition of the phenomenon. Accordingly, individual acts that represent forms of terrorist offences are subject to a special legal regime to avoid serious threats to society

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194 Article 6 (3) of Anti-Terrorism Law No 13/ 2005, which stats: “Provisions of the current Penal Law shall apply to all situations not stipulated in this law.” Appendix A.

and deter perpetrators. An Iraqi legislation addresses terrorism as an element of a crime that is punishable, as an offence of conspiring to change the fundamental principles of the constitution, an attack on the primary systems of the state, or an attack on employees or citizens.

The Iraqi legislation before Anti-Terrorism Law No. 13 of 2005 did not define the term “terrorism” as an element of a crime or an aggravating circumstance in the list of offences in Penal Code No. 111 of 1969, which stated the term “terrorism” under Articles (21), (365), and (366), as a crime of conspiring to change the fundamental principles of the constitution, or as an attack on the primary systems of the state, or an attack on the employees and citizens.

Moreover, the Iraqi Constitution of 2005 includes numerous provisions for the criminalization of terrorism. It expressly provides the prohibition of terrorism. The preamble of the Constitution states that terrorism will not stop the people of Iraq from building a nation of law. The Iraqi government will fight terrorism in all its practices, and will exert effort to defend its lands from being a base, passageway, or field of terrorist activities.

Article (1) of the Anti-Terrorism Law provides the following definition: “Every criminal act committed by an individual or an organized group that targeted an individual or a group of persons or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals”

The definition of terrorism under Article (1) of the Anti-Terrorism Law No. 13 of 2005 was carefully drafted with long phrases. Most of the phrases require interpretation, which may lead to extended arguments, which is unacceptable. The definition provided by the Iraqi Anti-Terrorism Law has three common elements;

First: Threats and actions that characterize terrorism include severe violence against people and severe loss of property and effects, which endanger lives, health, and safety.
Second: The objective of terrorist acts must be direct. These acts must be designed to influence the government or to intimidate the community or a section of the community.

Third: Motives must include advancing a political, religious, racial, or ideological cause.

Suggestion

The Iraqi legislator must adopt a clear and simple definition of terrorism that is not subject to multiple interpretations. Simultaneously, respect for human rights should be ensured. The researcher encourages the adoption of the definition provided by the Organization of the Islamic Conference 1999, which defined terrorism as: “Any act intended to cause death or serious bodily injury to a civilian. Alternatively, to any other person not taking an active part in the hostilities in a situation of armed conflict. When the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act.”

4.2.2 The criminal justice system is lack of due process and fair trials.

The criminal justice system in Iraq continues to be defective. The judiciary lacks independence. Lawyers and judges involved in the trials of members of armed groups are targets of abductions, killings, and assaults by these groups. Trials, mostly of defendants facing terrorism charges, are frequently unfair, with courts giving guilty verdicts on the basis of torture-tainted “confessions”.

Respect for due process and fair trial standards, as guaranteed by international law and the Constitution of Iraq, remained inconsistent. Many detainees complain of abuse, mistreatment, and torture at the hands of Ministry of Interior personnel after they are arrested and during the investigation phase, frequently with the intent to force

confessions, before they are transferred to Ministry of Justice facilities. Such complaints are mostly filed by suspects detained under Anti-Terrorism Law No. 13 of 2005.\textsuperscript{198}

According to interviews with female prisoners, lawyers, and judges, the authorities are detaining over 100 women under this law. Many women are unfairly targeted because of their relationship with male suspects in terrorism cases. Targeting women is apparently a technique used by the government to force male defendants to admit to committing offences, which violates their right to due process;\textsuperscript{199}

\textbf{a. Arbitrary arrest}

The Iraqi Constitution and the laws that deal with arrest, detention, and trial reflect various rights guaranteed by international laws; in practice, however, legal requirements are not always respected. Lengthy pre-trial detention, typically under the Anti-Terrorism Law, allows law enforcement officials to detain individuals suspected of being involved in terrorism offenses for extended periods without being charged or tried, which is a serious human right violation.

Iraqi security forces continue to arrest suspects without a judicial order. Moreover, not informing detainees of the case against them is a breach of Iraqi law under Article (92) of the Criminal Procedure Code, which states that a person may be arrested only by a judicial order, other than in exceptional circumstances, and must be informed of the reason for arrest and any charge against them.

The Head of the Human Rights Committee of the Iraqi Parliament alleges that approximately 40,000 detainees remain in prison awaiting investigations. Many of them are held in prisons and detention centers run by various government ministries.\textsuperscript{200} Most of the individuals in the facilities of the Ministries of Defense and Interior (which are outside the responsibility and authority of the


Ministry of Justice) are reportedly pre-trial detainees. Prolonged detention without trial (for weeks, months, and in some cases, years), in these facilities, is a systemic problem in Iraq. Lengthy detention is partly attributed to the lack of resources, the incapacity of the judicial system, the large number of detainees, the lack of information sharing, the reluctance to utilize bail provisions when appropriate, bribery, and corruption.

Suggestions

(i) The inadmissibility of confinement of the accused, if considerable evidence is available, leads to the belief that offenses are committed and that certain individuals have committed illegal actions or contributed to them.

(ii) Ensure that all detainees are taken to officially recognized detention centers directly after the arrest. Moreover, these detainees must be registered upon entrance. Also, when they are taking and bring them back to the detention. The authorities in charge of arrests must be different from those in charge of investigations of the charges against the detainees.

b. Secret and long-term detentions without trial are practiced.

During the past ten years, secret and long-term detention without trial in Iraq has been marked by obvious violations of human rights and the rule of law. Authorities are subjecting suspects to arrest without warrant and prolonged detention without being charged or undergoing trial. Many detainees remain incommunicado in secret detention areas, without an effective solution in sight. Trials are grossly unfair and conducted before courts on the basis of guilty verdicts from contested confessions, even in capital cases. Torture and other forms of mistreatment are committed with impunity.

UNAMI continues to receive claims from prisoners and detainees that they are being held in custody for periods beyond those prescribed by Iraqi law. Many such claims are made by individuals detained under the Anti-Terrorism
Law, some of whom alleged to being held for up to 8 years without being charged or tried.\textsuperscript{201}

At times, prison authorities delay the release of exonerated inmates pending the receipt of bribes. For offenses punishable by death, the Criminal Procedure Code permits authorities to detain a defendant legally for as long as necessary to complete the judicial process. Lengthy pre-trial detention is particularly prevalent in the case of terrorism suspects. For many years, Amnesty International has documented human rights violations and implemented actions against them by raising the issue with previous Iraqi governments. Detention, arbitrary arrests, and forced disappearances are widespread, with thousands of individuals being held without charge or trial for prolonged periods. Torture and mistreatments are routinely practiced in prisons and detention centers.\textsuperscript{202}

**Suggestions**

(i) Lawful and administrative improvements are necessary to ensure that prison authorities do not hold prisoners for over 24 hours before they are released or formally charged and then transferred to a Ministry of Justice facility.

(ii) Establishment of a judicial police service responsible for transporting detainees from detention centers to court hearings with an investigative judge. Apart from safeguarding defendants, such service will be liable to the examining magistrate if a detainee does not return to police custody, is released on bail, or transferred to a Ministry of Justice facility.


c. The accused are denied from the right to legal assistance.

International laws stipulate that individuals have the right to legal assistance when their fundamental rights to freedom and life are at stake. The fundamental principles of the role of lawyers, which have been adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, establishes that “all persons are entitled to call upon the assistance of a lawyer of their choice to protect, establish their rights, and defend them in all stages of criminal proceedings” as its first principle.\textsuperscript{203}

In Iraq, judges have attempted to enforce the right to fair trial; however, access to counsel remains a problem. In the case of detention centers under the Ministry of Justice, UNAMI observes that visits made by lawyers and family members to detainees are unhindered. However, detainees held as terrorism suspects, particularly those held in facilities controlled by the Ministries of Interior and Defense, are frequently held incommunicado, without any access to legal counsel (during the entire investigation process and in some cases, until the trial).\textsuperscript{204}

 Authorities who are preventing detainees from acquiring legal counsel are breaching Article (19 Paragraph 4) of the Iraqi Constitution of 2005 and the Criminal Procedure Code. Article (123) of the Criminal Procedure Code, as amended, entitles an arrested person to be represented by a lawyer when being questioned during the pre-trial period and to have a court-appointed lawyer, free of charge, in case they are unable to pay for their own legal counsel. Detaining authorities are also required to inform detainees of these rights before interrogation.

