

The Limits of Punishment

Transitional Justice and Violent Extremism

IRAQ CASE STUDY



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After the
Islamic State:
Balancing
Accountability
and Reconciliation
in Iraq

About the Author

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COVER IMAGE

IRAQ. Baghdad. 2016. The aftermath of an ISIS bombing in the predominantly Shia neighborhood of Karada in central Baghdad. © Paolo Pellegrin/Magnum Photos with support from the Pulitzer center.

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Introduction

The Islamic State (hereafter “IS”) is a Sunni jihadist group that captured and held substantial territory in Iraq and Syria starting in 2013 in an effort to establish a state-like “caliphate” purportedly based on the model of Islamic governance first laid out by the Prophet in the sixth century.¹ Unlike some other armed groups that are concerned primarily with violence and warfare, IS’s ideology revolves around statecraft and governance of civilians.² At the height of its expansion in late 2014, IS controlled – and governed, to varying extents – 20 major Iraqi cities with a total civilian population greater than 5 million.³ In these cities, IS not only recruited and trained fighters, but also operated service-providing and humanitarian institutions such as schools, hospitals, and municipal departments. Employees of IS’s civilian bureaucracy faced pressure to swear allegiance to the group and were functionally part of its workforce, but generally did not carry weapons or otherwise perform military functions. Many civilian residents of IS-controlled territory and relatives of IS members had no choice but to cooperate with the group because opposition was equated with “apostasy” and therefore punishable by death. When IS retreated from Iraqi territory in 2017, it left behind a population that Iraqi authorities now overwhelmingly regard as complicit in terrorism. The Iraqi government is currently facing the monumental challenge of reintegrating this population into Iraqi society, but in doing so, has taken a heavy-handed approach that fails to differentiate between voluntary and involuntary cooperation with IS, and between more serious crimes and lesser offenses. This approach, which is widely perceived as collective punishment of Sunnis, appears to be generating new grievances that could fuel the emergence of what many analysts predict will be an “IS 2.0.”

The Iraqi government has detained more than 19,000 people on terrorism-related charges – mostly related to IS – and convicted at least 8,861 since 2013. Of these, at least 3,130 have been sentenced to death on terrorism-related charges and at least 250 have already been executed.⁴ Although international law prohibits capital punishment of juveniles, Iraq’s Prime Minister has indicated that detainees as young as 16 may be eligible for capital punishment.⁵ The rapid pace of these trials – some as brief as 10 minutes with a conviction rate of around 98 percent⁶ – has raised concerns about due process. In addition to the punitive counter-terrorism policies carried out by uniformed Iraqi and Kurdistan Regional Government (KRG) authorities,⁷ civilians are vulnerable to extra-judicial punishments by private citizens and militias. Revenge killings of suspected IS affiliates or sympathisers are widespread,⁸ sometimes perpetrated by individuals who were personally victimised by IS.

The retaking of Mosul in 2017 and other previously IS-controlled cities raises several difficult questions. How can Iraqi and KRG authorities accurately and fairly differentiate between IS affiliates who pose a genuine threat to national security and civilians who merely lived and worked in areas controlled by the group? How can trust be rebuilt in multi-religious, multi-ethnic communities where Sunnis are feared or resented for their actual or perceived collaboration with IS? What strategies are available to bring an end to cycles of violence and revenge? And finally, given that the dominant approach to populations governed by and associated with IS have been highly punitive, are there any alternative transitional justice frameworks that would allow amnesty for individuals who are not accused of serious offenses? While it is important that IS members be held accountable for their crimes, many Sunni Arabs only loosely associated with IS are being accused of and punished for crimes that they did not personally commit. This report is organised as follows. Section 1 describes the methodology, Section 2 provides an overview of the conflict dynamics in Iraq, Section 3 presents preliminary results

of a survey of 1,409 residents of Mosul as a case study of life under IS rule and its aftermath, Section 4 analyses current approaches to accountability in Iraq and their consequences, and Section 5 concludes with recommendations for alternatives.

1. Methodology

Understanding the experiences and attitudes of Iraqis who personally experienced IS rule, as well as the views of other key stakeholders and policymakers, is an important first step in the process of designing evidence-based policies that will facilitate the stabilisation and reintegration of areas recaptured from IS. Toward this end, this report is based on fieldwork and interviews conducted in Iraq in April and December 2017. Research was conducted in Baghdad, Erbil, Mosul, a camp for internally displaced persons (IDPs) near Hawija (Hajj Ali), and Tel Kayf, the location of a counter-terrorism court that was established by the Iraqi government to prosecute the large number of alleged IS members detained in Ninewa Province. The 48 individuals interviewed include eight lawyers or law professors, nine judges and prosecutors, and nine family members of IS members (wives and mothers). The research also included observations of two trials of alleged IS members at the court in Tel Kayf and observation of a tribal reconciliation session in Baghdad – attended by representatives of 30 tribes from Anbar Province – that was organised to discuss social, legal, and security issues related to the recapture of territory from IS. Interviewees affiliated with IS or from IS-controlled areas are cited anonymously with pseudonyms for their own protection.⁹

In addition to qualitative evidence from the above sources, the report includes preliminary quantitative results from a large-scale survey of 1,409 residents of Mosul that is part of the author's dissertation. As Iraq's second largest city after Baghdad and the de facto capital of IS during the three and a half years that it was controlled by the group, Mosul is at the centre of current debates over accountability, reconciliation, and reconstruction. The survey was administered in March 2018 by a respected Iraqi research firm, the Independent Institute for Administration and Civil Society Studies (IIACSS), which has previously conducted the Arab Barometer and World Values surveys in Iraq. The sample was drawn from 47 randomly selected neighbourhoods of East and West Mosul. Filter questions intentionally limited the sample to adult Sunni Arab Iraqis. Given massive out-migration from Mosul by non-Sunnis and non-Arabs (due to their persecution by IS), the numbers of respondents belonging to these groups would have been too small to draw any conclusions about the larger populations to which they belong. Section 3 of this report presents some preliminary results of a selection of relevant questions from the larger survey on (1) respondents' experiences with IS governance and violence, (2) their experiences with the Iraqi government – both currently and prior to IS's arrival in June 2014, (3) tribal identities and institutions, and (4) harms experienced during the battle for Mosul. The survey also included two embedded experiments designed with Dr. Kristen Kao, a Postdoctoral Research Fellow at the University of Gothenburg, that assesses respondents' preferences for the punishment, forgiveness, and reintegration of hypothetical individuals who cooperated to varying extents with IS – for example, as taxpayers, wives, fighters, cooks, or cleaners.¹⁰ Preliminary results of this experiment indicate that many residents of Mosul would prefer less punitive responses to individuals who were affiliated with IS in non-combat roles than Iraq's Counter-Terrorism Law currently allows.

2. Conflict Overview

The Iraqi state and U.S.-led Coalition's fight against IS is only the most recent layer in a long history of violent conflicts that includes former President Saddam Hussein's persecution of Kurds, Shiites and dissidents during the 1980s and 1990s, the 2003 U.S. invasion of Iraq and overthrow of Hussein's government, and the subsequent al-Qaeda-driven insurgency against the U.S. occupation. The collapse and retreat of IS into Syria in 2017 has unfolded in the context of these pre-existing – and in some cases, unresolved – conflicts, but it also raises new challenges that stem from the group's unique organisational structure and state-building aspirations. Although IS no longer controls territory in Iraq, the country is at risk for the reactivation of old conflicts and the emergence of new ones, particularly around contested areas.¹¹

Micro-conflicts between individuals, communities and the state are extremely important in Iraq, where historically marginalised groups have longstanding grievances that predate the rise of IS by decades. Some groups, notably the Kurds, viewed the conflict with IS as an opportunity to reassert pre-existing claims to disputed territories.¹² Micro-conflicts are present not only between groups but also between individuals. At the individual level, some Iraqis have leveraged the conflict dynamics to exact revenge on personal enemies by accusing them – often falsely – of joining or supporting IS.¹³ A UNDP officer identified property disputes as the most pressing post-IS issue in the Iraqi city of Yathrib where some residents are “falsely accusing others of joining IS as a pretext for seizing their land.”¹⁴ Although the Iraqi government's conflict with IS is over for the time being – although many warn of the potential for an “IS 2.0” – the past several years of violence and instability have fuelled other conflicts that are still in need of resolution.

The Rise and Fall of IS

The group now known as IS has deep roots in Iraq and emerged from the remnants of al-Qaeda in Iraq, a Sunni jihadist group founded in 2004 in the aftermath of the U.S. invasion, which paved the way for Shia dominance in Baghdad and the alienation of the formerly powerful Sunni minority. In 2006, elements of al-Qaeda in Iraq announced the formation of a new splinter group, the Islamic State in Iraq (or ISI). In 2010, Abu Bakr al-Baghdadi was elected as the leader of ISI after his predecessor was killed in joint US-Iraqi operations. Baghdadi would remain the leader as the group evolved into IS. In 2011, as the world was watching the Arab Spring unfold, Baghdadi was quietly starting to expand ISI's influence within Iraq, exploiting the grievances of local Sunni populations who felt marginalised by the sectarian policies of then (Shia) Prime Minister Nouri al-Maliki. He also began expanding beyond Iraq, and in July of that year, sent operatives into Syria to start building a base of operations there. Back in Iraq, meanwhile, ISI carried out dozens of bombings and 8 major prison breaks, freeing hundreds of jihadists who had been detained in Iraqi jails.

By March 2013, as the Syrian civil war intensified, Raqqa fell to the Syrian opposition and several armed groups, including ISI, started fighting for control of the city. Eventually, ISI prevailed and quickly spread into other areas of Syria and Iraq, and it became clear that this was not simply a military organisation, but rather, a group that was trying to become something resembling a state – as its name had always suggested. By this time, IS was operating a variety of state-like institutions designed to govern, indoctrinate, and extract resources from civilians living in its territory including courts, religious police, and taxation. By late 2013, Baghdadi had relocated

from Iraq to Syria and renamed the group the “Islamic State in Iraq and Syria” known by the acronym ISIS, to reflect its expanding territorial claims. Around this time, Al-Qaeda formally cut ties with ISIS over several ideological and strategic disagreements. Despite losing al-Qaeda’s support, ISIS continued to capture more territory in Syria and Iraq with major victories in Tikrit and Mosul in June 2014. Shortly thereafter, ISIS announced the establishment of a “caliphate” and changed its name yet again to the “Islamic State” or IS, dropping references to Syria and Iraq and thereby signalling its intent to establish a global caliphate that would transcend what it regards as artificial, Western-imposed borders.

