Human Security Law in Iraq: Reforming Rules, Practices, and Urban Spaces

ABSTRACT

This article addresses a few moments in the evolution of human security law in Iraq, focusing in particular on the Coalition Provisional Authority, the new Iraqi Constitution, Iraqi High Tribunal (successor to the Iraqi Special Tribunal), and the International Criminal Court. It synthesizes the results of some existing research on ongoing impunity for certain crimes against political candidates, journalists, anti-corruption activists, and ethnic and religious minorities, a situation which may have tainted Iraq's transition to a more democratic republic, while aggravating other conflicts, such as those in Syria. In theory, the institutions of human and national security can help reconcile peoples whose tenuous unity had been shattered in wartime. The sometimes competing priorities and policies of Iraqi politicians, civil society groups, and judges resulted in swift justice for Iraqi officials responsible for mass killings involving Shi'a, Kurdish, and other victims, but a lack of justice for other segments of the population. The emphasis of some claims of injury over others may have 'reenchanted' some sectors of Iraqi society with the state and its institutions, while alienating others and contributing to ruptures in the social fabric. The Coalition Provisional Authority, Iraqi leaders, and international community ensured that the high-profile proceedings against former regime officials would not be accompanied or followed by others that some Iraqis might perceive as being as pressing as those of the Iraqi High Tribunal, relating to the impact of sanctions and aerial bombardment, the legality of Iraq's occupation, torture, etc.

KEYWORDS: Human security law, Iraq, Coalition Provisional Authority decrees, constitutional reform, International Criminal Court

Human Security Law in Theory

Human security law is an emerging field. Few or no books mentioned it prior to 2005. One scholar asked in 2013 whether there was already a field of "human security law" covering human rights law, war crimes (humanitarian) law, and the law of refugees and internally-displaced persons. Highlights would include the human rights treaties, the Geneva Conventions, the Rome Statute of the International Criminal Court, refugee treaties, the Guiding Principles on Internal Displacement (1997), and Security Council resolution 1325 on women, peace, and security (Kaldor, 2013; Oberleitner, 2013). Within transitional justice, human security law combines elements of retribution for mass killing, protection of infrastructure and the social fabric, and prevention or remediation of forced displacement.

Pillars of human security include the right to life, political rights, the right to truth, the right of peoples to self-determination, and economic, social, and cultural rights. On the flip side, human security law might confer guarantees against impunity for genocide or war crimes, against aggression or unjust occupation, against violations of the territorial integrity or political independence of U.N. member states, against incitement of atrocities or propaganda for or the planning of aggressive wars, and against extreme poverty or social exclusion. In addition to food security, ecological security, and other aspects of security in everyday life, the U.N. Development Programme (1994) emphasizes security from interpersonal violence:

> Perhaps no aspect of human security is so vital for people as their security from physical violence. In poor nations and rich, human life is increasingly threatened by sudden, unpredictable violence. The threats take several forms:
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> - Threats from the state (physical torture)
> - Threats from other states (war)
> - Threats from other groups of people (ethnic tension)
> - Threats from individuals or gangs against other individuals or gangs (street violence)
> - Threats directed against women (rape, domestic violence)
> - Threats directed at children based on their vulnerability and dependence (child abuse)
> - Threats to self (suicide, drug use)

Several of these threats loomed large in the lives of Iraqs since 1979 or perhaps 1963. The state killed hundreds of thousands of people by some reports. Other states, including Iran and the U.S.-backed coalition(s), waged war on Iraqi territory, and against Iraqi government officials and institutions, notably in 1990-1991 and 2003. Ethnic and religious violence surged in the 1990s and 2000s, and again in the 2010s. Economic and gang violence became pervasive post-2003 according to some reports. Women and children confronted various sources of familial and intercommunal/international violence. The U.N. Development Programme (2009) points out that these tragedies undermined human security, which "encompasses a well defined range of human concerns," ranging from livelihoods, nutrition, and health care to "peaceful relations among different identity groups, the state's fulfilment of its basic duty to protect its citizens from internal and external aggression, and the individual's safety from personal threats."

This article will review the evolution of human security law in Iraq over nearly two decades, starting in 2003. While proclaiming new policies of guaranteeing the right to life and protection against impunity, in some ways Iraq's institutions of governance and the administration of justice contributed to impunity and violations of human rights, impunity being a situation in which serious crimes are going unpunished in violation of the human rights to life and to property and other necessaries of life. The right to truth has been flouted, with human-rights and anti-corruption activists being particularly targeted and at times driven from the country. As formal change in institutions and laws has been perceived to be failing or incomplete, political discourse within Iraq has shifted from themes of law and national unity to themes of anti-corruption and transparency.