**Suggestion**

The commitment to prohibit incommunicado detention, guarantee the right to legal counsel of prisoners, and allow visits from their relatives.


d. The accused confessions are extracted under torture.

Numerous defendants have been sentenced to death after courts accept their pre-trial confessions as evidence of their guilt despite allegations made by these defendants during the trial that those confessions have been obtained under torture. Security officials in Iraq have continued to use abusive measures to coerce confessions from suspects as an investigation method. According to several defense lawyers, this problem stems from the general lack of capability of police and law enforcement officials to conduct effective investigations and uncover impartial reliable material evidence. Consequently, the police routinely rely on confessions, even if obtained through coercion.205

In June 2009, for example, human rights organization affiliated to the Al-Diwaniya governorate accused security forces of torturing detainees to extract “confessions.” Investigators from the Ministry of Interior later reported that 10 out of 170 prisoners exhibited bruises that could have been caused by torture or mistreatment. A video footage, taken by a correctional officer and later posted on the Internet, showed a prisoner lying with his hands tied behind his back being whipped and given electric shocks until he passed out. One of the guards was heard to say, “He is done.” Documents from the US government made accessible by Wikileaks described how detainees were forced to “confess” to “terrorism” under torture.206

Suggestions

(i) Instructions should be issued to judges not to convict detainees based only on suspicious confessions or evidence obtained under pressure, particularly with claims of torture or testimony of secret informants, in capital trials.

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(ii) Implement strict policies that will prohibit security forces and the police from using unlawful approaches of coercion and threats to force detainees to confess to the commission of offenses. Those who violate such policies will be held legally liable and may face trial and incarceration.

4.2.3 Torture and ill-treatment are conducted on detainees.

Mistreatment and torture continue in detention centers and prisons, mainly those controlled by the Ministries of Defense and Interior. These centers are blocked for inspection by the Independent High Commission for Human Rights. Interrogators torture detainees to extract information and “confessions” to use against them during trials.

Detainees are sometimes tortured to death. The Criminal Procedure Code has similar provisions, in addition to providing criminal liability for torture and other instances of abuse during custody. Furthermore, the Code states that when the alleged crimes happened in the course of or arising from official duty, the “responsible minister” must permit the referral of the accused official for trial.207 Many female detainees are arrested in place of their male family members who are suspected of terrorism or as collective punishment for the alleged acts of their male relatives. Women are also arrested on charges of aiding and abetting or withholding information related to crimes committed by their male relatives under the Anti-Terrorism Law.

Many female detainees also claimed of being subjected to torture, violence, and threats while in custody in Ministry of Interior facilities before being transferred to Ministry of Justice facilities. Defense lawyers have noted that judges ignore visible signs of physical abuse on women. Deaths in custody apparently caused by torture or other forms of maltreatment persistently occur since 2003. Official documents disclosed by the Ministry of Human Rights reported 237 cases of death in custody for a 3 year period

207 Article 136(b) of the Iraqi Criminal Procedure Code No. 23 of 1971, Appendix G.
until the end of 2011, including 16 with “suspicion of torture.”\textsuperscript{208} like what happened in the case of Samir Naji (See Chapter 2, Case No. 2 for further information).

\textbf{Suggestions}

(i) Investigate each claim of abuse or violation of human rights efficiently, neutrally, promptly, and methodically; then, take legal action on those responsible for such acts. Moreover, ensure that the outcome of such investigations is shared to bring justice to the victims.

(ii) Compliance of all officials involved in law enforcement and the administration of justice with the responsibilities of Iraq under its Constitution and laws, including on people detained under charges of terrorism.

\textbf{4.2.4 Human rights are violated by state officials}

The Geneva International Center for Justice has sent an urgent appeal to the United Nations Special Rapporteur on the protection and promotion of human rights. In counter-terrorism, Ben Emmerson called for the investigation of continuous violations of human rights perpetrated by the Iraqi government in the name of fighting terrorism. These violations include disproportional violence against peaceful protesters, mass campaigns of arbitrary arrests, obtaining confessions under torture, and political recourse to capital punishment.\textsuperscript{209}

On numerous occasions, the government has announced the establishment of committees to investigate specific human rights abuses; however, the outcomes of such investigations have never been publicized, and those responsible for human rights violations have not been brought to justice. The Iraqi government does not take adequate


measures to stop abuses, and thus, establishes a culture of impunity. Officials who commit abuses feel protected and believe that they are above the law.

**Suggestions**

(i) Amend the law to ensure its compliance with the provisions of the Iraqi Constitution and international standards in human rights, including the right to due process.

(ii) Formulate a reference guide to include rules and information used for investigating and collecting evidence to prevent violation of human rights, ensure the freedom of citizens, and avoid the abuse of such procedures committed by the authority.

### 4.2.5 Authorities misuse anti-terrorism law

The Anti-Terrorism Law of 2005 imposes the death penalty on those convicted of committing or threatening to commit acts of terrorism, such as inciting, planning, supporting, assisting, or funding such acts either as leaders or accomplices. In addition, the government has mentioned that capital punishment is necessary because of “unusual security conditions” in the country and that such punishment functions as a deterrent to terrorism. This law is justified by the need to provide justice to victims of violence and terrorism.

The Iraqi government claims that capital punishment is demanded by the “traditional values of Islam,” and that its implementation is supported by the majority of the Iraqi people. Despite these claims, however, the implementation of the death penalty has not ended violence nor has it provided justice for the victims.

The misuse of this law makes it flexible, and consequently, it is applied in sectarian and political conflicts, the elimination of political opponents, the arrest of national figures, the destruction of the middle class, and the isolation of managing state institutions, polished professionalism, and independence.
Authorities are inclined to apply the Anti-Terrorism Law in cases that have no connection to terrorism. This is of particular concern as defendants convicted under Article (4) of the Anti-Terrorism Law No. 13 of 2005 faced the death penalty. On 8 January 2014, for example, a trial at the Basra Palace of Justice, in which the defendant had been charged under this provision for alleged involvement in the murder of a taxi driver. The crime was financially motivated and did not fall within the definition of terrorism under the Anti-Terrorism Law. Sources close to the prosecutors in the case indicated that the charges under the Anti-Terrorism Law had been laid at the behest of a police officer, who believed the defendant had killed his father.\(^\text{210}\) The declaration of law should be accompanied by educating the public. Any law that regulates the actions of human beings.

**Suggestions**

(i) Develop policies to address circumstances that lead to the spread of terrorism.

(ii) Assurance by the administration on compliance with justice and the obligations of Iraq and all officials engaged in law enforcement under the Iraqi Constitution and international laws on human rights, even on detainees accused of committing terrorism.

(iii) Assurance on the appropriate and efficient distribution of medical, financial, and other forms of support to indirect and direct victims of violence.

(iv) Amending the articles of the Iraqi Criminal Procedure Code to stop the use of testimonies of secret informants, who regularly pay security officials to use such testimonies as bases for arrest or conviction. Detainees should also be given the right to sue security officials or courts if such evidence is used to convict them.

CHAPTER V

CONCLUSION

Terrorist acts are classified as crimes against humanity regardless of whether they occur in times of peace or war. To mitigate terrorism, the public must support authorities in classifying terrorists as offenders instead of heroes. Terrorism may assume real or perceived forms, both of which are equally hazardous. Governments actively ensure that terrorist threats do not affect their economies or the social strata of their people. Given that civil societies thrive on independence and security, these threats must be effectively controlled. Terrorism has gained international attention because of its overall effect on nation-states and societies. Some conclusions are highlighted as follows;

(a) *Terrorism is difficult to eliminate completely* because these crimes come in various forms that persist as long as some groups remain dissatisfied with their political or economic situations. Therefore, terrorism can only be addressed by minimizing its effects, which entails a long-term process. Necessary actions, such as allowing the government to bypass special legislation when combating terrorism-related offenses, must be implemented quickly yet carefully.

The terrorist acts focus on the highest values of the social order. Normally, the victims are innocent persons. Given that such acts usually focus on these factors, terrorism has become a national problem. The extent of transnational activities also makes terrorism an international issue, that is, what affects one country will have a carryover effect on another country. In other words, an act of terrorism in one part of the world will eventually spread to other regions. From this perspective, terrorism is considered a threat to international security.