In June 2014, Iran entered the conflict by sending 2,000 troops to support Iraqi forces.¹⁵ By August 2014, Iran was also providing weapons to Kurdish forces (the Peshmerga) to support their fight against IS,¹⁶ which had advanced to within 25 miles of the KRG capital of Erbil.¹⁷ At the invitation of the Iraqi government, the United States also entered the conflict in August 2014 by launching airstrikes at IS targets, dropping humanitarian aid for thousands of Yazidis,¹⁸ a religious minority group fleeing a genocidal attack by IS on Mount Sinjar, and by supplying the Kurdish Peshmerga with weapons. In response to the fall of Mosul in June 2014, former Prime Minister Nouri al-Maliki signed a decree to form the Popular Mobilisation Forces (PMF),¹⁹ an umbrella of at least 50 primarily Shia militia groups – some strongly backed by Iran – to supplement the regular Iraqi armed forces. Estimates of the size of the PMF, which has been described as Iraq’s “second army,”²⁰ vary widely between 60,000 and 140,000.²¹ In comparison, Iraq’s regular army (excluding police) in 2014 was estimated at 250,000, and the Kurdish Peshmerga to be between 80,000 and 190,000.²² At that time, IS was believed to have 7,000 and 10,000 fighters between Iraq and Syria.²³ In 2016, the Iraqi parliament passed a law that nominally integrated the PMF into the national armed forces by requiring its commanders to report to the Prime Minister.²⁴ However, the PMF remains largely autonomous in practice.²⁵ The PMF have played a crucial role in retaking territory from IS, but have also been accused of grave human rights abuses in the process, including forced displacement of local Sunni populations and extrajudicial executions of individuals accused of having been affiliated with IS.

By 2016, it was clear that IS had overextended itself by capturing more territory than it could effectively govern and defend. Over the past year, IS has lost all the major cities it controlled in Iraq and is at the time of writing in the process of retreating to a shrinking corner of Syria. Although the Iraqi government officially declared victory over IS in December 2017,²⁶ the massive collateral damage, destruction, and displacement caused by more than three years of violence raise a new and vexing set of challenges. First, the conflict with IS unfolded in the context of a long history of unresolved ethno-sectarian disputes that are now being reactivated. Second, the blanket stigmatisation of all individuals associated with IS – whether as combatants, civilian employees, family members, or merely residents of IS-controlled territory – has hindered the restoration of trust and social cohesion in areas retaken from IS. Third, Iraqi security forces’ collective punishment of Sunnis who lived in IS-controlled areas and failure to address the political and economic grievances that contributed to the rise of IS in the first place could fuel a new insurgency. All of these new and emerging challenges risk sowing the seeds of future conflict and will need to be taken into account in any Iraqi strategy to defeat IS while contributing to a sustainable transition away from conflict.

The Significance of IS’s Control of Territory

IS’s control of territory has important implications for post-conflict reintegration, stabilisation, and accountability because the group’s coercive power over civilians living in its territory has made it difficult for authorities to differentiate between voluntary and involuntary collaboration. Some residents of IS-controlled territory cooperated with the group because they genuinely

supported it – whether for ideological or opportunistic reasons – but many others (and perhaps most) cooperated only because resistance was punishable by death and therefore futile. Often, leaving these areas was not even an option because of the heavy costs of resettlement elsewhere or because IS eventually banned travel and migration outside of its territory. Nonetheless, Iraqis who stayed in IS-controlled territory rather than fleeing to IDP camps or government-controlled areas (“stayers”) are widely feared and resented by “leavers” – those who did manage to escape.²⁷ As one Sunni Kurdish internally displaced person (IDP) expressed this sentiment, “All [IS] is a red line, including those people who did not fight with [IS] but did not say no to them and lived among them.”²⁸ Although many residents of IS-controlled territory were opposed to the group and only complied with its policies for reasons of self-preservation, there is a widespread assumption – among Iraqi policy makers and many other Iraqi citizens – that people who lived for years under IS rule in cities such as Mosul are universally complicit in IS’s crimes.²⁹ This faulty assumption – that mere residence in IS-controlled territory is an act of support – has resulted in the application of over-broad counter-terrorism laws and policies that many Iraqi Sunni civilians regard as a form of collective punishment.

Stigmatisation of IS Affiliates and Extrajudicial Punishment

Individuals associated with IS – whether as combatants, civilian employees, family members, or merely residents of IS-controlled territory – have been stigmatised and penalised by local communities, tribal authorities and state and state-aligned forces. Many Iraqis experienced extreme human rights abuses at the hands of IS and understandably feel betrayed and threatened by Sunni Arabs who collaborated with the group. This is particularly true of ethnic and religious minorities such as the Yazidis, who were systematically massacred and enslaved by IS on a scale that the United Nations has determined to be genocide.³⁰ As one Yazidi activist explained, “Although we had good relations with them [Sunni Arabs] before, we simply cannot live with them any longer.”³¹ Dave van Zoonen, a researcher based in Erbil, has interviewed Yazidis who said that individuals complicit in IS’s crimes must be banished from their areas “for at least four generations” in order for coexistence to be possible in the distant future.³² Revenge killings of suspected IS affiliates or sympathisers are widespread,³³ sometimes perpetrated by individuals who were personally victimised by IS. For example, Yazidi militias have been implicated in reprisals against Sunni Arabs believed to have been complicit in the capture and enslavement of Yazidi women.³⁴

Civilian Employees of IS

Not only combatants but also civilian employees of IS’s bureaucracy – including its departments of health, agriculture, education, and municipal services – are being prosecuted on terrorism charges, even though the vast majority claim to have never received any military training or carried a weapon. Many of these individuals are public sector employees who were working in vital institutions – such as hospitals and sanitation departments – when IS captured their cities in 2014. When IS took over these public-sector institutions – and the payroll – many employees remained in their former jobs, whether because: they could not afford to quit; IS pressured them to continue working; or simply the vital services they provided were indispensable to the survival of the civilian population. Now, these public-sector employees are being punished both legally and economically. According to Ahlam Allami, President of the Iraqi Bar Association, judges and prosecutors do not differentiate between individuals who joined IS voluntarily and those who were coerced into joining due to the group’s complete control over the economy in areas it controlled: “In these areas, Daesh [IS] was the only employer. So we should try to

have some empathy and understanding for the people who worked for Daesh's bureaucracy in order to survive and support their families."³⁵

During fieldwork conducted by the author in Mosul in April 2017, a public elementary school principal in a neighbourhood that had been retaken from IS seven months earlier complained that the Iraqi government had not yet reinstated the salaries of any school administrators or teachers in Mosul.³⁶ Teachers, like all other public-sector employees who worked for IS's civilian bureaucracy, are required to undergo a prolonged screening process to prove that they did not join or support IS. Hospital employees, including doctors, are subject to the same background checks and are being denied security clearances due to their prior employment by IS.³⁷

"Stayers"

The return and reintegration of thousands of IDPs to areas recaptured from IS has generated new tensions within communities that were divided between supporters and opponents of IS, as well as those who tried to stay neutral. In Ninewa alone, 87,000 displaced families have returned to their places of origin, while 290,000 were still displaced as of October 2017.³⁸ In January 2018, the IOM reported that the number of Iraqis returning to their places of origin (3.2 million) had surpassed the number of IDPs (2.6 million) for the first time since the beginning of the conflict with IS.³⁹ One of the resulting social fault lines is between these "leavers" and "stayers" – those who experienced several years of IS rule and are now widely (and often erroneously) assumed to have collaborated with and supported the group. As one resident of Mosul explained, "People assume that everyone who stayed in Mosul [after June 2014] is an IS supporter or member, but many of us were victims."⁴⁰ The principal of a school in Hodh Sitta near Hawija said that even though only six men from the village had joined IS, the entire community was regarded with distrust and suspicion: "We were treated as if we were Daesh, too, not real Iraqis. In everyone's minds, and that included the government and the media, it's simple: Hawija is [IS]."⁴¹ Since most of those who stayed in IS-controlled areas were Sunni Muslims and the majority of those who left were Shia or other religious and ethnic minority minorities persecuted by IS, the return of these "leavers" has fuelled sectarian tensions. In some demographically mixed areas including Yahtrib in Salah ad-Din, Shia have demanded the construction of walls to exclude Sunnis from certain neighbourhoods.⁴²

Family Members

Relatives of IS members are another social group that has become a target for retaliation and extra-judicial violence by Iraqi security forces and by other civilians. Kinship ties to the group are considered a sufficient basis for retaliation even if the relatives of IS members did not personally commit any crimes. A key principle of tribal law, which is influential in Iraq – particularly in areas where state authority is weak – is the attribution of collective guilt to the family or tribe of the perpetrator of a crime. This principle allows for the relatives of an IS member to be held vicariously responsible for crimes that he or she committed individually.⁴³ As a result, women and girls who married IS members – and their children – often have difficulty returning to their former communities after the cessation of conflict, even if their husbands or parents are dead or missing. In Iraq's Hajj Ali IDP camp, widows of IS members interviewed in December 2017 said that they hoped to stay in the camp indefinitely because they believed that they and their children would be safer there than in their former homes in Hawija, where family members of IS members are vulnerable to retaliatory violence. One widow of an IS member, whose brother's house in their village near Hawija was attacked with grenades as a result of his

family ties to the group, said, “I am afraid that if I return, my neighbours would kill me in my sleep.”⁴⁴ In other areas, displaced relatives of IS members are allowed to return to their former homes but only conditional on payment of “blood money” to victims of IS.⁴⁵ A UNDP officer estimated that “only 5 percent of IDPs are ‘ISIS families’⁴⁶ and 95 percent have no relationship to the group.” Nevertheless, in many areas, IDPs are collectively stigmatised and distrusted.⁴⁷

Extrajudicial Punishment

Individuals suspected of association with IS are frequently threatened with expulsion or forcibly evicted from their homes. In the town of Zankura in Anbar, residents gave a list of 150 names of alleged IS members to the Iraqi army and demanded that they be barred from returning to the area.⁴⁸ In several governorates – Salah ad-Din, al-Anbar, and Ninewa – residents suspected of having ties to IS have received “night letters” warning them to leave by a certain deadline or else be expelled by force.⁴⁹ Many of these threats have followed written tribal agreements that identify specific individuals accused of association with IS and demand their temporary expulsion or permanent banishment from the community according to the tribal law doctrine of “bara’ah” (“disavowal”). For example, in the Iraqi Governorate of Salah ad-Din, several tribes published a list of the names of 113 individuals who are accused of association with IS and therefore permanently banned from the community.⁵⁰ In other areas, tribes have imposed temporary bans on IS-affiliated returnees. For example, in Tikrit, family members of alleged IS members have been banned from returning for a five-year period.⁵¹ Under tribal law, these banned individuals can be killed if they return.

