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5.1.1. The Iraqi State

COMMON ANALYSIS
Last update: November 2024

The analysis below is primarily based on the following EUAA COI reports: Country Focus 2024, 1.1.3, 1.2, 1.3.1, 1.6; Security 2024, 1.4; Arab tribes, 1.1, 3.11, 5.2, Targeting 2022, 10.3. Country Guidance should not be referred to as source of COI.

The three executive, legislative, and judicial branches of the Iraqi federal government are designed to create a system of 'checks and balances'. However, in practice, as of 2018, the boundaries between the branches are 'blurred' [Actors of protection 2018, 3.] Iraq's legal system is pluralistic, encompassing the formal state judiciary, *Sharia* law, Islamic courts, and tribal law. This plurality creates challenges in uniformly applying the law. The tribal system plays a crucial role in local dispute resolution, filling gaps left by the weak state legal system. Sources describe Iraq's criminal justice as weak, citing several critical issues (e.g. limited resources, lack of independence and impartiality, corruption, political and sectarian interference). Nevertheless, when the interests of powerful groups are involved, state institutions have a limited capacity to provide protection or take action against them.

Therefore, **when assessing the availability of State protection, individual circumstances, such as home area, ethnicity, gender, social status, wealth, personal connections, actor of persecution and type of human rights violation must be taken into account**.

More specifically:

When the actor of persecution is the State, such as for some individuals falling under the profiles of 3.1. Persons perceived to be affiliated with ISIL, 3.4. Journalists and media workers, 3.3. Human rights and political opposition activists, protesters and other perceived critics of the authorities, it is presumed that **protection is not available**. The same applies when the actor of persecution is the PMF, and the group in question is considered a State actor.

In Baghdad and southern Iraq, the Iraqi State may, depending on the individual circumstances of the case, **meet the requirements of Article 7 QD/QR**. The Iraqi state, even at the time of ISIL resurgence, kept control of the southern governorates and these areas

remained little affected by the conflict with ISIL. Iraqi security forces, including the PMF, have a strong presence in these regions, however, they can be subordinated to the political interests of certain groups. Operations to combat criminality, especially drug trafficking, have also taken place. The efficiency of the police forces, nevertheless, has been affected by both a widespread corruption and the shift to a more paramilitary role at the expense of traditional policing duties. Baghdad, even though more affected by the ISIL conflict than the southern governorates, also remained under the control of the Iraqi State. In 2018, police and military units in Baghdad were described as having the ability to respond to security incidents, terrorist attacks and criminal activities, although the capabilities and actual response of the authorities varied considerably due to lack resources, training, and forensic capacity. More recent reports indicate a strong presence of ISF, with Iran-backed PMF becoming increasingly more visible in the capital. Kata'ib Hezbollah (KH) was strengthening its control over part of the capital's territory by establishing checkpoints in different areas of Baghdad. US forces were also present in Baghdad, while political violence and civil unrest were 'frequent' in the capital.

In most other parts of northern and central Iraq, the capacity of the State still remains limited and the criteria under Article 7 QD/QR would generally not be met. Security conditions in areas liberated from ISIL significantly improved, prompting plans to transfer the responsibility for security in the city centres to the Ministry of Interior; however, the conflict has persisted. The PMF have dominated the security sector in the liberated governorates of Ninewa, Anbar and Salah al-din, where they have also sought to profit economically. Furthermore, some security gaps still exist, mainly in rural and desert regions and the situation in these governorates cannot be considered as fully stabilised.

The situation of the **disputed territories** remained unsolved, therefore **the criteria under Article 7 QD/QR would generally not be met** in these areas.

For **Shia Arabs in Baghdad and southern Iraq, the Iraqi State is in general considered able and willing to provide protection** that meets the requirements of Article 7 QD/QR, taking also into account that they form the majority in these areas. This is without prejudice to cases where State protection is considered not available due to individual circumstances.

Sunni Arabs were particularly subjected to abuses by state forces, including PMF. As indicated under 3.2. Sunni Arabs, it seems that persecution of Sunni Arabs would mostly derive from their potential perceived affiliation with ISIL. Therefore, **the availability of state protection is considered limited, but may in individual cases be available**.

State protection is generally not considered available for:

- **Members of minority religions and ethnicities:** Notwithstanding the recognition of freedom of religion and belief enshrined in the Iraqi Constitution, the legislative framework and customs reportedly favour the Muslim majority. Members of religious minority groups

continue to experience social, political and economic disenfranchisement, along with prejudice and restrictions on their freedom of religion or belief. According to the United States Commission on International Religious Freedom, the PMF are considered one of the most 'widespread and politically empowered impediments' to religious freedom in Iraq. See also 3.10. Religious and ethnic minorities.

- **Individuals considered to have committed blasphemy and/or apostasy, including converts and atheists**: Atheists have been prosecuted for blasphemy and other related charges however, blasphemy laws are rarely enforced. Apostasy is adjudicated under *Sharia* law. As reported in 2021, atheists are considered apostates and blasphemers and, as a result, face repression across Iraq, in a climate of impunity or collusion in violence by state actors.

- **Palestinians**: Most Palestinian refugees living in Iraq are Sunni Muslim and are therefore viewed with suspicion by Iraq's Shia Muslims. Palestinians in Iraq reportedly suffered persecution by coalition forces, Shia militant groups and Iraqi security forces [Palestinians in Iraq 2021]. See also 3.10.5. Palestinians.

- **Persons with diverse SOGIESC**: In April 2024 the Iraqi Parliament passed a law criminalising consensual same-sex relations. See also 3.7. Persons with diverse SOGIESC.

- **Victims of domestic or honour-related violence and gender-based violence, including harmful traditional practices**: The Constitution prohibits all forms of violence and abuse in the family. Nevertheless, effective state protection remained severely limited, including with regards to access to shelter and justice. Some women survivors of trafficking were tried and convicted for prostitution. Moreover, domestic violence or honour killings are rarely punished in Iraq and cases of sexual violence are hardly reported to the police. Perpetrators of gender-based violence are seldom prosecuted and lawyers assisting women victims of domestic violence are reported to be at risk of harassment. There is no law specifically criminalising spousal rape. In Iraq, tribal actors engaging in honour-based violence often operate without consequences, not only when it comes to women's issues, but in general. Political connections can grant impunity to those involved in tribal or clan violence. See also 3.11. Women and girls.

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