

# Understanding The Enactment of Anti-Terrorism Legislation in Iraq Regarding ISIS Crimes

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## Abstract

This paper examines Iraq's Anti-Terrorism Law and its implications in the fight against ISIS. The paper examines the law's brief legislative framework and discusses its effectiveness in combating terrorism. Concerns have been raised about the law's potential impact on constitutionally protected freedoms. Furthermore, the paper emphasizes the issue of duplicate penalties, as many of the terrorist acts outlined in the law are like traditional criminal offences already covered by the Iraqi Penal Code. Inconsistencies and imprecision in the legislative phrasing of state security violations are also discussed in the law. Despite the government's stated intention to combat terrorism, the paper raises concern about the effectiveness of these efforts and the need for more comprehensive and effective legal measures. And how the Iraqi Anti-Terrorism Law No.13 of 2005 should be amended or revised to include a clause emphasizing the importance of upholding human rights and established a hierarchical framework for penalties.

**Key Words:** ISIS, Anti-terrorism, Iraq, Law, penal code, crime



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## Introduction

Terrorism is a global menace that transcends religious, ideological, and intellectual boundaries, impeding the progress and development of nations. It represents one of the most significant challenges facing the world today, with acts of terrorism spreading across all countries. The pervasiveness of terrorism has become an obsession worldwide, instilling fear, panic, and uncertainty in the hearts of individuals. It disrupts security, creates instability, and undermines social, economic, and political realms. The repercussions are far-reaching, hindering energies, stifling businesses, and deterring national and foreign investments, thereby impeding development and hampering citizens' aspirations for creativity and progress. Terrorism now poses a greater threat than in the past, with an alarming increase in the frequency, scope, and

sophistication of terrorist incidents. Modern technological advancements have given rise to new forms of terrorism, such as remote-controlled explosives, cyber-attacks on information systems, and computer virus transmission. As a result, terrorism has emerged as one of the most significant and dangerous phenomena, negatively impacting societies around the world, particularly in terms of human toll. In modern times, the severity of this global phenomenon has increased, affecting all aspects of people's lives. Considering these challenges, enacting anti-terrorism legislation is paramount in Iraq. This article aims to provide a comprehensive understanding of the legal framework surrounding anti-terrorism measures in the country. It will delve into the key statutes, such as the Anti-Terrorism Law NO.13 of the year (2005), which form the basis of Iraq's approach to combating terrorism and ISIS. The analysis will shed light on this provision for prosecuting and sentencing individuals involved in terrorist activities in Iraq. By examining the legal landscape surrounding anti-terrorism legislation in Iraq, this article contributes to the existing body of knowledge, offering valuable insights for legal experts, policymakers, and practitioners. It aims to deepen understanding of the measures taken by the Iraqi government to address the threat of terrorism.

The paper problem is based on Iraqi Anti-Terrorism Law No. 13 of (2005), which requires a thorough examination and evaluation due to the formidable challenges posed by the emergence of ISIS and its activities since 2014. It has become clear that existing legislation does not adequately address ISIS's multifaceted dynamics and sophisticated tactics. As a result, a comprehensive reassessment of the Anti-Terrorism Law is required to effectively respond to the evolving threat landscape, ensure robust counterterrorism measures, and protect our nation's integrity and security.

## ISIS: Where it All Began

The emergence of the Islamic State of Iraq and Syria (ISIS) can be attributed to unresolved political and religious conflicts in the Middle East. A report by the United Nations Secretary-General (UNSG) highlights how the protracted conflicts in Iraq and Syria contributed to the rise of ISIS by creating political instability, weakening state institutions, and impeding effective control of territories and borders by the respective countries. Notably, Max Fisher identifies one of the primary political factors behind ISIS's emergence as the policies of former Iraqi Prime Minister Nouri al-Maliki, who made a series of detrimental decisions such as fostering corruption and authoritarianism while suppressing political opposition. (Fisher, 2015)

However, it is crucial to acknowledge that the existence of ISIS in Iraq cannot be solely attributed to the Maliki regime. As pointed out by Heller, the political atmosphere in Iraq is problematic, exerting a negative impact at all levels within the country. The political instability in Iraq alone does not account for the rise of ISIS. The political landscape in Syria, marked by the Syrian Civil War, also played a significant role (Heller, 2006). This conflict provided an environment in which ISIS could exploit the situation and seize control over extensive areas spanning from the eastern bank of Syria to western Iraq ((A/HRC/27/CRP.3), 2014).