Not only tribes but also state authorities and militias are participating in the forced eviction and displacement of persons associated with IS. In Mosul, Iraqi security forces ordered IS-affiliated families to leave their neighbourhoods or cities, justifying these evictions as necessary “to avoid communal tensions.”⁵² In Hit, Iraqi security forces ordered IS-associated families to leave the city, marking their houses with the warning, “you should leave within 72 hours.”⁵³ In other areas, Iraqi security forces – notably the PMFs – have been accused of preventing Sunni IDPs from returning to their homes in order to reduce Sunni turnout in the upcoming parliamentary elections.⁵⁴

In Salah ad-Din, the governorate council passed a decree in August 2016 permanently banning anyone proven to have been affiliated with IS from the governorate.⁵⁵ The same decree ordered the expulsion of immediate relatives of IS members for at least ten years, stating that they are only permitted to return if determined to be “safe,” and established a committee responsible for the seizure and redistribution of IS members’ properties. Alarmingly, the decree specifies an exemption for individuals who kill their IS-affiliated relatives or turn them over to Iraqi authorities, thereby creating incentives for extra-judicial executions.⁵⁶

In all these examples, it is unclear what evidentiary standards – if any – are being used to determine whether someone is a family member, supporter, or member of IS. Furthermore, those deemed to be associated with IS through these extra-legal processes do not appear to have an opportunity to defend themselves or appeal these determinations. Although many Iraqis recognise the counterproductive effects of overly punitive responses to terrorism, the Iraqi government has shown little interest in prioritising the prosecution of more serious crimes over lesser ones, or showing any lenience in dealing with lower-level IS personnel, civilian employees, and family members. As Prime Minister Haider al-Abadi stated in July 2017, “No terrorist escapes punishment and we will not issue an amnesty for the murderous terrorists.”⁵⁷ In many cases, harsh punishments appear to be driven by “a fear that IS will return to Iraq” and a resulting impulse to permanently eradicate its members.⁵⁸ However, in light of evidence that

state-perpetrated injustice – including the economic marginalisation and mass incarceration of Sunnis – was a causal factor in the initial emergence of IS, Iraqi authorities risk perpetuating the same grievances that have fuelled extremism in Iraq if the punishments they impose are perceived as unfair or disproportionate to the crimes committed.

3. Life Under IS Rule and Its Aftermath: A Survey of 1,409 Residents of Mosul

A survey of 1,409 residents of Mosul provides insight into the many forms of violence and injustice experienced by this population in recent years and the challenges that the Iraqi government will face in building social cohesion, security, and legitimacy in this city and other areas that experienced IS rule. The results are organised according to the following themes: (1) respondents' experiences with IS governance and violence, (2) their experiences with the Iraqi government – both currently and prior to IS's arrival in June 2014, (3) tribal identities and institutions, (4) harms experienced during the battle for Mosul, and (5) preferences concerning the punishment, forgiveness, and reintegration of individuals who "collaborated" to varying extents with IS. First, Table 1 presents basic demographic information about the sample. As noted above, the sample was intentionally limited to adult Sunni Arab Iraqis who were living in Mosul in June 2014 when IS arrived.

Table 1: Demographics

		Percentage of Respondents
Gender	Male	50%
	Female	50%
Education	Illiterate/No formal education	14%
	Elementary	38%
	Primary/Basic	17%
	Secondary	16%
	Professional or technical diploma	5%
	BA	9%
	MA and above	<1%
Age	18–24	17%
	24–34	21%
	35–44	14%
	45–54	9%
	55–65	6%
	65 and older	3%

Experiences with IS Violence and Governance

Although civilians who lived under IS rule are widely suspected of supporting the group, a significant majority of those surveyed were victims of IS violence (Table 2). Although IS initially allowed civilians to enter and exit Mosul, by March 2015 the group began to severely restrict travel and migration outside of its territory.⁵⁹ As a result, many residents of Mosul were trapped inside the city. IS imposed strict policies, including taxes, and severely punished those who refused to comply. For example, IS considered refusal to pay zakat (a mandatory charitable contribution prescribed by the Quran) to be a form of apostasy and therefore punishable by death.⁶⁰ Therefore, it is unsurprising that compliance with the group's policies was widespread. For example, 34 percent of the sample reported paying zakat to IS and an even higher percentage of the sample reported paying utility fees for water and electricity (Table 2). Additionally, the sample experienced significant violence and property destruction at the hands of IS.

Table 2: IS Violence and Governance

	Percentage of Respondents
Violence Experienced During IS Rule	
Arrested by IS	17%
House damaged	28%
House confiscated by IS	20%
Member of household injured	10%
Member of household killed	8%
Taxation	
Paid electricity fees to IS	38%
Paid water fees to IS	47%
Paid zakat to IS	34%

Experiences with the Iraqi Government

Of relevance to the Iraqi government's efforts to build social cohesion, security, and legitimacy in areas recaptured from IS is the finding that many residents of Mosul regard state institutions and authorities with distrust. In many cases, negative attitudes toward the Iraqi government appear to be linked to personal experiences with corruption and injustice. 28 percent of respondents said that they have "no trust" or "not very much trust" in the Iraqi judiciary, raising concerns about the ability of the Iraqi justice system to fairly adjudicate the cases of the thousands of individuals who are facing trial on IS-related charges. 22 percent said that they had been asked to pay a bribe by an Iraqi government official prior to June 2014; 6 percent had been arrested; 25 percent said that they had experienced police harassment, and 13 percent said that they had experienced sectarian discrimination as a result of being Sunni (Table 3).

Table 3: Experiences with the Iraqi Government Before June 2014

	Percentage of Respondents
Arrested	6%
Experienced police harassment	25%
Experienced sectarian discrimination	13%
Asked to pay a bribe	22%

Tribal Identities and Institutions

The vast majority of Mosul residents (more than 99 percent) identify with a tribe, as is true of Iraqi society more broadly. However, for many survey respondents, national and religious identity are more important than tribal identity. When asked, "Which of the following best describes you?" a plurality of respondents (48 percent) said "an Iraqi national," 39 percent said "a Muslim," 7 percent said "a resident of Mosul," and only 4 percent said "a member of my tribe."

Harms Experienced During the Battle for Mosul

While discussions of post-conflict accountability in Iraq focus heavily on crimes committed by IS, residents of Mosul and other areas affected by the conflict have experienced multiple waves of violence perpetrated by a range of state and non-state actors. 71 percent of the 1,409 survey respondents were living in Mosul for at least part of the battle to expel IS from the city. During the operation, 52 percent of survey respondents experienced serious property damage, 22 percent reported that a member of their household was injured, and 13 percent reported

that a member of their household was killed by one or more of the following forces: IS, the United States, the Iraqi Counter-Terrorism Service, the Iraqi Army, the Iraqi Federal Police, and the PMF. 24 percent said that they have personally witnessed or heard about cases in which Iraqi Federal Police or the PMF had stolen property or money from civilians in the aftermath of the battle, suggesting that many Mosul residents see these security forces as threats rather than protectors (Table 4).

Table 4: Harms Experienced During the Battle for Mosul

	Percentage of Respondents
Violence	
House was seriously damaged during the battle	52%
Member of household injured	22%
Member of household killed	13%
Witnessed or heard about looting by	
Iraqi Army	10%
Iraqi Federal Police	24%
Popular Mobilisation Forces (PMF)	24%

Survey Experiments on Preferences for Reintegration of IS “Collaborators” with Dr. Kristen Kao

In order to understand the attitudes of Mosul residents toward individuals perceived as IS “collaborators,” I worked with Dr. Kristen Kao to design two experiments embedded in the Mosul survey that assess respondents’ preferences for the punishment, forgiveness, and reintegration of hypothetical individuals who cooperated to varying extents with IS. The first experiment randomly varied the identity of hypothetical “collaborators” who are now seeking reintegration into Mosul society (e.g. gender, age, and co-tribal identity) and the type of collaboration (e.g. someone who paid taxes to IS, someone who was married to an IS fighter, a cook who prepared food for IS fighters, a janitor who worked in IS’s department of municipal services, or an IS fighter). Respondents were asked to choose which type of punishment (e.g. 6 months of community service, imprisonment for 3 or 15 years, or capital punishment) they considered most appropriate for the “collaborator.” The two most frequently selected options were “no punishment” (28 percent) and “capital punishment” (33 percent), indicating that there is considerable variation in the preferences of Mosul residents for accountability. In general, preferences for punishment appear to be highly dependent on the type of “collaboration,” as suggested by Table 5, with IS fighters and those who were most closely associated with fighters (cooks for and wives of fighters) receiving consistently harsher punishments than those less closely associated with fighters (janitors who worked for the IS municipality and taxpayers). Multivariate regression analysis supports this conclusion.⁶¹

We also found significant differences between “stayers” (those who remained in Mosul for the duration of IS’s three-year rule) and “leavers” (those who left relatively soon after IS’s arrival in June 2014) in their preferences for punishment of former IS collaborators: “Stayers,” on average, preferred more lenient punishments for the collaborator-types most closely associated with IS: fighters, wives of fighters, and cooks for fighters. Given the extent to which “stayers” were victimized by IS, including being used as human shields during the battle for Mosul, this result has important implications for the design of post-conflict transitional justice processes because it suggests that those who have been exposed to the highest levels of violence and abuse by a rebel group are not necessarily more vengeful and retributive toward collaborators, and may even be more empathetic and forgiving.