(b) *The criminalization of various terrorism-related acts is a prerequisite for the intervention of the criminal justice system.* Criminalization is not only a legal obligation for state parties to counter acts of terrorism but also a prerequisite for effective international cooperation. Under their domestic laws, state parties are expected to list
some offenses that are called for by the conventions and protocols that relate to terrorism and other related forms of crime. They must also ensure that such offenses are punished appropriately according to their gravity. Effective counter-terrorism strategies and tactics must be formulated immediately to protect civil liberty.

These strategies must include a strong element of criminal justice that is guided by a normative legal framework and embed the basic principles of due process and respect for human rights. The Iraqi criminal justice system operates under stressful situations. Armed political dissidents continue to attack and kill judges, lawyers, court officials, and members of the police force, as well as organize suicide bombings. Many lawyers who prosecute alleged members of armed terrorist groups have been murdered.

(c) The influence of counter-terrorism legislation, policies, and practices must be understood immediately because present Counter-Terrorism measures are counterproductive in protecting human rights, given that these measures discriminate, repress, stigmatize, and alienate certain groups within society. Such ineffectiveness may undermine the confidence and trust of the people in their government, which in turn hinders their cooperative actions against terrorists.

The fact that extremist groups resort to terrorism to establish their political influence does not mean that all groups have equal objectives or that the relationship between their means and ends is clear to an outside observer. Terrorist activities come in various forms, of which some are interdependent. Some terrorist acts have no clear distinction because they involve two forms. In addition, some domestic terrorist acts may have international origins or sources. Identifying the types of terrorism is a challenging process. Many researchers have generated multiple and conflicting types of terrorism by investigating such phenomenon from various perspectives and using intellectual approaches.

(d) Despite the conflicting arguments on the existence of state terrorism, the public remains firm in their belief that state terrorism exists. Despite the facts that some states commit terrorism to incite aggression instead of fear and that some states commit terrorism by themselves or by collaborating with internal or external groups, the existence of state terrorism remains widely accepted.
State terrorism often takes the form of using extra force and allowing custodial deaths. State Sponsors may use their own directly recruited and controlled terror squads or may work through proxies and client movements. They almost invariably work covertly to conceal their involvement in such activities. Terrorism may also be committed by groups of individuals with different ideological persuasions who challenge the authority of the state. Impatient groups who want to demoralize the government, dramatize a cause, gain support, inspire followers, provoke regime violence, or dominate a wider and stronger resistance movement often resort to terrorism.

(e) Domestic terrorism is often driven by the desire to change the government system or to gain power. This terrorism can be practiced by individuals and groups alike. Domestic terrorists may form death squads, support paramilitary or vigilante groups, or prosecute other groups that target the opponents of the present government or are perceived to be highly dangerous. Meanwhile, international terrorism may be conducted in various ways, such as taking hostages, hijacking planes, and attacking international figures; such actions have all attracted special attention from international legislations. International terrorism is mostly conducted by international and regional conventions.

Terrorism usually involves an external objective that is connected to a specific place, person or interest. Transnational terrorism is essentially political in character with an additional dimension of transcending national boundaries. This type of terrorism is subtle and powerful because its promoters have access to funds, weapons, and shelter.

Ideological terrorists desire to change the present political, social, and economic systems. They are less durable than the well-established nationalist groups and are highly prone to internal splits. When a group follows an ideology that is superior to another in the evolutionary world, fundamentalist tendencies tend to be generated among its members who seek to propagate their ideas through terror.

The propagators of religious terrorism are devoid of logic, rationale, or reason. They thwart all efforts that are aimed at an objective analysis of world religions, including their own, and promote an extreme cult in which religious co-existence is ruled out. This form of terrorism seeks to coerce followers of other religions into accepting the supremacy of their religion. Any challenge to religious terrorism is not tolerated, and its
challengers are usually killed. On a smaller scale, single-issue fanatics are obsessed with the desire to change a specific policy or practice within a specific society.

(f) Terrorism has a straightforward effect on many human rights, specifically on the rights to life and freedom. It seems clear that terrorist activities weaken regimes or the public, endanger harmony and safety, and threaten communities and economies, all of which directly affect the enjoyment of human rights. However, terrorism is also viewed as having minimal physical destructiveness regardless of the nature of the tragedy or its victims. Some researchers contend that the significance of terrorism has been exaggerated by the media, which consider such phenomenon an international news item. Yet, despite these arguments, kidnappings, hijackings, and other acts of terrorism remain a significant concern for large communities.

(g) The acts of terrorism in Iraq have economic, political, and social implications. The tourism, agriculture, and oil sectors of the country have been severely affected by such actions. The number of terrorist activities in Iraq has increased after the American invasion. Armed violence and acts of terrorism severely affect Iraqi children, women, and men both directly and indirectly. Fear of violence severely impairs the freedom of movement of civilians by restricting their activities outside of their homes or neighborhoods. Therefore, civilians are unable to access their workplaces and avail basic services, including education and healthcare. The demand for improved delivery of essential services and greater opportunities has fueled demonstrations in various cities throughout Iraq.

(h) The political efficiency of terrorism, on the other hand, is determined according to the psychological effects of violence on people. Terror is incited by acts of violence that are performed with maximum harshness. Each terrorist act is planned to affect a large audience. Terrorists also attack national symbols to demonstrate their power and to shake the foundation of the state or society that they oppose. Economic stagnation, widespread poverty, high unemployment, environmental degradation, and lack of basic services continue to affect many people.

In 2005, the Iraqi Parliament passed the Anti-Terrorism Law, which allows security forces to detain persons on broad terrorism charges. The law was passed at a
time when American forces were in charge of security matters in Iraq. Before and after the passage of this law, the U.S. military often detained suspects without formally charging them with a crime. The law has only six articles.

Article (1) defines the concept of terrorism. The definition of terrorism in the Anti-Terrorism Law and a list of crimes considered acts of terrorism are ambiguous and appear to include also lawful activities. Under the law, an accused may be detained for exercising his or her fundamental rights, such as criticizing the government, when the State decides that such criticism threatens “national unity,” a term not defined in the act. Moreover, an accused individual may face life imprisonment for minor offenses, such as causing property damage, which will subject him or her to significantly less detention time when “terrorist motive,” another term not clearly defined in the act, is absent. Consequently, detention under this law being arbitrary under international standards is a serious risk.

Article (2) cites specific acts of terrorism, including violence or threats, causing fear or endangering the lives of others, using violence to damage property, inciting sectarian strife, organizing terrorist gangs, and using explosives to kill and others. Article (3) defines terrorism as “crimes against state security” that include “any act” that threatens the safety of society and national unity, the use or attempted use of force to overthrow the government, takeovers or coups, impeding the orders of government, or inciting armed rebellion. Article (4) lists the punishments for those convicted of the offenses. The participants or main perpetrators of any of the offenses that are defined in Articles (2 & 3) are sentenced to death while those who are convicted of harboring a perpetrator of a terrorist act or intentionally covering up a terrorist activity as stated in Articles (2 & 3) are sentenced to life imprisonment. Article (5) allows the mitigation of these punishments in case the accused provides information that leads to the prevention of a terrorist action or the arrest of additional suspects. Article (6) mandates the confiscation of items and funds that are used in the preparation or execution of a terrorist act and provides other final provisions.

(i) Terrorism has no universally accepted definition. Although many scholars have tried to define this concept over the years, this term is loaded with conceptual problems that hinder the formulation of a universally acceptable definition. Iraqi legislation did not define the term “terrorism” before enacting the Anti-Terrorism Law
No. 13 of 2005. Instead, terrorism is loosely defined as an element of a crime or an aggravating circumstance that is listed in the Penal Code No. 111 of 1969. Although the term “terrorism” has been mentioned in Articles (21), (365), and (366), Iraqi legislation merely perceives terrorism as a crime, such as conspiring to change the fundamental principles of the constitution or assaulting citizens.

The Penal Code and other relevant legislations in Iraq have been adopted to punish crimes against the security of the state and public order. These laws, which have a wide coverage, can include terrorist offenses. However, without defining “terrorism,” many measures to ensure security or to counter-terrorism will not be within the rule of law, and consequently, may affect human rights. Despite Penal Code provisions that protect the right of suspects to be free from arbitrary arrest and detention, along with the right to a fair trial, the Anti-Terrorism Law of Iraq is frequently used to circumvent these protective measures.