Constitutionalism and Economic Reforms

Other than the Iraqi High Tribunal, the pillars of transitional justice in Iraq have been constitutional reform, judicial reform and de-Baathification, criminal law reform, and economic reform. Each area presented its own challenges and susceptibilities to abuse, and each contributed in its own way to worsening divisions and sectarian violence inside Iraq. As the U.N. Assistance Mission in Iraq (2012) reported:

> [During the] major, concerted effort by the UN family to support the country's postwar political transition and to meet its myriad humanitarian, reconstruction and development needs [there have been] efforts to lift millions out of poverty and to build a prosperous country where the rights of every woman, man and child are respected and protected.
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> Despite the immense tragedies that have played out, however, we have seen progress in many fields and there is much to be proud of. With UN support, government institutions were rebuilt, a constitution was adopted, elections were held. Governorate council elections are being held again this spring; the first opportunity for the Iraqi people to elect their representatives since the country regained its full sovereignty after the departure of American troops. The UN has focused on building the capacity of the Independent High Electoral Commission, IHEC, to support elections that are transparent, credible and professional....
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> UNAMI's political role in Iraq began in 2004 with the adoption of UN Security Council Resolution 1546. The UN Security Council accorded to UNAMI an expanded mandate under resolution 1770, adopted on 10 August 2007. This resolution provides for UNAMI to assist, provide advice and support the Iraqi Government and institutions in advancing inclusive political dialogue and national reconciliation, supporting efforts to resolve disputed internal boundaries, assisting the constitutional review process and facilitating regional dialogue and cooperation between Iraq and its neighbours. Since then, this mandate has been extended every year.

To begin with constitutional reform, the Iraqi Constitution, to some, represented a step backward from the pre-Ba'ath Provisional Constitution of 1958. For advocates of religious freedom, it may have been disappointing in that it adopted a state religion, although it also "guarantee[d] the full religious rights of all individuals to freedom of religious belief and practice such as Christians, Yazidis, and Mandean Sabeans," and stated that all Iraqis shall be equal before the law and free from discrimination based on ethnicity or religion (art. 14) (Al-Jeloo, 2015; Jabar, 2005). For advocates of popular input, the constitution was a great advance on Iraq's weak parliamentary institutions, because it made the head of government subject to notionally free multi-party parliamentary elections, and devolved all powers not exclusively assigned to the national government to the regions, including powers over internal security in regions (Anderson, 2015). The constitution formally guaranteed the familiar array of civil liberties. Elections for a transitional assembly were held in January 2005, followed by a referendum on the constitution and elections for the assembly's first full term (Dobbins et al. 2005).

Judicial reform and de-Baathification went hand in hand, and the way that they were carried out revealed some of the fundamental problems with CPA rule over Iraq.

The Ba'ath party was dissolved by the U.S. military in May 2003, in what was in hindsight probably not the best way of delivering the news to the population (Law, 2004). Some sort of leave or suspension, followed by an Iraqi parliamentary or executive council decision, may have been seen as more legitimate or less jarring. In a decision harshly criticized within the U.S. government at the time, the Iraqi army was not recalled to assist the Multinational Force-Iraq, which was facing an unacceptable military-to-population ratio from the standpoint of protecting the population, in light of peak ratios between members of international forces to members of local populations in Bosnia and Herzegovina, Kosovo and elsewhere (Allawi, 2007; Dobbins, 2005).[1] Of course, the ratio needed to be much higher in Iraq due to the absence of large-scale attacks on international forces by local insurgents in Bosnia or Kosovo.

Evidence of insecurity and widespread infringements of human rights emerged soon after the Transitional Administrative Law was accounced, and continued under the Iraqi Constitution of 2005. The Transitional Administrative Law augured governance by an Iraqi council (the Iraqi Governing Council) rather than simply by U.S. authorities (the Coalition Provisional Authority or CPA, subject to U.S. Department of Defense, Congress, and the White House) (Bassiouni, 2005; Dobbins et al., 2005; Fisk, 2007). The U.S. military warned Iraqis to stay in their homes each night from sundown to sunrise, even though many of them lacked electricity or running water due to the war, because terrorists and criminals roamed the streets at night, looting and perhaps looking to kill (Fisk, 2007). More than eight in ten institutions of higher education suffered plunder, arson, or total destruction (Sassoun, 2008). Lists of Ba'athists began circulating in Baghdad, and death squads killed thousands of former officials, including teachers, professors, and doctors (Allawi, 2007; U.S. Institute of Peace, 2004). Iraq may have lost a large share of its medical staff and its other professionals, including engineers, to such campaigns and resulting refugee flight (Oxfam, 2008; Sassoun, 2008).