Table 5: Punishments Preferred for Types of Collaboration (Percentage of Respondents)

Act	No punishment	Community Service	3 Years Prison	15 Years Prison	Death Penalty
IS Fighter	2%	2%	5%	13%	78%
Cook for Fighters	3%	14%	22%	26%	36%
Wife of Fighter	17%	17%	16%	18%	31%
Janitor	41%	27%	11%	6%	15%
Paid Taxes	74%	8%	5%	4%	9%
Total	28%	14%	12%	14%	33%

Additionally, we found variation in perceptions of the voluntariness of different types of collaboration (Table 6). The vast majority of respondents (92 percent) perceived paying taxes to IS as an involuntary act, which is unsurprising given that IS imposed mandatory taxes and harshly punished tax evasion, while a smaller percentage (29 percent) perceived working as a janitor for the IS municipality to be involuntary. Almost all respondents (97 percent) perceived fighting for IS to be voluntary. In general, these results suggest that many residents of Mosul recognize that some “collaborators” were coerced into cooperating with or working for IS against their will.

Table 6: Perceptions of Voluntariness of Collaboration

	Percentage of Respondents	
	Voluntary	Involuntary
“Do you see the following acts as voluntary or involuntary?”		
A cook for IS fighters	88%	12%
An IS fighter	97%	3%
Married to an IS fighter	84%	16%
A janitor who worked for the IS municipality	71%	29%
A resident of Mosul who paid taxes to IS	8%	92%

In a second experiment that randomly varied the punishments imposed on three different types of “collaborators” – a wife of a fighter, a cook for fighters, and a janitor who worked for the IS municipality – respondents were asked whether they would allow this person to become their neighbour – a measure of preferences for reintegration. We found that many Mosul residents are willing to allow the reintegration of IS “collaborators” back into their neighbourhoods who are subjected to more lenient and restorative punishments – such as community service – than the current legal framework allows. For example, in the case of a hypothetical 35-year-old woman married to an IS fighter, 27 percent of respondents would allow her reintegration into the community despite receiving no punishment at all – even though Iraqi courts routinely sentence wives of IS fighters to life in prison.⁶² Imposing a punishment of 6 months of community service, three years in prison, or 15 years in prison does not significantly increase the willingness of respondents to accept her as a neighbour. In general, regression analysis of this experiment suggests that harsher punishments do not necessarily improve prospects for reintegration of former “collaborators.”

Together, these two experiments reveal a mismatch between the harsh punishments prescribed by Iraq’s current legal framework and the preferences of ordinary Iraqis, suggesting the need for legislative reforms and an inclusive national conversation about how best to balance demands for accountability with the need for reconciliation.

4. Current Approaches to Accountability and Their Consequences

“No Negotiations”

The Iraqi government’s stated objective in its conflict with IS was to force the group’s withdrawal from Iraqi territory and eradicate its personnel. In other recent sub-national conflicts including those in Colombia, Somalia, and Sierra Leone, governments have established Disarmament, Demobilisation, and Reintegration (DDR) or similar programs to incentivise defections or as part of a peace deal, but no such program has been adopted in Iraq. As President Muhammad Fuad Masum summarised the government’s approach on the occasion of Mosul’s recapture from IS: “We will continue the battle against the few remaining remnants of the terrorist Daesh [IS] gangs relentlessly and tirelessly until every last inch of the territory of our country is purged of this abomination and it is fully defeated and crushed.”⁶³ Iraqi security forces overwhelmingly view the solution to IS as one of elimination rather than rehabilitation. One federal police commander in Mosul, when asked how Iraqi security forces planned to prevent the re-emergence of IS, said that the strategy was to “kill them.”⁶⁴

IS commanders and fighters had begun surrendering to Iraqi forces in large numbers by October 2017⁶⁵ and senior IS leaders reached out to at least one Iraqi military commander in an attempt to broker “deals” for themselves. But the Iraqi army was uninterested in negotiating the terms of surrender. As Captain Ali Muhammad Syan said, “We tell them no way, no negotiations, turn yourselves in and we’ll turn you over to the court, which will decide.”⁶⁶ Some IS fighters reported that their commanders had instructed them to surrender to Kurdish forces, who had a reputation for taking prisoners rather than executing them,⁶⁷ as Iraqi security forces have done on numerous occasions.⁶⁸

These reports indicate that IS fighters and commanders were willing to cooperate with Iraqi forces in the hope of staying alive. IS commanders in neighbouring Syria have occasionally negotiated with counter-IS forces on the terms of their surrender and withdrawal. For example, in August 2017, Hezbollah and the Syrian government permitted 310 IS fighters to withdraw from a besieged enclave on the Lebanon-Syria border.⁶⁹ In Raqqa, talks between IS and local tribal leaders resulted in a deal that allowed safe passage out of the city for the group’s fighters as they retreated to the group’s remaining territory in Deir Ezzor.⁷⁰ Despite evidence that IS commanders are willing to make deals, Iraqi military and political leaders appeared to be uninterested in the possibility of negotiated surrenders or withdrawals.

A Harsh and Overbroad Legal Framework

A harsh and overbroad legal framework governing terrorism-related offenses in Iraq has enabled the mass incarceration of tens of thousands of individuals (both pre- and post-trial) whose connection to IS is often tenuous. At least 19,000 individuals have been detained on IS-related charges by federal Iraqi authorities according to officials,⁷¹ and at least 4,000 individuals have been detained on IS-related charges by Kurdish Regional Government (KRG) authorities.⁷² As with all of the government-provided statistics cited in this report, these numbers should be interpreted as rough and incomplete estimates given their lack of specificity and the impossibility of external verification. It has been suggested that “no one [in the Iraqi government] – perhaps not even the prime minister himself – knows the full number of detainees.”⁷³

Counter-Terrorism Laws

Detainees are being tried in both KRG and Iraqi courts under their respective counter-terrorism laws. The legal basis for convictions issued by KRG courts is uncertain for two reasons. First, the KRG's counter-terrorism law (No. 3/2006) expired in July 2016. At that time, a KRG committee recommended bringing charges under Iraq's penal code (no. 111/1969) "in order to prevent a legal vacuum,"⁷⁴ however, KRG prosecutors have continued to charge suspects accused of joining IS under the expired law because they are seeking harsher sentences than the penal code allows.⁷⁵ Second, KRG courts are in many cases prosecuting suspects for crimes committed in Mosul and other areas of federal Iraq that fall outside of their territorial jurisdiction. Some of these crimes also occurred in disputed territories where both the federal Iraqi government and KRG claim jurisdiction – notably Sinjar District (the site of IS's massacre of the Yazidis) and Tel Afar District, one of the last areas lost by IS before its retreat into Syria. As a matter of territorial jurisdiction, KRG authorities should be transferring suspects accused of committing terrorism-related offenses on federal Iraqi soil to federal Iraqi authorities, but they have resisted doing so.⁷⁶

Unlike the KRG, federal Iraq has a legal basis for the detention and prosecution of IS suspects: the 2005 Counter-Terrorism Law. In some terrorism cases, the Criminal Procedure Code (1971) and the Penal Code (1969) are also applied.⁷⁷ The Counter-Terrorism Law has been criticised as excessively harsh. Even an Iraqi judge interviewed for this report admitted that "judges can be very harsh, sometimes as harsh as Daesh [IS]" because of social and political pressure to show no mercy to IS and because the Counter-Terrorism Law does not allow them sufficient flexibility in sentencing.⁷⁸ Article 4 stipulates the death penalty for anyone who has committed, incited, planned, financed, or assisted a terror act and a life sentence for anyone who covers up such an act or harbours those who perpetrated it. Article 2 defines a terrorist as "Anyone who organised, chaired or participated in an armed terrorist gang."⁷⁹ Iraqi judges and prosecutors interpret this law as criminalising *membership* in a terrorist group – including IS – regardless of whether or not the group member engaged in any violence or other criminal acts. The language of the law is similar to and was likely influenced by United Nations Security Council Resolutions of the early 2000s that referred, *inter alia*, to the "incitement" of terrorist acts.⁸⁰ Judges, at their discretion, can reduce the punishment to less than a life sentence in terrorism cases with mitigating circumstances. For example, a counter-terrorism advisor to the Iraqi government reported that some "Ansar" – a term used to refer to supporters of IS who did not pledge allegiance and therefore cannot be considered "members" – have received a relatively lenient sentence of three years in prison. Falling into the "Ansar" category are, for example, civilians who have appeared in IS propaganda videos watching public executions.⁸¹ However, the lack of publicly available data on terrorism trials makes it difficult to assess the prevalence of reduced sentences.

Terrorism-Related Trials

Of the 3,130 individuals who have been sentenced to death on terrorism-related charges since 2013, at least 250 have already been executed and the pace of executions has increased over time.⁸² Two mass hangings of 42 and 38 convicted IS members took place in September and December 2017.⁸³ The true number of executions may be even higher but remains unknown due to lack of transparency and poor record-keeping by the government. Despite the lack of comprehensive data, patterns can be discerned from individual cases documented by the media and human rights organisations. It is clear from these cases that not only combatants but also civilian employees of IS are being sentenced to death. One judge told Human Rights Watch, "I had a case yesterday of an [IS] cook and I have recommended giving him the death penalty. How could the [IS] fighter have executed someone if he had not been fed a good meal the night before?"⁸⁴

A special counter-terrorism court was established by the Iraqi government in Tel Kayf specifically to deal with the large volume of cases from Mosul.⁸⁵ According to a judge interviewed in Mosul, at least 4,000 detainees are awaiting trial by this court.⁸⁶ Cases are heard by a panel of three judges whose verdicts are then sent to the Court of Cassation in Baghdad for review by an additional 30 judges.⁸⁷ Convicted defendants have the right to appeal their sentences. Those who claim to have been tortured have the right to request a medical examination.⁸⁸ A concern raised by an Iraqi lawyer, Ziad Saeed, is that many of the judges and prosecutors who are involved in the trials of alleged IS members are from communities that were victimised by IS, and therefore feel anger and grief that could influence their judgments.