Since its implementation on February 9, 2005, Anti-Terrorism Law No. 13 has raised many questions and debates between its supporters and challengers. This act was implemented by a relatively new Iraqi government at a time when the security of the country was compromised after the Iraqi borders were opened to everyone, thereby increasing the crime rates within Iraqi territory. Upon realizing that the existing Iraqi laws were inconsistent with the reality, the Iraqi government issued the Anti-Terrorism Law. The law also contains loose provisions, especially Article (4), which contains broad interpretations that can threaten civil liberties. The law has been worded in such a way that anyone who challenges its orders will be brought to trial.

(j) Under the Anti-Terrorism Law, Iraqi authorities continue to arrest suspects, hold them in protracted, pre-trial detention without judicial review, subject them to torture, and keep them in horrible circumstances while in custody. Therefore, the Anti-Terrorism Law in Iraq has become like a sword that hangs on the necks of Iraqi citizens and an influential factor in the relationship between the Iraqi leaders and their people. People are arrested and detained arbitrarily on political and religious grounds. Many prisoners are held captive without access to relatives, lawyers, or doctors for weeks, months, or years before their trial. Some people are detained for prolonged periods without charge or trial and often outside the judicial process.
The Anti-Terrorism Law does not include special provisions for these procedures and refers to the Criminal Procedure Code only, the provisions of which are an insufficient safeguard for the rights and freedom of the accused. For instance, the severe punishment policy of the Anti-Terrorism Law violates the constitutional right of the accused to human rights protection and freedom. Therefore, the Anti-Terrorism Law has been criticized heavily by legal scholars and human rights organizations. The Anti-Terrorism Law is broad and open to interpretations.

This law allows the imposition of capital punishment for any individual who participates in any terrorism-related activities. In other words, the offender must be conscious of achieving terrorist ends through his / her actions. Therefore, the terrorist should not have simply committed criminal acts. The offender is also subject to capital punishment if he /she intends to commit one or more terrorism-related activities, including breaching security or stability, promoting discord, introducing fear or panic among people, or inciting chaos to achieve terrorist ends.

(k) Following the changes in the Iraqi political regime, a new generation of judges has emerged and established political harmony among various parties, albeit not professionally. However, the establishment of new courts in Iraq, especially high criminal courts that hold trials for people who are charged with terrorism, has exacerbated the problem of the Anti-Terrorism Law. Individuals who are accused of terrorist crimes are often held in prison for long periods before they are put on trial. These prisoners are unlikely to be released on bail before their trial and tend to be segregated from the inmate population. They also have limited contact with the outside world or with their suspected accomplices. Nevertheless, all persons who are deprived of their liberty because of their suspected participation in terrorist activities must, in all circumstances, be treated with due respect to preserving their human dignity and rights.

Authorities are inclined to apply the Anti-Terrorism Law in cases that have no connection to terrorism. This is of particular concern as defendants convicted under Article (4) of the Anti-Terrorism Law No. 13 of 2005 faced the death penalty. Most of the death sentences carried out since the reintroduction of the death penalty in 2004 were executions related to convictions for offenses under the Anti-Terrorism Law of 2005. Others included conviction for crimes under the Iraqi Penal Code.
Since late 2012, many Iraqi civilians, mostly from the northern and western governorates, have expressed grievances concerning alleged government failures to respect due process and fair trial standards, perceived abuse in implementing the Anti-Terrorism Law, and mistreatment of detainees and prisoners. In many cases, judges and investigating officers conspired to extort bribes from detainees and their families to secure their release. In other cases, judges accepted bribes from security forces to issue or extend detention and arrest orders as well as ignored charges of abuse committed by security officials on detainees.

Trial judges fail to protect defendants from torture in various ways, such as accepting forced confessions and prohibiting defendants from proving their allegations of torture. In this way, judges sustain a culture in which police and intelligence forces rely on torture to obtain confessions. This culture creates a *vicious cycle* in which the police and investigative judges are encouraged to resort to torture instead of performing appropriate forensic investigations. Misuse of the law, which makes it flexible, is observed in sectarian and political conflicts, the exclusion of political opponents, the arrest of national figures, the destruction of the middle class, and isolation from the management of state institutions, polished professionalism, and independence.
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APPENDIX

Appendix A

ANTI-TERRORISM LAW NUMBER (13) FOR THE YEAR 2005

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</table>
| 1 | **Definition of Terrorism**  
Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals. |
| 2 | **The following acts are considered acts of terrorism**  
1. Violence or threats which aim to bring about fear among people or expose their lives, freedoms and security to danger and their money and properties to damage regardless of its motives and purposes which takes place in the execution of a terrorist act, individually or collectively organized.  
2. Work with violence or threat to deliberately sabotage or wreck, ruin or damage buildings or public property, government interests, institutions, state departments, the private sector or public utilities and public places prepared for public use or public meetings for the public or public funds, and an attempt to occupy it or to seize it or expose it to danger or prevent its use for the purpose for which it was prepared with the aim of disrupting the security and stability.  
3. Anyone who organized, chaired or participated in an armed terrorist gang that practices and plans for terrorism and also contributes and participates in this act.  
4. Use violence or threat to stir up sectarian strife or civil war or sectarian infighting by arming citizens or by encouraging them to arm themselves and by incitement or funding.  
5. Assail with firearms army and police offices, volunteer centers, security |
offices, and assault national military troops or their reinforcement, communication lines or their camps or bases, with a terrorist motive.

6. Assault with firearms, with a terrorist motive, embassies and diplomatic entities throughout Iraq as well as all Iraqi institutions, foreign and Arab companies and institutions and governmental and non-governmental and international organizations operating in Iraq in accordance with a valid agreement.

7. Use, with terrorist motives, explosive and incendiary devices designed to kill people, and possess the ability to do so, or to spread fear among the people, either through blowing up or releasing or spreading, or planting or bubbly trapping equipment or human bodies, regardless of their forms or through the effect of poisonous chemicals or biological agents or similar radioactive materials or toxins.

8. Kidnap or impede the freedoms of individuals or detain them either for financial blackmailing for political, sectarian, national, religious or racially beneficial purposes that threaten security and national unity and promote terrorism.

<table>
<thead>
<tr>
<th>The following acts are specifically considered amongst The crimes against State security</th>
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<tbody>
<tr>
<td>1. Any act with terrorist motives, that threatens the national unity and the safety of society and affects the State security and its stability or weakens the capacity of the security services in defending and protecting the security of citizens, their properties, State borders and its institutions either through armed confrontation with State forces or any other act that deviates from the freedom of expression which the law guarantees.</td>
</tr>
<tr>
<td>2. Any act that includes the attempt to use force or violence to overthrow the regime or the form of government as set forth in the Constitution.</td>
</tr>
<tr>
<td>3. Any one who led, for a criminal purpose, a branch of the armed forces, military checkpoint, a harbor, airport or any military site or city without being authorized by the government.</td>
</tr>
</tbody>
</table>
| 4. Anyone who attempts to incite an armed rebellion against the authority established in accordance with the constitution or participates in a conspiracy or
a gang formed for the same purpose.

5. Any act by a person who had authority over individuals in the military and asked or charged them with the task of impeding orders of the government.

4 | **Penalties**

1. Any one who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator.

2. Any one, who intentionally covers up any terrorist act or harbors a terrorist with the purpose of concealment, shall be sentenced to life imprisonment.

5 | **Waiver of Punishment, Legal Excuses and Extenuating Legal Circumstances**

1. Any one, who provides to the competent authorities before a crime is discovered or during its planning, information that contributes to the arrest of the criminals or prevents the execution of the operation, shall be pardoned.

2. Information, offered voluntarily by a person to the competent authorities after a crime is committed or after it is discovered by the authorities and before the person is arrested which leads to the arrest of the other participants, shall be considered an extenuating excuse for reducing the penalty stated in the second article of this law and the punishment shall be imprisonment.

6 | **Final Provisions**

1. Crimes stated in this law are considered regular crimes involving moral turpitude.

2. All funds, seized items, and accessories used in the criminal act or in preparation for its execution shall be confiscated.