The statement that "The Islamic State of Iraq and Syria (ISIS) arose from the ashes of unresolved religious conflicts in the Middle East" is a complex assertion. To delve into its origins, it is essential to consider the role of Ayman al-Zarqawi, the leader of Al Qaeda in Iraq

(AQI) (LoGaglio, 2014). Al-Zarqawi's tensions with Bin Laden, the founder of Al Qaeda, remained unresolved, and this ideological gap between them played out on the battlefield. Al-Zarqawi believed that purifying the global Islamic community (umma) was the only way to save it from internal threats. This disparity between Bin Laden and Al-Zarqawi ultimately paved the way for the establishment of ISIS (Fishman, 2011). Nevertheless, on June 7, 2006, al-Zarqawi was killed in an airstrike north of Baghdad. Following his demise, Muharib al-Juburi (The Department of Defense), the new information minister of the Islamic State of Iraq (ISI), issued a statement titled "Announcing the Establishment of the Islamic State of Iraq" on October 15. On November 10, Abu Hamza al-Muhajir, the successor to al-Zarqawi within AQI, pledged allegiance (baya) to Abu Omar al-Baghdadi, the newly appointed leader of ISI (Barrett, 2017).

## **The Motives Behind Joining ISIS and The Aims of The Organization**

ISIS employed effective propaganda techniques to reach a wide range of individuals across the globe, particularly targeting vulnerable individuals and those with mental health issues. Al-Baghdadi's call attracted a substantial number of people, leading to the commencement of ISIS's heinous crimes in Iraq. Extensive research conducted by Barrett reveals that one of the most significant phenomena presented by the terrorist organization ISIS to the international community is the recruitment of foreign fighters. Remarkably, ISIS successfully recruited more than 40,000 individuals from over 130 different countries. In addition to foreign fighters (Barrett, 2017). Bunzel's report highlights that a most of the fighters originate from Iraq and Syria. This recruitment success can be attributed to ISIS's territorial occupation in both Iraq and Syria, which transformed the organization into not just a jihadist group, but also a self-proclaimed caliphate with its governing authority (Bunzel, 2015).

ISIS outperformed other jihadist groups in terms of recruiting fighters and foreign recruits. By the end of (2016), approximately 30,000 fighters had joined ISIS in Iraq and Syria, while a similar number pledged their commitment to engage in terrorist activities in their home nations (Belkin, P., Blanchard, C. M., Humud, C. E., & Mix, D. E2015 ,). Perein argues that Western Muslim migrants joining ISIS were motivated by various factors, including religious, ideological, political, and personal considerations (Perešin, 2015). Victoroff emphasizes the importance of understanding the unique psychological experiences and traits that drive each terrorist. Furthermore (Victoroff, 2005), Juergensmeyer suggests that the desire to participate in a large-scale conflict, akin to a video game, serves as a significant motivator for some individuals. He also claims that certain individuals acted out of piety and a sense of historical significance, believing that they were sacrificing their lives for a cause transcendently meaningful to Islamic civilization (Juergensmeyer, 2018).

Under the leadership of Abu Bakr al-Baghdadi, ISIS urged Muslims worldwide to fulfil their religious duty and relocate to the newly formed "Caliphate" to contribute to its infrastructure, economy, and military for jihad (Abu Bakr al-Baghdadi urges Muslims to make hijrah to the "Islamic state, 2014). It is worth noting that the study referred to these followers as "so-called Muslims" due to the atrocities they committed against Iraqis and the rest of the world, including acts of killing, looting, rape, kidnapping, displacement, and other crimes. Wood's 2015 article claims that the movement aimed to faithfully recreate the early days of

Islam and its norms of warfare (Wood, 2015). However, Suleiman and Akhmetova present a contrasting view, suggesting that jihadist groups, despite their ideological façade, are fundamentally driven by violence. They interpret various texts to support their distorted conclusions while masking their deceptive interpretations (Omar Suleiman, Elmira Akhmetova 2020, ). On the other hand, Reza Aslan argues against a direct causal relationship between religion and violence, asserting that the actions of Islamic extremists cannot be solely attributed to their faith in Islam (Aslan, 2014). The research further supports the notion that a person's inherent personality influences their approach to the religion they practice—if someone is inherently violent, they will exhibit violence regardless of their religious affiliation, while those inclined toward peace will manifest peaceful behavior within their religious framework.

## ISIS's Characteristics

ISIS presented an entirely novel form of terrorism that the international community was not prepared to deal with, which resulted in many difficulties for Iraq, Syria, and the rest of the world. ISIS has been successful in expanding its influence in war zones by taking advantage of weak governments and ongoing crises, as stated by Choi, who remarked on this topic (Choi, 2016).