The author's observation of two trials in Tel Kayf and transcripts of additional trials reported by journalists confirm that many suspects are being convicted solely on the basis of membership in IS, as evidenced by swearing an oath of allegiance, without proof of specific offenses.⁸⁹ A senior Iraqi judge justified the criminalisation of membership as follows: "Terrorism is not just about the act of killing people; it is also an extremist ideology. Sometimes, unarmed members of terrorist groups are even more dangerous than those who carry weapons – for example, a cleric who writes a fatwa that inspires thousands of people to join. So, the act of belonging to one of these groups is a crime itself, and if joining is followed by a violent action, then that is a second crime that warrants an even greater punishment."⁹⁰ A judge interviewed in Mosul expressed a similar view: "Daesh [IS]'s ideology is so dangerous that we cannot afford to show any leniency even for those who were only believers and did not commit specific crimes."⁹¹ His argument was that extreme punishment is the only solution to extreme beliefs.

Defining membership as a crime, regardless of actions, appears to be a slippery slope toward prosecuting "thought crimes." Furthermore, prosecutors and judges define membership very broadly and subjectively. According to a public prosecutor interviewed at the court in Tel Kayf, it is not even necessary to prove that a person swore allegiance (known as "*bayah*") to establish membership: "Swearing *bayah* is strong evidence of membership but even without it, we can infer membership from other facts. For example, if someone was manufacturing the coating for missiles used by IS and never swore *bayah*, then this person can be considered functionally a member of the group because of the nature of his work."⁹² The lack of clear definitions and sentencing guidelines makes it very easy for "Ansar" (supporters who did not pledge allegiance) to be found guilty of membership by implication.

Some observers have drawn an analogy between the Iraqi government's criminalisation of membership in IS – without requiring proof of specific criminal acts – with the widely criticised de-Ba'athification policy introduced by the Coalition Provisional Authority in 2003 which resulted in the permanent removal of all Iraqi government and military personnel from public-sector employment. As Abdulrazzaq al-Saeidi of Physicians for Human Rights explained, "De-baathification is a large-scale and affiliation-based dismissal mechanism. The process was not only ineffective and incoherent but also violated some fundamental rights such the freedom of association and access to public office."⁹³ Collective punishment of Sunnis by the de-Ba'athification policy is frequently cited as a catalyst for sectarian grievances that fuelled the rise of IS.⁹⁴ Now, the Iraqi government seems to be "repeating the same mistakes" for which the de-Ba'athification policy was criticised, according to Anne Hagood, a UNDP consultant working on reintegration challenges in areas retaken from IS.⁹⁵

Many IS "members" were employed in civilian jobs for which they did not undergo any military training or carry weapons. For example, the author observed the trial of an animal farmer who was working for a slaughterhouse in Mosul when IS arrived in June 2014. After IS took over the slaughterhouse and informed him that he would be fired unless he agreed to pledge allegiance to the group, he complied. Although the man claimed that he never received any military training or fought on behalf of IS, the judges nonetheless found him guilty of the crime of membership in a terrorist group and sentenced him to 15 years in prison. The whole trial lasted only 30 minutes.⁹⁶

Additionally, intellectually disabled individuals have been sentenced to death, in violation of international law.⁹⁷ During one 22-minute trial observed by the author at the counter-terrorism court in Tel Kayf, a panel of three judges sentenced to death a 37-year-old who claimed to be suffering from a brain tumour and was too weak to stand during the hearing – a guard needed to bring him a chair. The man, a former day labourer who joined IS under pressure from a friend, admitted to undergoing a few days of training. However, when a commanding officer deemed him to be unfit for military service as a result of his illness, he was demoted to the job of guarding a warehouse. When he pleaded to the judges that his brain tumour interfered with his cognitive functioning, one of them laughed and said, “Of course you are mentally ill. Daesh [IS] loves to recruit mentally ill people.”⁹⁸ When interviewed after the trial, the chief justice insisted that “we do not give the death penalty unless we are 100 percent certain that the person poses a threat to Iraqi society,”⁹⁹ but it is difficult to reconcile this statement with the obvious physical incapacity of the defendant.

Hallan Ibrahim, a journalist who has observed more than 30 trials at the counter-terrorism court in Tel Kayf, said that the panel of three judges hears around four cases per day and estimated that the average length of each trial is between 20 and 25 minutes. He has witnessed the convictions of numerous unarmed civilian employees of IS including a cook who was sentenced to 15 years in prison and an accountant who worked for an office that distributed salaries to IS fighters and was sentenced to life in prison.¹⁰⁰ Sometimes, civilians who merely cooperated with IS economically – without joining the group – are prosecuted for supporting terrorism indirectly. Nifal al-Tai, director of the Iraqi Bar Association’s Ninewa branch, observed one case in which a baker who provided bread to IS received a life sentence.¹⁰¹

The broad scope of the Counter-Terrorism Law raises the question of whether relatives of IS members can be considered members themselves by proxy and therefore criminally liable under the counter-terrorism law. Iraqi judges and officials interviewed for this report claimed that a family relationship to IS alone is not proof of criminality. As the Chairman of the National Reconciliation Committee stated, “Being a wife of a Daesh member is not a crime per se, but if she committed a crime such as murder or torture, then she will be held accountable according to the law.” Hisham al-Hashimi, a counter-terrorism advisor to the Iraqi government, reported that women who served in IS’s female police force, known as the al-Khansaa Brigade, are being sentenced to between one and seven years in prison.¹⁰² Even housewives who were married to IS fighters but never worked for the group can still be prosecuted for harbouring terrorists, according to Judge Said Jabar Hussein¹⁰³ – notwithstanding that these women had little control over their husbands’ decisions to join IS and could not leave or divorce them without endangering their own lives or losing their children.¹⁰⁴ For example, one woman from Shirqaat said that when her husband decided to join IS in 2014 and she expressed misgivings about the group’s extreme ideology, he told her that if she did not agree with his choice, “You can leave and I will keep the kids.”¹⁰⁵ In many cases, wives and children of IS fighters were often victims of IS’s violence themselves and may have been coerced into facilitating crimes such as the enslavement of Yazidi women, but judges and prosecutors do not appear to be taking into account these mitigating circumstances of duress. Even family members of IS personnel who are not found guilty by a court may still be punished by administrative processes that exclude IS-affiliated persons from important social services and benefits. According to Christopher Holt of the International Rescue Committee:

Family members of individuals charged or detained under the Anti-Terrorism Law are often unable to obtain civil documentation, including civil IDs and housing cards or register for government services, including the public distribution system (food and fuel rations), because their security clearance is rejected. Women, whose husbands are suspected IS militants who have been killed, detained, or are missing, cannot obtain civil

documentation in their own name or even birth certificates for their children without filing a missing person's report for their husband or obtaining a death certificate. Most women chose not to do this, due to the risks to their own safety which they believe will result from acknowledging in public or in court that they are or were married to an ISIS member.¹⁰⁶

In addition to punishing alleged IS members, thus, the Counter-Terrorism Law indirectly penalises their family members by triggering the denial of basic public services and resources.

A Flawed Amnesty Law

Until recently, Iraq had a General Amnesty Law (No. 27/2016) that, in theory, allowed for the pardon of individuals convicted of association with IS or other terrorist groups when certain conditions were met. The law, adopted in August 2016, allowed for the granting of amnesty to anyone who could demonstrate that they joined IS or another extremist group against their will and did not commit any serious crimes (such as torture or killing) while a member.¹⁰⁷ The burden of proof was on the accused rather than on the state. Sunni politicians had lobbied for this legislation to provide a mechanism for the release of Sunni political prisoners who had been wrongly arrested and convicted for ties to terrorism by the government of former Prime Minister Nouri al-Maliki.¹⁰⁸ However, several members of parliament and Prime Minister Abadi criticised the August 2016 version of the law for containing loopholes that would have allowed the release of dangerous criminals. Their concerns pertained to provisions that permitted kidnappers and terrorists to apply for pardons if their crimes did not result in death or permanent disability of the victims (Article 4) and that allowed prisoners who have served at least one third of their sentences for terrorism or criminal offenses to “buy” their way out of their remaining jail time for the price of 10,000 Iraqi dinars (around \$7.50 USD) per day (Article 6).¹⁰⁹ Even without this provision, reports of prisoners – including convicted IS members – paying bribes to get out of prison are rampant.¹¹⁰ As a result of the backlash to the law, Prime Minister Abadi's office submitted amendments that, among other changes, cancelled the provision that had allowed amnesty for IS members who could prove that they joined against their will and had not committed any serious crimes while associated with the group. These amendments, ratified in November 2017,¹¹¹ now preclude pardons for anyone convicted of terrorism, regardless of mitigating circumstances. The amendments also exclude several other serious crimes from eligibility for amnesty, including kidnapping, drug trafficking, and counterfeiting currency.¹¹² Individuals convicted of crimes not designated as exceptions are still eligible for amnesty. Although the amendments are a setback for proponents of amnesty, the law still includes some important protections for the rights of the accused, including provisions that allow retrials for detainees convicted on the basis of forced confessions or evidence provided by secret informants.¹¹³

Even during the brief 15-month period in which it was possible for convicted IS members to apply for a pardon, judges resisted applying the amnesty law. Senior counter-terrorism judges interviewed in 2017 indicated that they “do not believe that anyone who did anything to support ISIS deserves an amnesty. So they're simply not applying this law.”¹¹⁴ A senior judge who serves on the Amnesty Committee, a judicial body in Baghdad that processes amnesty requests submitted by convicted prisoners, provided statistics indicating that 190 amnesty requests were granted in 2016 while 422 were rejected (a 69 percent rejection rate). In 2017, 298 amnesty requests were granted by the committee and 1,887 were rejected (an 86 percent rejection rate).¹¹⁵ Although these statistics are not disaggregated by crime committed (whether terrorism or other offenses such as kidnapping), the judge confirmed that some convicted IS members were pardoned during these years – primarily members who supported the group ideologically but did not commit any other crimes.¹¹⁶ The judge said that he supports pardoning

those whose only crime was belief in the group's ideology: "Beliefs and ideas are okay until someone commits a crime in the name of those ideas."¹¹⁷ However, other judges interviewed for this report were resistant to the idea of offering amnesty to any IS members, even those who never participated in violence.¹¹⁸ Meanwhile, the KRG has not adopted any amnesty law, so individuals convicted of terrorism charges by KRG courts have no means of applying for pardon.