3. Provisions of the current Penal Law shall apply to all situations not stipulated in this law.

4. This law shall enter into force on the date of its publication in the official Gazette.
**Justifying Reasons**

The size and volume of damages resulting from the terrorists’ operations has reached a level that threatens to national unity, order, security and stability. To move forward towards a federal, pluralistic, democratic system based on the rule of law and the guarantee of rights and liberties and to set off in motion the wheel of comprehensive development, it has thus become necessary to issue a legislation that puts an end to and limits terrorist operations and reduces the interaction between those who execute them and those who support them. For these reasons this law is enacted.
## NATIONAL SAFETY LAW NO. (1) IN 2004

<table>
<thead>
<tr>
<th>Article</th>
<th>Content</th>
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<tbody>
<tr>
<td>1</td>
<td>The prime minister has the right (after the majority approval of presidential commission, to declare the emergency state in any area in Iraq when the Iraqi people are exposure to danger which threaten the life of individuals and resulted from a continuous campaign of violence by any kind of people in order to prevent forming an official government in Iraq or prevent the Iraqis from the political participation for all Iraqis or any other purpose.</td>
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<tr>
<td>2</td>
<td>The emergency state is declared after showing the reason behind it, identify the region, identify the period of emergency, but it should not last more than (60) days or end after the danger end or the reason it declare according to, and it is allowed to expand the emergency state repeatedly every 30 days by a written letter from the prime minister and presidential commission if necessary, the emergency state end if the period determined ends with no expanding.</td>
</tr>
</tbody>
</table>
| 3       | In case of emergency the prime minister is authorized by the following exceptional temporary authorities in the area emergency state declared;  
  
1st: arresting or searching after getting the a judicial memo just in urgent need, restrict freedom of citizens or foreign in Iraq, in the witnessed crimes or the other cases that has enough evidences concerning transportation, gathering or traveling in or outside Iraq, carry or use weapons, ammunitions or dangerous equipments, and it is allowed to arrest the suspects and searching their houses and place of work, the prime minister has the right to authorize these powers to whom he chooses military or civilian leaders.  

2nd: enforce curfew for a short period in the area that witnesses a serious threats for the security, also he is allowed to separate the area and surround it with suitable forces and search it if it is approved that some the residents have weapons or explosives or there are some wanted people hidden in this area, all of these after getting a judicial memo for searching except in urgent cases. |
3rd: restraint assets or forbidden equipments, and restraint assets of suspects in plotting, mutiny, armed disobedience, assassination attempts and explosions cases, also restraint the assets of their partners in any matter and their motivators to such crimes, even those who offer to them a place to hide or meet if they know their ambitions, so he is allowed to arrest any one of them f there are enough evidences.

4th: enforce safety procedures on the mails, means of communications like radios if it is approved using it in the crimes above, and it is possible to observe and search these Items if it is necessary to reveal the mentioned crimes or prevent it after getting a judicial memo in a limited period of time.

5th: restrict means of transportations, air, land or sea in limited place and time.

6th: set rules and regulations on the commercial and public shops, clubs, organizations, associations, companies, foundations and directorates, and set a work schedule hours and observe, guard it after getting a judicial order, or even stop it from working temporary if it is approved that it is involved in the crimes mentioned in paragraph (1st) of article (7).

7th: stop issuing license of weapons, ammunitions and explosive equipments temporary or permanently or trade it, if it is approved using these items in the above mentioned crimes, or it is considered a threat on the security situation and stability in the area.

8th: decide quick military and security orders and procedures which are limited and suitable in the areas in which emergency case has declared, in coordination with ministers of defense and interior or any other minister, national security advisor or any related entity.

9th: it is possible to get help of the coalition forces in the big operations in wide areas to face armed criminals according to UN decision no. (1546) in 2004 and task the Iraq military forces for clear duties suitable with its status and abilities after the approval of presidential commission, in Kurdistan there are exceptional procedures in coordination with their government.

The decisions and arrest orders against individuals and assets which are issued in accordance to this law, are presented to the investigative judge but the
suspect should stand before the judge within (24) hours from the date of orders issuance.

5

1st: The prime minister practices the exceptional authorities above-mentioned according to orders or declarations published in the written, vision and hearing media with identifying the date of its validity.

2nd: punishment of not more than three years imprisonment and a fine of not more than 1 million ID or one of them for whom violate the orders and decisions of the prime minister or whom he authorized.

6

The armed forces, emergency forces, Special Forces, civil defense, security and intelligence forces in the region where the emergency case occurs, are connected directly with the prime minister in the period of emergency case and he has the right in coordination with the forces leaders to task it with any missions that are suitable with its nature and the needs of the current condition.

7

1st: The criminal central court in Iraqi deals with the high crimes committed during the period of emergency case such as murdering, kidnapping, raping, damaging, looting, explosion, damaging public and private properties, carry weapons or ammunitions, trade it or smuggling crimes which is transferred by the related judge.

2nd: the criminal courts deal with the other crimes that are not mentioned above or what the related judge transfers to it according to his area of operation.

3rd: the investigative judges, according to their area of operation, are charged to investigate in the above mentioned crimes, the high judicial council chief judge or the supreme court chief have the right to ask some judges or legal investigator to deal with these cases in stead of the current judges if necessary.

4th: the criminal code and criminal procedure code are valid for the crimes mentioned in paragraph (1st) and (2nd) of this article.

8

The prime minister, after the approval of the presidential commission, before transferring the case to the related courts or in investigation process has the authority to save the case and release the suspects before their prosecutions, for security, stability or country interest issues.

9

1st: the presidential commission approves by majority on the decisions and
exceptional procedures, and the temporary national assembly is allowed to observe carrying out these procedures.

2nd: the procedures and decisions of the prime minister are subject to observe by the cassation court, Kurdistan cassation court concerns with emergency status in their region and supreme court, these courts have the right to cancel these decisions and procedures or approve it regarding the exceptional conditions during which these procedures and decisions issued.

The prime minister declare the end of emergency status by a decision approved by the majority of presidential commission, then his authorities of issuing decisions and exceptional procedures mentioned in this law would be end.

The necessity reasons

Because of the dangerous security conditions that Iraq is doing through and the necessary to face the terrorists and law violators, and the ambition of the temporary government to protect the rights of citizen in living a peaceful life and protect his political and civilian rights and create the suitable atmosphere for democratic elections as it is mentioned in state management law for the transitional period, also for rule of law enforcement and achieve its independence, and for other reasons we issued this order in July 3rd, 2004
IRAQ BANKING LAW NO. 94 OF 2004

<table>
<thead>
<tr>
<th>Article</th>
<th>Content</th>
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| 2       | **Regulatory objectives**  
The primary regulatory objective of this Law is to maintain confidence in the banking system. Other regulatory objectives include those of promoting public understanding of the banking system by providing appropriate information, maintaining an appropriate degree of protection for depositors, and helping to reduce financial crime, including fraud, money laundering and terrorist financing. The CBI shall discharge its functions in a way which is compatible with the regulatory objectives and which the CBI considers most appropriate for the purpose of meeting those objectives. |
| 5       | **License application**  
1. Licenses shall be applied for in writing to the CBI. Applications shall be in such form and detail, and shall be accompanied by such documents, as shall be prescribed by regulation of the CBI.  
2. For a company established in the form of a juridical person pursuant to the laws of Iraq the application shall include the following documents and information:  
   a. an authenticated copy of the instrument under which the applicant is formed, together with the memorandum of association or bylaws, if any, and the address of its head office;  
   b. the amounts of the authorized and subscribed capital of the applicant, including the amounts that have been paid in;  
   c. the name, nationality, permanent place of residence, and business or profession of every administrator, together with a statement detailing the qualifications and professional experience and at least three references for each administrator;  
   d. the name, nationality, permanent place of residence, and business or profession of every owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, together with at least two |
references verifying good financial standing, and, in case the owner of a qualifying holding is a body corporate, copies of the latest three audited annual financial statements, including balance sheets and profit and loss accounts, if applicable;

e. a list of shareholders and ultimate beneficial owners of shares stating the name, address and respective shareholding, and, for registered shares, a copy of the shareholder register.

f. for each administrator and owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, an affidavit duly signed by the individual disclosing any convictions for offenses by a criminal court, personal bankruptcy filings, disqualifications from practicing a profession, or past or present involvement in a managerial function in a body corporate or other undertaking subject to insolvency proceedings, if any (the standard text for such affidavit to be determined by the CBI);

g. copies of the latest three audited annual financial statements, including balance sheets and profit and loss accounts of the applicant, if applicable;

h. a business plan setting out the business objectives and types of activities envisaged for the proposed bank, including a description of its organizational structure and internal control systems (including adequate measures to counter money-laundering and terrorist financing) together with projected balance sheets, profit and loss accounts and cash flow statements for the next three full financial years;

i. a statement by an auditor indicating the auditor’s undertaking to take on the external auditing function pursuant to Article 46;

j. for the applicant and for each owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, a list of undertakings in which participations exist, specifying the size of such participations and the registered addresses of those undertakings.

k. the location of the principal place of business and any other place in or outside Iraq where it proposes to conduct banking business;

l. proof of payment of the application fee;

m. such other information as the CBI may require for the purpose of the application; and

n. in any case where the applicant is a subsidiary of a foreign bank or bank holding company, a statement that the foreign supervisory authority responsible for the prudential supervision of the applicant in the country of formation of the
foreign bank or bank holding company has no objection to the proposed establishment of operations in Iraq, and exercises global consolidated banking supervision over the applicant.