One notable characteristic of ISIS was its swift and widespread expansion of territory within Iraq, which garnered significant attention from numerous news articles. According to reports from the United Nations Assistance Mission for Iraq (UNAMI), during the initial two weeks of January 2014, ISIS fighters surrounded Ramadi and gained control over certain areas of Fallujah, located 69 kilometers west of Baghdad. They also established partial control over the main road leading to Baghdad (UNAMI, 2014). Subsequently, Culbertson and Robinson reported that in April 2014, ISIS extended its operations to other regions within the Mosul governorate, launching an attack on the Euphrates River dam. On June 5th, ISIS simultaneously initiated assaults in the governorates of Salah id-Din, Mosul, and Diyala. By June 8th, they advanced east of Mosul, capturing territories in Salah id-Din and Kirkuk. Finally, on June 11th, they reached Baiji, Iraq's largest oil refinery (Linda Robinson, Shelly Culbertson 2017, ).

This expansion, coupled with other factors, led ISIS to officially declare the establishment of an Islamic Caliphate on July 1, 2014, as noted by Tønnessen (Tønnessen, 2019). Under the leadership of Abu Bakr al-Baghdadi, the self-proclaimed Caliph, ISIS called upon Muslims worldwide to pledge allegiance and protect the newly formed Caliphate. By late 2014, the group controlled over 100,000 square kilometers of land, representing its peak dominance, according to Dobbins and others (Seth G. Jones, James Dobbins, Daniel Byman, Christopher S. Chivvis, Ben Connable, Jeffrey Martini, Eric Robinson, Nathan Chandler, 2017). The territorial acquisition by ISIS also provided them with significant financial resources. Swanson highlights that ISIS possessed internal financial systems and implemented operational organizational architecture that proved highly effective (Swanson 2015, ). In 2014, ISIS managed to steal up to \$400 million from the Iraqi Central Bank, while also gaining control over more than 80% of Syria's oil infrastructure, generating approximately \$500 million in revenue in 2015. These revenues supplemented ISIS's overall income, which amounted to approximately \$1 billion (Council of Europe, 2017). Additionally, the territories under ISIS

control housed a population of at least 10 million people (BBC, 2018) as stated by Boll. By establishing a caliphate, ISIS maintained control over land, population, and resources within their dominion (Alexandra L. Boll, 2016). This rapid expansion posed significant challenges for the Iraqi government. The large number of ISIS members, both Iraqi and foreign, necessitated extensive legal proceedings. Dealing with this influx of cases strained the Iraqi criminal justice system.

## **Atrocities Carried Out by ISIS**

During the establishment of their self-proclaimed entity, members of ISIS considered themselves a state, albeit not following international standards. However, their reign was marked by numerous atrocities committed in Iraq, including acts of genocide, war crimes, crimes against humanity, and other heinous acts. Disturbingly, women and girls as young as nine years old were subjected to being sold in slave markets or given as gifts to combatants (United Nations Human Rights Council [UNHRC], 2018). Additionally, ISIS was responsible for causing massive displacement among civilians, forcing over 3.2 million people to flee their homes between January 2014 and October 2016 (International Organization for Migration [IOM], 2016).

More recently, the United Nations Assistance Mission for Iraq (UNAMI) documented 202 mass grave sites after liberating areas previously seized by ISIS. These graves contained the remains of victims, including women, children, the elderly, individuals with disabilities, as well as members and former members of the Iraqi armed forces, police, and foreign workers (United Nations Assistance Mission for Iraq [UNAMI], 2018). Disturbing reports emerged during the battle of Mosul, suggesting that ISIS fighters targeted and killed civilians who refused to obey ISIS orders or had prior service in Iraqi security forces. Shockingly, at least 7,000 families were kidnapped, with 232 civilians reportedly being executed in a single day (United Nations Office of the High Commissioner for Human Rights [OHCHR], 2016). In September 2014, ISIS extremists further demonstrated their disregard for cultural heritage by destroying an Armenian church in Dayr Az-Zawr. Moreover, they conducted a campaign of genocide against the Yazidi people, committing grave violations of international law (United Nations Office of the High Commissioner for Human Rights [OHCHR], 2016). These crimes, among others, demand attention and accountability. According to this study, the most appropriate course of action to achieve justice and provide satisfaction for the victims of ISIS is to ensure that the perpetrators are brought to justice. Such justice must be pursued in a manner that adheres to humanitarian principles and international standards.