Procedural Flaws

In addition to the substantive flaws in Iraq's counter-terrorism and amnesty legislation described above, the legal system suffers from a number of procedural flaws that make it even more difficult for individuals accused of association with IS to receive fair treatment. In particular, the following four problems threaten the basic due process rights of detainees and criminal defendants before, during, and after trial: (1) arbitrary arrests based on poorly sourced wanted lists, (2) the military's involvement in pre-trial investigations, (3) heavy reliance on the testimony of secret informants, and (4) a weak public defence system.

Arbitrary Arrests

Iraqi government statistics indicate that at least 19,000 individuals have been detained on terrorism-related charges since 2014,¹¹⁹ and a counter-terrorism advisor to the Iraqi government estimated in December 2017 that the number of detainees accused of association with IS may be as high as 36,000.¹²⁰ In most cases, these arrests are based on very flimsy evidence of association with IS, and sometimes on no evidence at all. Men, women, and children have been detained by Iraqi and KRG authorities on suspicion of association with IS simply based on demographic traits (being a fighting-age male) or spatial proximity to Mosul and other contested areas. During the battle for Mosul, thousands of men and boys as young as 14 – which the Iraqi government considers "fighting age" – were quarantined in pre-trial detention for months and in some cases years in makeshift prisons.¹²¹ Release was conditional on passing a lengthy and arbitrary "screening" process.¹²² Many of these detainees were arrested in IDP camps to which they had fled from the fighting simply for having a last name that is similar to one on a wanted list or because they were denounced – often falsely – by another resident of the camp.¹²³

Wanted lists are poorly sourced and widely recognised as inaccurate. Different Iraqi security forces maintain their own wanted lists and make little effort to communicate or cross-check their respective intelligence.¹²⁴ According to Abdelaziz al-Jerba, director of the al-Tahreer Association for Development, there are at least 45,000 names in these various databases.¹²⁵ Individuals may be arrested based on similarity between their surname and one that appears on a wanted list.¹²⁶ Lack of coordination between Iraqi and KRG authorities on the maintenance of wanted lists can lead to further injustice, resulting in duplicative punishments of IS suspects who travel between the two jurisdictions. A humanitarian officer in Baghdad was aware of cases in which alleged IS members who have already served a prison sentence in either the KRG or federal Iraqi territory "were rearrested because the relevant authorities were not informed, or their databases were not updated and the person didn't carry the proof of the decision or release document."¹²⁷

The Military's Involvement in Pre-Trial Investigations

Once suspects are arrested, they are vulnerable to further rights violations as a result of the Iraqi military's heavy involvement in pre-trial investigative processes that should be the responsibility of the police and civilian judiciary. Lawyers reported that the Iraqi army has, in recent years,

begun to perform quasi-judicial functions that threaten the separation of military and civilian institutions. According to Nifal al-Tai, the Iraqi Army has been conducting preliminary interrogations and investigations of terrorism suspects since 2005.¹²⁸ Prisoners are more likely to be tortured or abused by military investigators than by civilian judicial investigators. The mother of a detained IS fighter used the term “army justice” to refer to the military’s problematic role as a quasi-judicial entity.¹²⁹

Reliance on Secret Informants

One of the reasons for the inaccuracy of the “wanted lists” described above is their reliance on the testimony of secret informants. Tips from secret informants are used to construct the wanted lists along with intelligence extracted from detainees, often under conditions of duress or torture.¹³⁰ A humanitarian officer in Baghdad familiar with these lists questioned the veracity of the information they contain: “One of the main concerns is that the information sources are not always reliable. Many times, the “informants” will accuse individuals based on their personal preferences and/or political affiliations and will try to use this as an opportunity to attack supporters of opposite parties.”¹³¹ Human Rights Watch has documented cases in which secret informants proposed the addition of names to wanted lists “because of tribal, familial, land, or personal disputes.”¹³²

In addition to the role of secret informants in mass arrests, their testimonies are also used to prosecute suspected IS members once they have been taken into custody, in violation of defendants’ right to confront the witnesses against them – a right that is enshrined in the International Covenant on Civil and Political Rights, which Iraq has ratified.¹³³ Iraq’s Counter-Terrorism Law allows for the conviction of defendants based solely on testimony provided by secret informants whose statements they are unable to challenge.¹³⁴ Iraq has been accused of imposing the death penalty based on testimony of secret informants.¹³⁵ There have been some efforts to combat false denunciations by secret informants. According to Khalid Obaide, a law professor, the Central Criminal Court in Baghdad has convicted 482 secret informants for providing false testimony and sentenced them to prison terms ranging from five to ten years.¹³⁶ However, secret informants continue to wield considerable influence in the detention and prosecution of suspected terrorists. Iraqi authorities’ heavy reliance on the testimonies of secret informants to identify and prosecute alleged IS members makes it easy for innocent people to be falsely accused and unjustly punished for crimes that they did not commit.

A Weak Public Defence System

The weakness of Iraq’s public defence system makes it difficult for alleged IS members to receive a fair trial. Under Iraqi law, a person can only be prosecuted in the presence of a lawyer.¹³⁷ Since the vast majority of individuals accused of association with IS cannot afford a private lawyer, they must rely on public defenders who are paid only around \$20 per case, according to one public defender interviewed at the counter-terrorism court in Tel Kayf.¹³⁸ Public defenders have no financial incentive to invest time and effort in building a strong case for their clients. Private lawyers, too, are disincentivised from taking on the cases of alleged IS members. Iraqi authorities have issued arrest warrants for at least 15 private lawyers since July 2017 on charges of affiliation with IS. All of these lawyers were defending IS suspects at the time of their arrest, raising concerns that Iraqi authorities are trying to discourage private legal representation of IS suspects through intimidation.¹³⁹

Tribal Justice

Alongside the state legal system, tribal justice is playing an important but controversial role in social, security, and legal issues related to the recapture of territory from IS. Tribalism is an integral part of the fabric of Iraqi society, where tribes have been important providers of justice, security, and services since the founding of the modern Iraqi state in 1921.¹⁴⁰ Estimates of the percentage of Iraqis who identify with one of the country's approximately 150 tribes range from 75¹⁴¹ to 100 percent.¹⁴² More than 99 percent of the 1,409 survey respondents in Mosul said that they identified with a tribe. In fragile and conflict-affected states such as Iraq, it is common for non-state actors including tribes to assume functions that in strong states are exclusively performed by the government, such as security provision and dispute resolution. Many Iraqis prefer to resolve inter-personal and inter-communal disputes – including disputes related to IS – through tribal law rather than state law.¹⁴³ Some who are seeking redress for crimes committed against them by IS members are turning to tribal justice as an alternative to state courts, which are both overburdened and widely perceived as corrupt and illegitimate.¹⁴⁴ According to Holt of the IRC, “Customary justice is often the first resort for Iraqis because it is free and often faster than state courts.”¹⁴⁵ In addition to dispute resolution, tribal authorities are involved in negotiating the terms under which IDPs displaced by IS-related violence and individuals affiliated with IS including family members may or may not be allowed to return to their former communities.

Some NGOs have argued that tribes – rather than undermining state authority – are important partners in the Iraqi government's efforts to restore stability and social cohesion in areas recaptured from IS. For example, the U.S. Institute of Peace and Sanad, an Iraqi peacebuilding NGO, have been working to facilitate dialogues between tribal leaders and government officials – dialogues that they believe have prevented revenge killings and facilitated the return of IDPs.¹⁴⁶ In Hawija, one such dialogue resulted in a pledge to forgo tribal justice mechanisms in dealing with IS affiliates and instead “embrace Iraq's formal legal system.”¹⁴⁷ In another promising example of the positive role that tribes can play in post-IS reconciliation efforts, the leader of a powerful tribe in the northern Iraqi town of al-Shura held meetings with residents who had been victimised by IS in order to secure a promise that they would allow relatives of IS members to reintegrate into the community peacefully.¹⁴⁸

However, in other cases, tribal justice has been a barrier to reconciliation. In some areas, tribes have been unwilling to cooperate with state authorities and have insisted on enforcing their own legal doctrines including those requiring paying of “blood money” or banishment, and many Iraqis feel that these methods of conflict resolution are a threat to rule of law. Ahlam Allami, President of the Iraqi Bar Association, said she fears that empowering the tribes “will weaken the sovereignty of the state.”¹⁴⁹ In some areas retaken from IS, tribes have engaged in acts of extra-judicial violence that appear to be at odds with the constitutional right to a fair trial.¹⁵⁰ These actions include executing individuals accused of joining IS, banishing them from the community, or destroying their homes.¹⁵¹ In the village of Qayyarah in Ninewa, family members of victims of IS – acting with the backing of local tribal leaders – drew up a list of names and visited the houses of these individuals to demand that they sign next to their names promising to leave the community or else face consequences.¹⁵²

Additionally, some Iraqis fear that tribal governance has the potential to undermine the constitutional principle of equal rights among Iraqi citizens.¹⁵³ For example, one tribe may force women to marry members of another tribe “as a means of resolving a dispute between the two groups”¹⁵⁴ – a practice that is prohibited by Iraq's Personal Status Law.¹⁵⁵ Tribal law and politics are highly patriarchal. Women cannot serve in tribal leadership roles nor can they represent themselves in disputes adjudicated by tribal sheikhs. According to Holt, “Custom-

ary justice is completely inaccessible to women; they need to be represented by a husband, brother, or other male guardian.”¹⁵⁶ In addition, tribal law is inconsistent with the principle of “individual liability” that is integral to Iraq’s Penal Code.¹⁵⁷ Unlike state law, tribal law allows for the attribution of collective guilt to the family or tribe of the perpetrator, such that the relatives of an IS member can be held vicariously responsible for crimes that he or she committed individually.¹⁵⁸ According to Khalid Obaide, an Iraqi law professor, “The idea that family members of a criminal can be held vicariously liable for his crimes is a violation of the Iraqi legal system’s principle of individual responsibility.”¹⁵⁹