For companies that are not yet established pursuant to the laws of Iraq, the procedure for a banking license consists of two stages, namely, a first stage beginning with the submission of a preliminary application for a banking license by the founders of the company, and a second stage beginning with the submission of a final application for a banking license by the company after it has been established and appropriately registered in the commercial register.

The preliminary application shall be accompanied by the supporting information and documents set out in paragraph (2), provided that, with the approval of the CBI, certain documents may be submitted in draft form. When, after having received a preliminary application for a banking license and having met with the founders and the proposed administrators of the bank, the CBI determines that the preliminary application and supporting documents are satisfactory, the CBI shall notify the applicants that their preliminary application is complete and request that the second stage be initiated by the submission of a final application for a banking license.

### Revocation of banking license or permit

1. A license or permit may be revoked only by decision of the CBI on one or more of the following grounds:
   a. the license or permit has been obtained on the ground of fraudulent statements or other material irregularities that occurred in connection with the application;
   b. the bank has not made use of the license or permit within twelve months after the date of its effectiveness, or the bank has ceased for more than six months to engage in the business of receiving money deposits or other repayable funds from the public or making credits or investments for its own account;
   c. the bank conducts its administration or operations in an unsafe or unsound manner;
   d. the bank violates an order of the CBI;
   e. the bank, in a manner which materially affects the financial soundness of the bank, violates a law, a regulation of the CBI, or any condition or restriction
attached to a license or permit issued by the CBI;

f. the bank, or the foreign bank or bank holding company of which the bank is a subsidiary, or a subsidiary of the bank, has engaged in criminal activities constituting fraud, money-laundering or terrorist financing;

g. the foreign bank or bank holding company of which the bank is a subsidiary has lost its operating license;

h. the CBI is hindered in supervising the bank because the bank has moved all or part of its administration, operations, books or records outside Iraq without the prior written approval of the CBI;

i. the CBI is hindered in supervising the bank because the bank is a member of a group of companies, or because the bank is a subsidiary of a foreign bank or a bank holding company that is not adequately supervised; or

j. the foreign supervisory authority responsible for the supervision of the bank or the foreign bank or bank holding company of which the bank is a subsidiary has appointed a conservator or receiver for the bank, foreign bank or bank holding company.

2. The CBI shall revoke a license or permit: a. at the time that bankruptcy proceedings are opened against the bank by decision of the Financial Services Tribunal pursuant to Article 78; or b. pursuant to paragraph (3) of Article 12.

3. Decisions to revoke a license or permit pursuant to this article shall be in writing and include the grounds on which they are taken. Each such decision shall be promptly served on the bank concerned, registered in the register of banks and published in the Official Publication by the CBI. A decision taken pursuant to this article shall take effect at the time that it is served on the bank concerned, unless the decision specifies another date for its entry into force not later than 30 days after the decision is served. The requirement of service of such decision on a foreign bank may be met by serving the decision on its designated branch office or representative office addressed by the decision.

4. Decisions by the CBI to revoke a license or permit pursuant to paragraph (1) shall include the appointment of a conservator in accordance with Article 69 to liquidate the bank.

<table>
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<tr>
<th>47</th>
<th>Additional duties</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>The CBI may impose on an auditor, in addition to any duty specified in Article 46, a duty to:</td>
</tr>
</tbody>
</table>
a. submit to the CBI such additional information in relation to the audit as the CBI considers necessary;
b. submit a report, carry out an inspection or establish any procedure as specified by the CBI;
c. submit to the CBI a report on the financial and accounting systems and internal controls of the bank; or
d. certify whether or not adequate measures to prevent money-laundering or terrorist financing have been adopted by the bank and are being implemented in accordance with such regulations, orders and guidelines issued by the CBI.

2. The auditor’s costs for performing any such additional duties requested by the CBI shall be borne by the bank.

51

Exceptions

The provisions of Articles 49 and 50 of this Law shall not apply to disclosure of information in the following cases:

a. the performance of duties legally assigned to auditors appointed by the bank or by the CBI according to this Law;
b. information and documents requested by the CBI in connection with its duties under this Law or the Central Bank of Iraq Law;
c. actions taken in good faith in the course of the performance of duties or responsibilities imposed by this Law or in the implementation of measures countering money-laundering and terrorist financing pursuant to regulations of the CBI;
d. the issuance of a certificate or statement of the reasons for refusing to pay a check based on the request of a rightful holder;
e. the provision of information on: (i) customers’ indebtedness to provide the necessary data for determining the soundness of granting credit; (ii) bad checks; or

(iii) any other transaction deemed necessary by the CBI because of its pertinence to the soundness of the banking sector to banks, the CBI or any other agencies approved by the CBI to facilitate the exchange of such information pursuant to rules and procedures specified in regulation of the CBI;
f. a bank’s disclosure of all or some information on a customer’s transactions to prove its claim in a judicial dispute between it and its customer regarding these transactions; and
Grounds for appointment of a conservator

1. The CBI shall appoint a conservator for a bank when the CBI determines that:
   a. the bank fails to pay its financial obligations, including but not limited to deposit liabilities, as they fall due;
   b. the capital of the bank is less than 50 percent of the minimum capital required by law or by regulation of the CBI pursuant to paragraph (1) of Article 16; or
   c. a petition has been submitted for opening bankruptcy proceedings against the bank, as set forth in Article 72.

2. The CBI may appoint a conservator for a bank when the CBI determines that:
   a. the bank fails to carry out an order given to the bank by the CBI;
   b. the capital of the bank is less than 75 percent of the minimum capital required by law or by regulation of the CBI pursuant to paragraph (1) of Article 16; or
   c. there is evidence that the bank or any of its administrators have engaged in criminal activities punishable by imprisonment of one year or more or there is reasonable cause to believe that the bank or any of its administrators are engaging in such criminal activities.

3. The provisions of this section shall apply to the domestic branch offices and domestic representative offices of a foreign bank as if all these offices together were to form a single legal entity. All assets, liabilities, acts and omissions of the foreign bank resulting from or otherwise relating to the business of any such office shall be attributed to that single entity in applying the provisions of this section. The conservator shall be authorized to take all actions with respect to such single entity as could be taken, were it to be a domestic bank, by the authorized manager or by shareholders at the general
### IRAQ ANTI-MONEY LAUNDERING LAW OF 2004

<table>
<thead>
<tr>
<th>Article</th>
<th>Content</th>
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<tbody>
<tr>
<td>2</td>
<td><strong>Definitions</strong></td>
</tr>
<tr>
<td></td>
<td>9-b the transaction involves funds intended for financing of crime, including, but not limited to, terrorism.</td>
</tr>
<tr>
<td>4</td>
<td><strong>Financing of Crime and Terrorist Financing</strong></td>
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<td></td>
<td>2. Terrorist Financing whoever provides, or invites another person to provide, property, support, or financial or other related services intending that it be used, or knowing that it will likely be used, in whole or in part, to carry out:</td>
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<tr>
<td></td>
<td>a. An act or omission that provides a benefit to a terrorist group, or</td>
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<td></td>
<td>b. Any other act or omission intended to cause death or serious bodily harm to a civilian or any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of the act or omission is to intimidate the public or to compel a government or an international organization to do or refrain from doing any act, shall be fined not more than 20 million Iraqi dinar, or imprisoned for not more than 2 years, or both.</td>
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<tr>
<td>7</td>
<td><strong>Duties</strong></td>
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<td></td>
<td>c. the CBI shall issue and periodically update a list of financial activities which may constitute &quot;suspicious transactions&quot; for the purposes of this Act, including money laundering, financing crime, financing terrorism, transactions involving funds over which a criminal organization has a right of disposal, or transactions designed to evade reporting, recording, or other legal requirements. The CBI shall publish the list for the benefit of financial institutions.</td>
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<td></td>
<td>f. the CBI shall compile and provide to financial institutions a list of individuals and institutions whose transactions the financial institutions are to report to the relevant body of the Government of Iraq upon discovery. The list shall include, but not be limited to, the New Consolidated List of Individuals and Entities Belonging to or Associated with the Taliban and Al-Qaida</td>
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<tr>
<td>12</td>
<td><strong>Money Laundering Reporting Office</strong></td>
</tr>
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<tr>
<td>1.</td>
<td>The CBI shall establish the Money Laundering Reporting Office, which shall be administratively subordinate to the CBI but shall retain operational independence. The Reporting Office shall;</td>
</tr>
<tr>
<td>b.</td>
<td>participate in implementing Iraqi policy on preventing money laundering, financing of crime, and financing of terrorism;</td>
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<tr>
<td>c.</td>
<td>cooperate and interact with and exchange information with Iraqi state authorities, competent bodies of other countries and international organizations on money laundering, financing of crime, and financing of terrorism;</td>
</tr>
<tr>
<td>d.</td>
<td>represent Iraq, according to the established procedure, in international organizations dealing with preventing money laundering, financing of crime, and financing of terrorism.</td>
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If the MLRO reasonably suspects that a transaction, conducted or attempted, involves funds derived from illegal activities, money laundering, funds to be used in the financing of crime, funds that a criminal organization has a right of disposal over, terrorist financing, or that the transaction is otherwise in furtherance of an illegal purpose, it shall immediately notify the competent prosecuting and investigative authority.