## **Government Responses to Terrorism**

The Iraqi constitution of 2005 is one of the first constitutions to address the issue of terrorism, compared to similar constitutions in Iraq since the establishment of the Iraqi state in 1921, where the word terrorism was mentioned multiple times, including "...Takfir and terrorism did not prevent us from moving forward. Forward to build a state of law" and repeated "...we, the people of Iraq, who have just emerged from the ashes and are confidently looking forward to

their future through a republican, federal, democratic, pluralistic system, have resolved, with our men and women, to respect the rules of law, to achieve justice and equality, and to defuse terrorism." Article 7 of the constitution on the other hand, also prohibits political and non-political entities from promoting, paving the way for, or inciting terrorism. Article 72 of the Constitution similarly prohibited general or special pardons for terrorist crimes.

The issue of terrorism and the way to deal with it resonated widely with the Iraqi legislature, especially after the growth of terrorist operations in Iraq after 2003, which prompted the legislator to address the issue of terrorism through the issuance of Anti-Terrorism Law No. 13 of 2005. However, before 2005, the Iraqi Criminal Law No. 111 of 1969 was the ruling and the decisive factor in dealing with terrorist crimes, as this law dealt with this crime in Article 21 thereof, and stated, "A political crime is a crime that is committed with a political motive or falls on public or individual political rights." Apart from that, the crime is considered ordinary, however, the following crimes are not considered political if they were committed for a political motive (crimes committed with a sordid selfish motive, crimes against the external security of the state, premeditated and attempted murder, the crime of attacking the life of the head of state, terrorist crimes, Crimes against honor such as theft, embezzlement, forgery, breach of trust, fraud, bribery, and indecent assault).

In 2004, by order of the Coalition Authority No. 13 for the year (2004), the Central Criminal Court (CCC) in Iraq was established, which has its headquarters in Baghdad and exercises its jurisdiction, resources, and sources in the following cases: terrorism, organized crime, and government corruption. This court was established simultaneously with the issuance of Anti-Terrorism Law No. 13 of 2005. There is no doubt that the governments that followed 2003 tended to combat terrorism. However, whether these governments have successfully combatted terrorism is another question.

## **The Anti-Terrorism Law Dilemmas in Battling ISIS**

The Iraqi Anti-Terrorism Law is one of the most concise legislative enactments within the jurisdiction of Iraq, and possibly the Arab world. This statutory framework consists of only six articles. Article one defines a terrorist act explicitly, while articles two and three define the parameters that encompass both terrorist offenses and offenses against state security. The provisions of article four that follow outline the prescribed penalties, which then give way to the contents of article five, which elucidate circumstances warranting exemption from punishment and the availability of mitigating excuses. Finally, the sixth article brings the legislative corporation close with final provisions.

### **A Broad Definition of Terrorism**

In the realm of criminal legislation, there is a discernible trend in various nations towards addressing the issue of terrorism through the establishment of specific acts that constitute terrorist offenses or by addressing and deterring the severe consequences arising from such acts. Rather than providing an explicit definition of a terrorist act, legislators frequently focus on

enumerating specific actions that qualify as terrorist crimes. This approach enables the legal framework to effectively combat terrorism and mitigate its potential impact (Shabi, 2005).

Terrorism was defined in the Iraqi Anti-terrorism law as “every criminal act committed by an individual or an organized group that targets an individual or group of individuals, groups, or official or unofficial institutions, causing damage to public or private property, understand the security situation, stability, and national unity, or introducing terror or Fear and panic among people or creating chaos to achieve terrorist goals” (The Anti-Terrorism Law No. 13, 2005). Upon careful analysis of the foregoing definition, it becomes evident that the Iraqi Anti-Terrorism Law adopts an expansive scope in its delineation of terrorism, encompassing a multitude of actions that potentially qualify as constituting a terrorist act. By way of illustration, the exercise of individuals' political rights, as expressly guaranteed by the Iraqi constitution, could be readily subjected to criminalization and deemed tantamount to acts of terrorism. This portends significant jeopardy to the constitutionally safeguarded freedom of expression. This interpretation of the definition persisted throughout the rest of the law.

### **Duplicate Penalties!**

Article (2) of the Anti-Terrorism Law includes a comprehensive exposition of various terrorist acts within its purview. Notably, these acts closely resemble traditional criminal patterns outlined in the Iraqi Penal Code. Nonetheless, their inclusion within the framework of the Anti-Terrorism Law automatically classifies them as terrorist acts.

Concerning the third article, it is noted that it elaborates on five instances of state security violations. A careful examination of the title and content of the article reveals glaring inconsistencies and imprecision in legislative phrasing. This observation is bolstered by the fact that the state security crimes listed in Article Three are strikingly like those described in Articles (156-222) of the Iraqi Penal Code. As a result, the inconsistency manifests itself, with a single offense receiving multiple legal designations at the same time.