A tribal reconciliation session in Baghdad in December 2017 that was attended by representatives of dozens of tribes from Anbar Province illustrated some of the benefits and drawbacks of tribal involvement in post-IS accountability and reintegration processes. The goal of the meeting was to discuss issues associated with the recapture of territory from IS including: the need for compensation of victims of IS-related violence; the return and reintegration of IDPs; and mechanisms for detaining and prosecuting individuals associated with IS. On the one hand, there was broad consensus on the need for cooperation and coordination with the Iraqi legal system and security forces on matters concerning the detention and prosecution of suspected IS members. But on the other hand, some of the participating sheikhs made statements in favour of the collective punishment and social exclusion of individuals solely on the basis of their family ties to IS. One tribal leader said, “Even if a criminal is dead, his father or other family members must bear responsibility for his crimes.”¹⁶⁰ One of the “solutions” generated by the participants was to banish families with one or more members who had joined IS from returning to the community according to the tribal law doctrine of *bara’ah* (“disavowal”).¹⁶¹ Similar tribal agreements demanding the forced eviction of families affiliated with IS and the redistribution of their property to victims of the group have been documented in other areas of Iraq including Ninewa, where tribal leaders claimed that the seizure and redistribution of these assets would help to prevent other forms of retribution and serve as “mental therapy” for those harmed by IS.¹⁶²

In all of these examples, there is a concerning lack of due process for individuals accused of association with IS. When tribes publish the names of individuals deemed to be affiliated with IS and therefore banned from the community, it is unclear what standards were used to determine their guilt, and whether they have an opportunity to challenge their accusers or appeal the decision.

Coercive Rehabilitation

Rehabilitation programs are being established in Iraq to facilitate the reintegration of individuals formerly associated with IS including family members. In some cases, these programs are being imposed coercively without the consent of the affected populations. Some Iraqi officials have advocated for the quarantining of family members of IS members in camps where they can be closely supervised by security forces while undergoing rehabilitation. Mohamed Salman al-Saadi, Chairman of the National Reconciliation Council – a body established in 2007 to oversee the vetting of Ba’ath Party personnel that is now primarily focused on IS-related reintegration challenges¹⁶³ – said that he is in favour of the isolation of IS-affiliated families in special camps for three reasons: first, “to protect them from revenge attacks”; second, “to prevent them from communicating with Daesh [IS]; and third, “to re-educate and rehabilitate them in order to reverse the effects of three years of brainwashing.”¹⁶⁴ Local government officials have also endorsed the creation of such camps. For example, a decree issued by the Mosul district council in June 2017 ordered the expulsion of all families of IS members and proposed the creation of “special camps where they can be rehabilitated psychologically and

ideologically.” The decree said that these families would only be permitted to return to Mosul “after confirming their responsiveness to rehabilitation.”¹⁶⁵

The Iraqi government has constructed several facilities that it calls “isolation camps” – functionally equivalent to internment camps – to house IS-affiliated families for the purported purpose of “protecting them from revenge killings,” according to Dr. Hisham al-Hashimi, a counter-terrorism expert who advises the Iraqi government.¹⁶⁶ In June 2017, Iraqi authorities forcibly relocated at least 170 “IS families” to a closed rehabilitation camp east of Mosul – which they are not allowed to leave – after the city’s district council issued a directive ordering such families “to receive psychological and ideological rehabilitation, after which they will be reintegrated into society if they prove responsive to the rehabilitation program.”¹⁶⁷ Although this camp was closed – after Human Rights Watch reported that at least 10 women and children had died traveling to or at the camp¹⁶⁸ – al-Hashimi said that five similar facilities are still operating: Tel Kayf Camp, Hamam al-Alil Camp, Leilan Camp south of Kirkuk, Kilo 18 Camp in west Anbar, and al-Taji Camp north of Baghdad. At least 10,000 families – between 60,000 and 10,000 individuals – are currently living in these camps,¹⁶⁹ which they are not free to leave unless they receive a “green light” from all of the different security agencies and their respective databases.¹⁷⁰

According to al-Hashimi, suspects who lack identification – a common problem in areas where IS systematically destroyed government-issued documents – or cannot prove that they are unaffiliated with IS are being detained indefinitely in these de facto internment camps.¹⁷¹ Contrary to a bedrock principle of most justice systems – that the state bears the burden of proving a suspect’s guilt – many Iraqi IDPs bear the burden of proving their innocence.

Dysfunctional Compensation Processes

IS expropriated a vast amount of property and other assets from Iraqi civilians – particularly non-Sunni religious minorities – for redistribution to the group’s supporters and for sale or rent to residents of IS-controlled territory.¹⁷² Now that the former owners of expropriated land and real estate are trying to return home, there is an urgent need for a compensation process to adjudicate claims. Iraqi courts have begun to review claims for compensation under a 2009 law that provides remedies for victims of “terrorism and military errors.”¹⁷³ However, the process is slow, taking two years on average.¹⁷⁴ In Fallujah and Ramadi, where more than 12,000 claims for the reconstruction of homes have been filed, not a single payment had been issued as of August 2017.¹⁷⁵ According to an appeals judge in Mosul who is involved in the compensation process there, the court has received nearly one million claims related to the battle for Mosul – concerning deaths, injuries, and property destruction – but no payments had been issued as of December 2017.¹⁷⁶

An important barrier to compensation is that many claimants lack the documents that are necessary to prove ownership of damaged properties for reasons noted earlier in this report. Eighty-eight percent of Iraq’s three million IDPs cite missing documents as one of their major concerns. IS systematically destroyed property deeds in Mosul¹⁷⁷ and other Iraqi cities.¹⁷⁸ Although the group created its own real estate department that issued “statements of ownership,”¹⁷⁹ these documents – like all IS-issued documents – are not recognised as valid by the Iraqi government.

In addition to IS’s expropriation and redistribution of property, there is some evidence that Iraqi security forces involved in the battle for Mosul have illegally occupied some properties in the city. 24 percent of respondents in a survey of 1,409 residents of Mosul said that they have personally witnessed or heard about cases in which Iraqi Federal Police or the PMF had

stolen property or money from civilians in the aftermath of the battle. A humanitarian worker involved in reconstruction efforts in Mosul reported several cases in which the Iraqi military forces appeared to have illegally occupied houses recently abandoned by IS members.¹⁸⁰ In other cases, military forces have gifted abandoned properties to civilians with *wāsta* (influence) whose houses were destroyed during the battle. According to the humanitarian worker, “There are no formal rules or procedures for distributing these abandoned properties. They are being divvied up according to the discretion of individual commanders.”¹⁸¹ Holt of the IRC was also aware of cases in which Iraqi security forces have occupied civilian properties and said that “these property disputes have the potential to generate further conflict if they are not resolved promptly.”¹⁸²

As a result of these unofficial property transfers and the absence of legally valid deeds, disputes over the ownership of real estate and land in areas retaken from IS are widespread. An important obstacle to the resolution of these disputes is that many Iraqis have lost their government-issued ID cards in the chaos caused by the conflict and – in the case of children born in IS-controlled areas – may never have been issued essential document such as birth certificates in the first place. Not only are identification documents necessary to rent or own property but they are also the basis for Iraqi citizenship.¹⁸³ Although IS issued its own ID cards, birth certificates,¹⁸⁴ and marriage contracts,¹⁸⁵ none of these documents are valid in the eyes of the federal Iraqi or KRG governments. 88 percent of Iraq’s three million IDPs cite missing documents as one of their major concerns.¹⁸⁶ Some “mobile courts” have been set up in IDP camps to issue valid documents, sometimes based on converted IS documents, but the demand for the services of these courts exceeds their capacity.¹⁸⁷

Another concern is that existing compensation processes are perceived as sectarian. The “Martyrs’ Foundation,” which was established by the Iraqi government in 2006 to provide compensation to the families of Iraqis who lost their lives for opposing the government of Saddam Hussein,¹⁸⁸ is now working to investigate and document crimes committed by IS including through DNA analysis of bodies recovered from mass graves.¹⁸⁹ In addition, the government has created a fund to reward fighters (and their families) who fought against IS with property and land distributions. However, these programs are perceived as benefiting primarily Shia.¹⁹⁰

There is also a danger that compensation processes, if administered by tribal leaders, could devolve into patronage schemes. This appears to already be happening in Salah ad-Din, where the government paid 1 billion Iraqi dinars to Shia tribal leaders – as compensation for harms perpetrated by IS – for them to distribute to their members.¹⁹¹ Tribal leaders distributed the funds preferentially to their supporters and family members, prompting accusations of corruption.¹⁹² Another reason for the ineffectiveness of existing compensation processes is that the Iraqi government’s financial crisis has imposed severe constraints on the amount of funding available for distribution to claimants.¹⁹³

The Risk of an “IS 2.0”

The Iraqi state’s current approach to individuals associated with IS is widely perceived among Sunnis as collectively punishing Sunni civilians for simply living in areas controlled and governed by IS. Although it is important that IS members be identified and held accountable, it is equally important that punishment be proportionate. Several lawyers interviewed for this report expressed the concern that excessively harsh punishments may backfire and increase the likelihood for recidivism by convicted IS members. Furthermore, the wrongful conviction of innocent people generates grievances that could contribute to a future insurgency against the Iraqi government. Nifal al-Tai, the director of the Iraqi Bar Association’s Ninewa Branch,

expressed concern over the large number of juvenile IS suspects being detained alongside dangerous adults: “Children under the age of 14 are being held in the same cells as real terrorists. If these children are not already terrorists, they will certainly become terrorists by learning from their fellow inmates.”¹⁹⁴ Furthermore, many of those who have been convicted are innocent and should never have been punished in the first place, according to al-Tai: “Many innocent people have been unjustly imprisoned. If they remain in prison with terrorists for years and years, by the time they are eventually released, they will become the next generation of Daesh [IS].”¹⁹⁵ As Dr. Zyad Saeed, an Iraqi lawyer, noted, “Daesh [IS] was born in prisons in the 2000s, including the American-run Camp Bucca where Abu Bakr al-Baghdadi [IS’s leader] himself was detained. Bucca became a terrorist university where criminals could learn from extremists and vice versa.”¹⁹⁶ Numerous analysts have pointed out that IS has a long history in Iraq dating back to the early 2000s and will likely re-emerge again as an “IS 2.0” if the underlying political and economic grievances that fuelled its rise to power are not addressed or even exacerbated by excessively punitive responses.¹⁹⁷