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<tr>
<th>18</th>
<th><strong>Further Verification of Purpose and Nature of Transactions</strong></th>
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<tr>
<td>The financial institution shall immediately verify the source of funds, and the purpose and intended nature of a transaction or business relationship, when there is reason to suspect that assets are the proceeds of a crime, that they may be intended for the financing of crime or terrorist financing, or that a criminal organization has power of disposal over them.</td>
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### IRAQI PENAL CODE NO. 111/1969

<table>
<thead>
<tr>
<th>Article</th>
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</table>
| **21** | (1) A political offence is one which is committed with a political motive or which violates the political rights either of the public or of the individual. All other offences are considered to be ordinary. However, the following offences are not considered to be political even though they are committed with a political motive:  
(a) Offences that are committed with a selfish or base motive.  
(b) Offences affecting the external security of the State.  
(c) Murder and attempted murder.  
(d) Attempts on the life of the Head of State.  
(e) Terrorist offences.  
(f) Dishonorable offences such as theft, embezzlement, forgery, breach of trust, fraud, bribery and rape.  
(2) If the court considers the offence to be political, it must show that in its judgment. |
| **22** | (1) Life imprisonment replaces the death sentence for political offences.  
(2) On conviction for a political offence, any penalty imposed for a previous political offence is not taken into consideration nor is there a subsequent loss of civil rights or privileges nor is the convicted person prevented from managing and disposing of his assets. |
| **27** | An infraction is an offence punishable by one of the following penalties;  
(1) Detention for a period of between 24 hours and 3 months.  
(2) A fine not exceeding 30 dinars. |
| **28** | The physical element of an offence is the criminal behavior involved in the commission of a criminal act stipulated by the Code or failure to carry out an act stipulated by the Code. |
| **29** | (1) A person is not responsible for an offence that did not result from his |
criminal behavior but he is responsible for that offence if, together with his criminal behavior, some other prior, contemporaneous or subsequent cause, even though he was unaware of it, played a part in its commission.

However, if that cause alone is sufficient to effect the consequence of the offence, then the offender in this case is only responsible for the act that he has committed.

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<tr>
<th>30</th>
<th>This is the initiation of an act with intent to commit a felony or misdemeanor which is prevented or frustrated for reasons unrelated to the intentions of the offender. An attempt to commit an offence is considered to include all acts that are impossible to carry out and which are attempted with intent to commit a felony or misdemeanor whether or not it is for a reason relating to the object of the offence or to the means by which it is committed as long as the offender does not believe as a result of misconception or total ignorance that it is within his power to achieve the result of the offence. Merely the intention to commit an offence or preparations to do so are not considered an attempt unless otherwise stipulated by law.</th>
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<tbody>
<tr>
<td>32</td>
<td>Provisions relating to incidental or supplemental penalties and precautionary measures prescribed for offences committed are applicable to attempted offences.</td>
</tr>
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</table>
| 33 | (1) Criminal intent is the existence in the mind of the offender of an intention to commit the criminal act with a view to realizing the consequence of the offence that has occurred or any other criminal consequence.  
(2) Intent maybe simple or premeditated.  
(3) Premeditation is the resolute contemplation of the commission of an offence before it is committed and is far removed from an outburst of jealous rage or mental turmoil.  
(4) Premeditation can be established whether or not the intent of the offender is directed towards a specific person or merely a person he has met or encountered or whether the intent is dependant on something happening or on some condition. |
| 101 | In circumstances other than those in which the law requires a confiscation
order, the court may, on the conviction of a person for a felony or misdemeanor, order the confiscation of particular items that were acquired as a result of the offence and that were subsequently seized or that were intended to be used in the commission of the offence. This is without prejudice to the rights of others who have acted in good faith.

The court must, in all circumstances, order the confiscation of particular items that are used to create funds for the commission of an offence.

103 (1) No precautionary measure prescribed by law may be imposed on a person unless an act considered by law to be an offence has actually been committed and the condition of the offender is such that it is considered to constitute a danger to the public welfare. The condition of the offender constitutes a danger to the public welfare if it is clear from his past and present behavior and from the circumstances of the offence and the motive for committing the offence that there is a distinct possibility that he might commit a further offence.

No precautionary measures may be imposed except in such circumstances and under such conditions as are prescribed by law.

128 (1) Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honourable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse.

(2) The court must identify in its decision the excuse that discharges a person from a penalty.

129 An excuse that discharges a person from a penalty precludes the imposition on such person of a sentence to a primary, incidental or supplemental penalty.

130 If there exists a mitigating excuse for a felony for which the penalty is death, the penalty shall be reduced to life imprisonment or imprisonment for a term of years or detention for a period of not less than 1 year. If the penalty is life imprisonment or imprisonment for a term of years; the penalty shall be reduced to a period of detention of not less than 6 months unless otherwise stipulated by law.
| 156 | Any person who willfully commits an act with intent to violate the independence of the country or its unity or the security of its territory and that act, by its nature, leads to such violation is punishable by life imprisonment. |
| 190 | Any person who attempts to overthrow by force or with the use of violence the constitutionally appointed Republican regime or change the constitution of the State or the formation of the government is punishable by life imprisonment or imprisonment for a term of years. If the offence is committed by a group using bombs, dynamite or other explosives or firearms, the penalty will be death or life imprisonment. The penalty will be death if the offence results in any fatalities. |
| 191 | Any person who, with criminal intent, takes command of part of the armed forces or a military post or port or town without authorization from the government is punishable by death or life imprisonment. The same penalty applies to any person who remains in a position of military command in contravention of the orders given to him by the government and to any commander who maintains his units under arms or mobilized after the government has ordered their demobilization or disbandment. |
| 192 | (1) Any person who attempts to incite armed rebellion against the constitutionally appointed authorities or who is a member of a conspiracy or group aspiring to that end is punishable by imprisonment.  
(2) If such rebellion actually occurs, then the penalty is life imprisonment.  
(3) If such rebellion results in an armed confrontation with the armed forces of the State or in fatalities or if the offender is the commander in charge of an armed force, the penalty will be death. |
| 193 | Any person who is entitled to command units of the armed forces and who asks or instructs those units to obstruct the execution of the government's orders is punishable by life imprisonment or imprisonment for a term of years if he has criminal intent. If such an act does result in the obstruction of the government's orders, he is punishable by death or life imprisonment and any commander who obeys that person's orders is punishable by life imprisonment or imprisonment for a term of years. |
| 194 | Any person who organizes, directs or assumes command of an armed group that attacks any sector of the population or has, as its objective, the prevention of the rule of law, the invasion of territory or the appropriation by force of property belonging to the State or a group of people or who resists with the use of arms members of the public authorities is punishable by death. However, any person who joins such a group without participating in its formation or assuming control of it is punishable by life imprisonment or imprisonment for a term of years. |
| 195 | Any person who has as his objective incitement to civil war or sectarian fighting by arming the population or by encouraging one section of the population to arm itself against another or by urging them to fight is punishable by life imprisonment. The penalty will be death if the objective is realized. |
| 196 | Any person who attempts to occupy with the use of force or menaces any public property or building or building belonging to a government agency or departments or public utility or general establishment or to take control in any way of such property or prevent it from being used for the purpose for which it was intended.  
If the offence is committed by an armed group, the penalty will be life imprisonment or imprisonment for a term of years for its members or death or life imprisonment for the person who formed the group or assumed the leadership or command of that group. |
| 197 | (1) Any person who willfully destroys, demolishes, spoils or seriously damages a public building or property or property belonging to a government agency or department or public utility or general establishment or property belonging to associations considered by law to be for the public welfare or oil installation or any other state industrial installation or hydroelectric power station or means of communication or bridge or dam or public waterway or place set aside for public use or recreation or any public property of significant importance to the national economy with intent to overthrow the constitutionally appointed regime is punishable by death or life imprisonment.  
(2) The penalty is death if the offender uses explosives in the commission of the offence or if that offence leads to the death of any person found in such |
(3) The penalty is life imprisonment or imprisonment for a term of years if the offence is committed in time of civil unrest or riot or with intent to spread panic among the population or create anarchy but without the offender intending to overthrow the constitutionally appointed regime.

