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Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), International-Lawyers.Org, Union of Arab Jurists, United Towns Agency for North-South Cooperation, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[04 June 2019]

* Issued as received, in the language(s) of submission only.



The Rule of Law in Iraq

Introduction

The Rule of Law, as defined by the UN, refers to a “principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws”. It necessitates that laws be “consistent with international human rights norms and standards”, and that measures be taken to ensure, among other things, equality before and accountability to the law, avoidance of arbitrariness, and procedural and legal transparency.

Given this definition, in Iraq, there are systematic violations of the principles of rule of law at every level of governance: the legislative, executive, and judiciary. Not only are there arbitrary deviations from these principles by the government and associated forces, but also, laws fall far short of the standards set by international human rights and humanitarian law.

Legislative level

The Iraqi Constitution mandates that the Council of Representatives, Iraq’s primary legislative body, be comprised of elected representatives who meet age, education, and criminal background-related criteria, but nothing along ethnic or sectarian lines. However, in practice, most Iraqi governments formed since the 2003 invasion have followed a system known as the *muhasasa ta’ifia*, an ethno-sectarian quota system. Positions have been allotted and elections conducted on the basis of identity, rather than merit or technocratic prowess. In this process, minorities are inevitably underrepresented, the most prominent example being Sunnis.

In itself, this is a discriminatory practice; it puts some sections of society at a legislative disadvantage due to factors beyond their control. Discrimination is explicitly outlawed by the Constitution. Additionally, the imposition of such sectarian criteria is extrajudicial, warping or circumventing the law itself, and in this manner placing advantaged sections above it.

This aside, some laws that have been created by the Council of Representatives are deeply concerning in their ambiguity and deviance from international human rights standards. A long-standing example is the Anti-Terrorism Law of 2005, which legalizes the use of the death penalty on perpetrators of terrorism. However, as the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions found on her mission to Iraq in 2017, this law is vague and broad, allowing the liberal use of the death penalty, and using a deeply ambiguous definition of terrorism (relying on vague terms such as “terrorist intentions”), which is not in line with the International Convention for the Suppression of the Financing of Terrorism (which Iraq ratified in 2012).¹ This stands in violation of the definition set out by the UN for the rule of law, as this law is not in accordance with international standards. Furthermore, its practice is concerning and often denies fair legal trial to people, regardless of proven affiliation to terrorist organizations or lack thereof.

Executive level

One of the most urgent problems Iraq faces is rampant corruption. It was admitted by a member of the Iraqi Parliament that millions are given and received in bribes behind the scenes at every level of Iraqi governance.

The year 2019 saw the formation of a Supreme Anti-Corruption Council to take preventive measures to curb corruption. However, Moussa Faraj, the former chief of Iraq’s Commission on Public Integrity, revealed to an Iraqi publication that corruption starts at Iraq’s executive branch, and that this Anti-Corruption commission is extrajudicial and will not put an end to corruption. He said that MPs and government officials often intervened in and inhibited the

¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, UN Doc A/HRC/38/44/Add.1
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/44/Add.1, 20 June 2018

work of independent bodies that stood in the way of their personal gain. This is seen through bribes, blackmail, blocking litigation, the incorrect placement of independent bodies under ministerial authority instead of parliamentary, etc. This is a flagrant violation of the rule of law – a clear demonstration that MPs, lawmakers, and decision-makers at every level engage in practices that seemingly place them above the law.

A second concerning aspect has to do with the Iraqi government's support for armed militias (Hashd al-Sha'abi, or the Popular Mobilization Forces (PMF)). This alliance was initially cemented during the battle against ISIL, but continued even in the wake of its defeat. In fact, it has evolved and reorganized to give militia members salaries and treatment equivalent to that of the Iraqi military.

Not only is the continued alliance with these militias concerning, but their unregulated activities in the various provinces of Iraq are rife with flagrant human rights violations and corruption. A common tactic employed by them is to focus on ISIL-liberated areas with fragile security, deceiving the people there to believe that their presence is necessary for protection, and then proceeding to extort their money. Militia members reportedly blackmail residents into compliance, making many of them fear for their lives and livelihoods. They also set up commercial offices and take over public services by exerting pressure on authorities to award these contracts to them. The sinking of a ferry crossing the Tigris in Mosul on 21 March 2019 (resulting in ~100 casualties) was linked to corrupt militia offices that don't meet minimum safety standards to run such operations.

This involvement is concerning not only in light of the militias being placed above the law by brute force, but the fact that this comes at the expense of Iraqi civilians. Yet the government stays involved with these militias. Another concerning aspect is the backing and training of these militias by Iran, raising questions about whose law these independent militias are truly governed by. To paraphrase a senior Iraqi intelligence official, the security provided by these militias comes at the cost of rule of law in Iraq.

Judicial level

Among other things, at the judicial level, there is a significant gap between legal provisions and their practice in real life. For instance, the Iraqi Constitution guarantees the right to life in Article 15, to legal representation in all stages of trial in Article 19 (4), and to be protected against torture, forced extraction of confessions under duress, and coercion of any kind, under Article 37. However, respect for these provisions is rarely demonstrated in actual trial.

Reports show grave violations of these rights as well as the rights provided by international humanitarian and human rights law between 2014-17 during the battles against ISIL in Mosul, Tikrit, Jurf al-Sakhar, al-Dour, Ramadi and Fallujah by the government and PMF. These include interceptions, enforced disappearances, and the killing of civilians, detainees, and children. However, according to the Special Rapporteur report above, there is a lack of clarity on the effectiveness of authorities at holding individual PMF members to account for these violations. Investigations have not been made public, and the families of victims have received no information or compensation. Meanwhile, in other parts of the country, as shown above, the militias continue to wield extrajudicial power and be employed by the government in security positions, including at Internally Displaced Persons (IDP) camps and other sensitive areas.

Extensive documentation also exists of the complete lack of fair legal process in trials of people with alleged terrorist involvement, including extrajudicial practices like politician involvement in the judicial system and confessions being extracted from prisoners who are forced to provide their thumbprint blindfolded or on blank paper. Even when the accused pleads innocent, they are more often than not pronounced guilty by a panel of judges paying scant attention. In fact, a high-profile judge in the Saddam Hussein trials, Munir Haddad, said, "It's not possible to argue with the judge, because if you do he'll just take it out on your client. As a lawyer, you just have to accept the humiliation."

It's possible that these harsh judgements were made to placate public fear in a post-ISIL world, or to instill enough fear to quell any remote possibility of an ISIL-like repeat.

However, when such PR comes at the cost of human lives without proof of their guilt, due legal process, and respect for their human rights – especially in a country whose Constitution deems it democratic and guarantees these rights to its citizens – the compromises to the rule of law set an even more dangerous precedent.

Conclusion & Recommendations

In the current state of affairs in Iraq, the rule of law is a mere idea that enjoys no respect in actual practice. This disrespect does not just undermine Iraq's commitment to democratic principles, legal guarantees, and international law, but to guaranteeing the safety of its own people.

We recommend that:

- The United Nations should urge the Iraqi government to ensure the right of fair trial and due legal process to all prisoners
- The international community urge the Iraqi government to abolish the death penalty
- The government should ensure effective measures against all types of corruption.
- The United Nations to urge the Iraqi government to hold al Hashd al-Sha'abi militias and other government forces accountable for their crimes.

Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.