5. Policy Implications

Leveraging Opportunities for Forgiveness: Public pressure appears to significantly influence policy and judicial approaches, as even a judge interviewed for this report admitted that “judges can be very harsh, sometimes as harsh as Daesh [IS]” because of social and political pressure to show no mercy to IS and because the counter-terrorism law does not allow them sufficient flexibility in sentencing. Yet, the evidence presented in this report suggests that many Iraqis are open to more restorative and forgiving approaches to accountability than the highly punitive model that is currently being implemented by the Iraqi government. For example, many residents of Mosul surveyed for this report said that they would be willing to accept a lenient punishment – community service – or no punishment at all for individuals who were affiliated with IS in non-combat roles. For example, although 31 percent of respondents believed that a hypothetical woman married to an IS fighter should be sentenced to death, 17 percent believed that she did not deserve to be punished at all, while another 17 percent believed that she should perform six months of community service (Table 5). Thus, Iraqi authorities may be overestimating the public demand for a heavy-handed response to IS associates, and there may in fact be more political room for nuanced approaches that differentiate between combatants and those in diverse support roles than the current state approach allows for.

Building Trust in the Iraqi Legal System and Security Forces: A common theme across the interviews conducted for this report was the need to strengthen the legitimacy of the Iraqi legal system and security forces particularly in the eyes of Sunnis. According to Khalid Obaide, a law professor, “Corruption contributed directly to the rise of Daesh [IS] and as long as corruption remains a problem in Iraq, extremist groups will continue to exploit grievances with bad governance and weak rule of law.”¹⁹⁸ In a national survey conducted in 2014, only 41 percent of Sunni respondents said that they trust the Iraqi police and only 37 percent said that they trust the Iraqi judiciary.¹⁹⁹ A consequence of widespread distrust in the state legal system is that many Iraqis believe that justice can only be achieved through extra-judicial violence. As one Mosul resident said of individuals currently awaiting trial on IS-related charges, “We don’t want them to go to jail because they will be let out. It’s better for them to be killed.”²⁰⁰ One lawyer working in Mosul claims to have witnessed cases in which judges offered to alter witness statements in exchange for bribes.²⁰¹ Three lawyers interviewed for this report expressed the concern that the most senior IS leaders are escaping accountability – either by fleeing to Syria or by paying bribes, for instance to get out of detention.²⁰² The perception that IS fighters can easily bribe their way out of justice has been cited by Iraqi security forces and militias as a justification for extra-judicial killings of prisoners.²⁰³

Iraq will also need to make headway toward correcting procedural flaws, namely by: reducing the arbitrariness of arrests by improving the maintenance of wanted lists; limiting the military’s involvement in pre-trial investigations; eliminating or at least reducing reliance on the testimony of secret informants; and providing individuals accused of IS association with competent public defence lawyers, and protecting all lawyers who defend individuals accused of IS association. Furthermore, the Iraqi government should also consider dispatching judges from Baghdad or other areas of Iraq who have not been personally affected by IS to preside over IS-related trials in order to ensure that personal biases do not interfere with the administration of justice.

Accountability for All: It is important to recognise that IS was not the only perpetrator of crimes and human rights violations during the recent conflict. Iraqi security forces and state-affiliated militias (notably the PMF) have also committed crimes including torture, extra-judicial killings, and unlawful expropriation of property. Accountability and compensation measures that focus exclusively on IS risk alienating Sunni Muslims who feel that they are being singled out for punishment.

Some Iraqi security forces – notably the PMF – have engaged in revenge killings and torture of Sunni civilians from areas recaptured from IS in addition to looting and preventing Sunni IDPs from returning to their homes.²⁰⁴ Although the Prime Minister’s office has established a committee to investigate allegations of abuses by security forces during and after the battle to retake Mosul,²⁰⁵ and some of the officers implicated have been arrested and are facing trial, Iraqi authorities have been criticised for turning a blind eye to human rights violations perpetrated under the pretense of combating terrorism.²⁰⁶

Iraqi authorities should take steps to ensure the compliance of all security forces with the laws of war and should thoroughly investigate and hold accountable those who violate them. Iraqi authorities should also consider providing additional training aimed at preventing future abuses. The NGO Geneva Call has successfully conducted a training workshop with a PMF brigade that stressed the right of IDPs to return to their homes without interference by armed actors.²⁰⁷ Iraqi authorities should consider replicating and scaling up such workshops to facilitate the peaceful return and reintegration of the many thousands of civilians who remain displaced.

Looking Beyond the False Victim–Perpetrator Dichotomy: Another deficit of the Iraqi government’s current approach to accountability is its reliance on a false dichotomy between victims and perpetrators. According to Anne Hagood, “From the government’s perspective, people are either fully innocent or fully guilty. They see these categories as black and white, without recognising that many people are in a gray area.”²⁰⁸ As the experiences of wives and children of IS members illustrate, the same person can be both a victim and a perpetrator or somewhere on a continuum between these two identities and therefore difficult to classify as either. Khalid Obeide, a law professor, said, “Children who were recruited and brainwashed by IS need to be viewed as victims rather than as criminals, regardless of whether or not they carried weapons, because they had no awareness of what they were doing.”²⁰⁹ Iraqi authorities should attempt to look beyond simplistic binaries and recognise that IS’s coercive control over territory and harsh treatment of dissidents resulted in near-universal collaboration. Many people who appear to be “collaborators” were acting under conditions of extreme duress and may have experienced violence or other crimes at the hands of IS.

Prosecutorial Prioritisation: There appears to be no effort by the Iraqi government to prioritize the prosecution of more serious crimes over lesser offenses. The sheer number of individuals currently detained in connection with IS – more than 19,000²¹⁰ – exceeds the capacity of the Iraqi justice system to investigate and prosecute in a timely manner. According to Ahlam Allami, President of the Iraqi Bar Association, “The process will take years and is already imposing huge strain on the court system and prisons.”²¹¹ According to Khalid Obeide, a law professor, investigating judges – who are responsible for pre-trial investigations and fact-finding – often review as many as 40 cases in a day.²¹² The burden on the Iraqi judiciary could be reduced by prioritising more serious crimes over lesser offenses and by attempting to differentiate between those who aided IS voluntarily and those who merely cooperated with the group under conditions of extreme coercion and duress. In addition to conserving the limited resources of the justice system, adopting a strategy of prosecutorial prioritisation would reduce the likelihood that innocent people will be convicted while those who are actually guilty escape justice, according to a United Nations report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.²¹³

Legislative and Procedural Reforms: In addition to prioritising more serious crimes over lesser offenses, the Iraqi and KRG governments should consider legislative reforms to reduce the currently vast scope of counter-terrorism prosecutions and to selectively allow amnesty for low-level IS members who did not commit any serious crimes while affiliated with the group. Iraq is in the process of revising the 2005 Counter-Terrorism Law – a draft was reviewed by the United Nations Office on Drugs and Crime in October 2016²¹⁴ – presenting an opportunity to correct some of the flaws identified in this report. Iraqi lawmakers should consider revising the law to require a criminal act in addition to membership in a terrorist group for prosecution.

Iraq's Amnesty Law should be re-amended to permit pardons for low-level IS members who did not commit any serious crimes while affiliated with the group – as a previous version of the law had allowed – while closing loopholes that allowed release of dangerous criminals and terrorists. The KRG, which does not have any Amnesty Law, should consider adopting one along these lines.

As a procedural matter, Iraqi and KRG authorities should clarify and publicise detailed guidelines for the screening, detention, and sentencing of individuals accused of association with IS. Greater transparency about the types of conduct that warrant punitive measures is necessary to ensure a consistent and principled approach to accountability. Iraqi and KRG authorities should also explore ways of improving their coordination and communication on IS-related security and legal matters including the maintenance of wanted lists, which currently suffer from inconsistent and out-of-date information.

Facilitate an Inclusive National Dialogue: Finally, criminal justice proceedings alone cannot adequately address the physical, economic, and psychological harms caused by the conflict with IS. In cases where suspected low-level IS members – for example, unarmed civilian employees such as janitors and cooks – do not appear to pose a threat to society, alternatives to prosecution such as counselling and education may be appropriate. Some Iraqi officials have been reluctant to consider lessons from transitional justice in other historical and regional contexts because they view Iraq's current challenges as unique and highly context-specific.²¹⁵ As the chairman of the National Reconciliation Committee said, “We are aware of the experiences of other countries, but we believe that each country is unique. No model I have seen anywhere else in the world is replicable in Iraq because of the specificity and complexity of Iraqi society and history.”

Yet, other post-conflict and transitional settings have exhibited some comparable challenges to those faced by Iraq, and might offer transferable lessons. Specifically, national dialogues have proven useful in post-conflict peacebuilding and reconciliation, including in some countries that experienced transitions after the Arab Spring.²¹⁶ Dialogues offer space for debates beyond elite decision-makers who may be out of touch with the needs and aspirations of citizens.²¹⁷ If adapted to local realities, an inclusive national dialogue in Iraq could allow all key interest groups to express their past grievances and aspirations for the future. The evidence presented in this report suggests many Iraqis are open to more restorative and forgiving approaches to accountability than the highly punitive model that is currently being implemented by the Iraqi government. A national dialogue could help to incorporate public opinion into the policy-making process in ways that would be beneficial for peacebuilding and the prevention of future insurgencies. A well-designed dialogue would include all major social, religious, ethnic, tribal, and regional groups. As noted earlier in this report, tribes have already emerged as powerful brokers of agreements governing the return and reintegration of individuals affiliated with IS. However, the absence of women from tribal dialogues is problematic and limits the representativeness and inclusivity of any resulting agreements. Given the diversity of Iraqi society, it is important that any national dialogue process give a voice to all interest groups.

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