### **Punitive Framework Challenges**

Article 4 of the Anti-Terrorism Law has garnered substantial controversy and serves as a focal point for this study discussion. This particular provision entails the delineation of penalties associated with acts of terrorism. Within the confines of this article, two distinct penalties are set forth, namely death and life imprisonment. The inclusion of these severe punishments about terrorist activities has contributed significantly to the ongoing debate surrounding the Anti-Terrorism Law.

Article 4 of the Anti-Terrorism Law is structured in a manner that classifies the offense of terrorism as a singular crime, devoid of multiple legal descriptions. Consequently, the penalty prescribed for this offense remains unvarying, namely death, irrespective of whether the individuals involved are primary perpetrators or accomplices. This interpretation pertains specifically to the initial paragraph of Article 4.

The subsequent paragraph within the same article, it establishes the penalty of life and imprisonment for specific acts delineated in the law, namely the concealment of a terrorist act

or the harboring of an individual who has committed such an act. It is noteworthy that the penalties imposed by the law should ideally correspond to the gravity of the offense committed. While terrorist crimes may not invariably surpass ordinary crimes in severity, instances such as the smuggling of Iraqi archaeological property in Mosul or the illegal sale of oil by ISIS do constitute grave offenses. Nevertheless, these acts do not inherently pose greater peril than intentional homicide, as stipulated in the Iraqi Penal Code. Consequently, it is untenable for both crimes to carry the death penalty. A hierarchical structure must be established to govern the penalties assigned to terrorist offenses, with the death penalty occupying the pinnacle of the hierarchy, while the remaining penalties exhibit gradation commensurate with the severity of the terrorist acts perpetrated.

### **Excuses and Exceptions Under the Law**

This law exempts anyone who informs the competent authorities before the crime is discovered or when planning it and helps arrest the perpetrators or prevent the act. If a person voluntarily provides information to the competent authorities after the crime is committed or discovered by the authorities and before his arrest, and the information leads to the arrest of the other shareholders, the penalty is imprisonment (The Anti-Terrorism Law No. 13, 2005, Articles 6.1–6.2). The Iraqi legislator can be deemed successful in this regard, as they have aptly fostered the dissemination of pre-emptive intelligence concerning potential news-related operations, with the overarching aim of averting their actualization.

### **Findings**

The Iraqi Anti-Terrorism Law No. 13, enacted in 2005, can be regarded as groundbreaking legislation within the context of Iraq and the broader Arab region. However, considering the subsequent developments witnessed within the Iraqi landscape, including the emergence of ISIS and their commission of atrocious crimes, the Iraqi legislator has been confronted with new and pressing challenges that necessitate adaptation. The following findings have been identified:

1. The Anti-Terrorism Law defines terrorism broadly.
2. The prescribed penalties articulated within the law exhibit a lack of practicality and fail to align with realistic considerations.
3. Significantly, the law lacks explicit criminal procedures about terrorist offenses, particularly regarding arrest, investigation, and trial. These procedural aspects are not specifically addressed within the purview of the Anti-Terrorism Law.



## Recommendations

Based on this study, the following recommendations have been made:

1. It is advisable to consider amending or revising the existing anti-terrorism law, either through a complete overhaul or by incorporating its provisions into the Unified and Amended Penal Code. Such a revision should be undertaken with due consideration to the observations and recommendations outlined in the study.
2. The foreground of the Anti-Terrorism Law should include a specific clause emphasizing the importance of upholding human rights and fundamental freedoms. This provision should explicitly safeguard against any infringement upon the rights and freedoms enshrined in the Constitution, ensuring that the law is not misused for harassment.
3. It is imperative to ensure that the anti-terrorism law aligns with the regional and international agreements that Iraq has ratified. Consistency with these agreements will bolster the credibility and effectiveness of the law in combating terrorism.
4. The establishment of a hierarchical framework for penalties pertaining to terrorist crimes is crucial. At the apex of this hierarchy should be the most severe penalties, namely death and life imprisonment, followed by other punitive measures associated with non-lethal terrorist offenses.
5. To account for the gravity of these crimes, the introduction of explicit criminal procedures concerning arrest, investigation, and trial phases is imperative. Such procedures should acknowledge the distinctive nature of terrorist offenses and ensure they are not treated in the same manner as ordinary crimes.

These recommendations are intended to address the identified flaws and improve the effectiveness, compliance, and fairness of the anti-terrorism legal framework in Iraq.

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