(4) The penalty is imprisonment for a term of years for any person who willfully contributes to the destruction of anything mentioned in Sub-Article 1 or to the obstruction of the normal course of its operation.

(5) The offender will in all cases be ordered to pay for such damage or destruction.

198

(1) The following persons are punishable by a term of imprisonment not exceeding 10 years:

(a) Any person who incites the commission of an offence stipulated in Articles 190 to 197 and nothing results from such incitement.

(b) Any person who invites the commission of such offences by providing material or financial assistance without intending to participate in their commission.

(2) If such incitement or encouragement is directed at a member of the armed forces, the penalty is life imprisonment.

333

Any public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by penal servitude. Torture shall include the use of force or menaces.

365

Any person who infringes or attempts to infringe with the use of force, violence, intimidation or menaces or by any other illegal means the right of a public official or agent to carry out his employment is punishable by detention plus a fine or by one of those penalties.

366

In circumstances other than those described in the preceding Article, any person who uses force, violence, intimidation, menaces or other illegal method
against the right of another to carry out his employment or the right to employ or refrain from employing a person is punishable by a period of detention not exceeding 1 year or by a fine not exceeding 100 dinars.

The provision of this Article also applies if any illegal method is used in respect of the spouse, ancestor or descendant of the victim of the offence.
### IRAQI CONSTITUTION / 2005

<table>
<thead>
<tr>
<th>Article</th>
<th>Content</th>
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<tbody>
<tr>
<td><strong>The Preamble</strong></td>
<td>....Accusations of being infidels, and terrorism did not stop us from marching forward to build a nation of law…</td>
</tr>
<tr>
<td><strong>7</strong> First:</td>
<td>Any entity or program that adopts, incites, facilitates, glorifies, promotes, or justifies racism or terrorism or accusations of being an infidel (takfir) or ethnic cleansing, especially the Saddamist Ba’ath in Iraq and its symbols, under any name whatsoever, shall be prohibited. Such entities may not be part of political pluralism in Iraq. This shall be regulated by law.</td>
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<td><strong>Second:</strong></td>
<td>The State shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, pathway, or field for terrorist activities.</td>
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<tr>
<td><strong>15</strong></td>
<td>Every individual has the right to enjoy life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority.</td>
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<tr>
<td><strong>19</strong> Second:</td>
<td>There is no crime or punishment except by law. The punishment shall only be for an act that the law considers a crime when perpetrated. A harsher punishment than the applicable punishment at the time of the offense may not be imposed.</td>
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<tr>
<td>Third:</td>
<td>Litigation shall be a protected and guaranteed right for all.</td>
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<td>Fourth:</td>
<td>The right to a defense shall be sacred and guaranteed in all phases of investigation and the trial.</td>
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<tr>
<td>Fifth:</td>
<td>The accused is innocent until proven guilty in a fair legal trial. The accused may not be tried for the same crime for a second time after acquittal unless new evidence is produced.</td>
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<tr>
<td>Sixth:</td>
<td>Every person shall have the right to be treated with justice in judicial and administrative proceedings.</td>
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<tr>
<td>Fourth:</td>
<td>Punishment shall be personal.</td>
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<tr>
<td>Eleventh:</td>
<td>The court shall appoint a lawyer at the expense of the state for an accused of a felony or misdemeanor who does not have a defense lawyer.</td>
</tr>
</tbody>
</table>
| Twelfth: | a. Unlawful detention shall be prohibited.  
b. Imprisonment or detention shall be prohibited in places not designed for these purposes, pursuant to prison laws covering health and social care, and subject to the authorities of the State. |
| Thirteenth: | The preliminary investigative documents shall be submitted to the competent judge in a period not to exceed twenty-four hours from the time of the arrest of the accused, which may be extended only once and for the same period. |
| Third: | Political asylum shall not be granted to a person accused of committing international or terrorist crimes or to any person who inflicted damage on Iraq. |
| The President of the Republic shall assume the following powers: |  |
| First: | To issue a special pardon on the recommendation of the Prime Minister, except for anything concerning a private claim and for those who have been convicted of committing international crimes, terrorism, or financial and administrative corruption. |
| Second: | The State shall guarantee compensation to the families of the martyrs and the injured as a result of terrorist acts. |
## CRIMINAL PROCEDURE CODE 23 OF 1971

<table>
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<tr>
<td>92</td>
<td>Arrest or apprehension of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law.</td>
</tr>
<tr>
<td>b.</td>
<td>If the person arrested is accused of an offence punishable by death the period stipulated in sub-paragraph A may be extended for as long as necessary for the investigation to proceed until the investigative judge or criminal court issues a decision on the case on completion of the preliminary or judicial investigation or the trial.</td>
</tr>
<tr>
<td>c.</td>
<td>The total period of detention should not exceed one quarter of the maximum permissible sentence for the offence with which the arrested person is charged and should not, in any case, exceed 6 months. If it is necessary to increase the period of detention to more than 6 months, the judge must submit the case to the Felony Court to seek permission for an appropriate extension, which must not itself exceed one quarter of maximum permissible sentence, or he should order his release, with or without bail, subject to paragraph b.</td>
</tr>
<tr>
<td>109</td>
<td>a. The investigative judge or [judicial] investigator must question the accused within 24 hours of his presentation, after proving his identity and informing him of the offence of which he is accused. His statements on this should be recorded, with a statement of evidence in his favour. The accused should be questioned again if necessary to establish the truth.</td>
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<td>b. Before questioning the accused the investigative judge must inform the accused that:</td>
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<td></td>
<td>i) He or she has the right to remain silent and no adverse inference may be drawn from the accused’s decision to exercise that right;</td>
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<td></td>
<td>ii) He or she has the right to be represented by an attorney, and if he or she is not able to afford representation, the court will provide an attorney at no expense to the accused;</td>
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</tbody>
</table>
|         | c. The investigative judge or [judicial] investigator must determine whether the accused desires to be represented by an attorney before questioning the accused. If the accused desires an attorney, the investigative judge or [judicial] investigator shall not question the accused until he or she has retained an
attorney or until an attorney has been appointed by the court.

| 127 | The use of any illegal method to influence the accused and extract an admission is not permitted. Mistreatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants are considered illegal methods. |
| 136 | b. With the exception of infractions punishable by the amended Traffic Code number 48 of 1971, and related statements, the transfer of the accused for trial in an offense committed during performance of an official duty, or as a consequence of performance of this duty is possible only with permission of the minister responsible, in accordance with the stipulations of other codes.  
   c. The transfer of the accused for trial before the criminal court is not permissible in a case of false testimony, false information or provision of false evidence except with the permission of the court in which the offence took place or where the official who witnessed the offence is employed. The decision in this case is subject to appeal at the Court of Cassation within 30 days, starting from the day following the issue of the decision, unless the decision has been issued by the Court of Cassation, in which case it is final. |
| 217 | a. The court has absolute authority in evaluating the accused’s admission and acting upon it whether it was given in front of the court, in front of the investigative judge, during other court hearing of the same case or in another case, even if the witness subsequently withdraws his statement. The court can accept his admission to the [judicial] investigator if there is enough evidence to convince it that the investigator did not have sufficient time to present the accused to the [investigative] judge so that his admission could be recorded.  
   b. Admissions may not accepted be if the conditions stipulated in A are not present. |
| 218 | It is stipulated that an admission must not have been extracted by coercion. |