Economic reform may have been the greatest failure from the standpoint of those not affected personally by increased violence or displacement. Iraq entered its civil-war period in a context, however transient in macroeconomic terms, of rapidly deteriorating living standards. At purchasing power parity, its GDP per capita was down about 10% between 2001 and 2008, even though 2000 represented a near-trough in Iraq's development due to sanctions, low oil prices, and the destruction of factories, refineries, and infrastructure by U.N.-led bombing in 1990-1991 (U.N. Development Programme, 2014). The economic crisis in Iraq, which dated to 1990 if not earlier, was at the root of many of the society's problems. Although 12 million Iraqis voted in the 2005 elections, by that time over 60% of adult Iraqis were illiterate (CIA, 2007), the Iraqi middle class had been battered by the destruction of more than $20 billion in infrastructure and the flight of professionals from the country (Wallsten & Kosec, 2005).[2]

The early decisions of the international community were not consistent with the sustainable economic and human development of Iraq. In contrast to Germany, which did

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[1] For criticism, see "Former US Administrator Blasts US Post-war Actions in Iraq," Canadian Broad. Corp., Nov. 26, 2003, http://www.cbc.ca/; "Interview with Bob Woodward," Der Spiegel, Oct. 10, 2006, http://www.spiegel.de/international/spiegel/0,1518,441841,00.html; "Millionaire-Turned-Filmmaker Traces Iraq War", NPR, Aug. 23, 2007, http://www.npr.org/templates/story/story.php/storyId=13903569.

[2] Outlook for Iraq and U.S. Policy, Hearing of the House Foreign Affairs Committee, Federal News Service (Sept. 10, 2009), https://advance.lexis.com; Hanna Ingber Win, "Between Iraq and a Hard Place," Los Angeles Weekly, May 21, 2009, https://advance.lexis.com.

not make its restitution to Holocaust survivors until seven years after 1945, Iraq was forced to make its reparations to Kuwait in the first year after the fall of the Ba'athist regime, denying the country vital funds for reconstruction while further enriching an already much richer country, by contrast to Israel which was poorer than Germany. In the Western zone of postwar Germany, which was viewed by U.S. officials as a model for the reconstruction of Iraq, the Allies suspended reparations payments and agreed never to assert any claim for reparation against the "current production" of the West Germany, as opposed to its external assets and holdings in gold (Convention on the Settlement of Matters Arising Out of the War etc., 1952; Agreement on German External Debts, 1953). Although Iraq repeatedly requested that its reparations to Kuwait be suspended during its national and humanitarian crisis, this apparently was not done even though Iraq had paid $22 billion, or more than Holocaust survivors initially received (Al-Bayati, 2007). Billions of dollars in Iraq's oil revenue went for this purpose in the 2000s, even as the real GDP per capita at PPP fell.

Corruption within the transitional Iraqi government also reached appalling proportions. Continuing a pattern begun in the 1990s, much of the oil that was produced despite the vast infrastructure damages that had been done was smuggled out of the country, often to Turkey, by a vast network with government contacts (Allawi, 2007; Economist Intelligence Unit, 2007). As documented by Iraq's commissioner for corruption and public integrity, corruption cost Iraq about $18 billion by 2007 (al-Rahdi, 2007). Military spending by the government of Iraq dwarfed health care and education spending, with an estimate in 2007 being that $2.5 billion was being spent on food subsidies and under $1 billion on education in 2006, compared to $4 billion on the military (Allawi, 2007; Economist Intelligence Unit, 2007). Still, the military was often ill-equipped and understaffed, with less than half of the 20,000 assigned to Mosul reportedly being present for the terrorist invasion of 2014, and those present lacking relatively inexpensive machine guns to provide them with an equality of arms vis à vis the attacking forces (Reuters, 2014).[3]

Finally, the privatization movement in the United States helped ensure that billions of dollars in Iraqi funds were wasted on fraud and abuse by U.S. corporations such as Halliburton. As Klein (2007) wrote:

> Before the invasion, Iraq's economy had been anchored by its national oil company and by two hundred state-owned companies, which produced the staples of the Iraqi diet and the raw materials of its industry, everything from cement to paper and cooking oil. [The CPA] announced that the two hundred firms were going to be privatized immediately....

While statistics are spotty, it is possible that the unemployment rate increased from 28% in 2003 to 48% in 2010; it is also possible that the rate declined from 28% to more like 10-20%, depending on the region (Sassoun, 2011). Some estimates suggested that half of the Iraqi population was living on less than one dollar per day (Economist Intelligence Unit, 2007). Meanwhile, chronic malnutrition afflicted one in four Iraqi children under the age of five (Economist Intelligence Unit, 2007). The rate of underweight babies and malnourished children doubled or tripled since 2003, and 800,000 were out of school by 2006. Access to subsidized food was cut below the level

[3] "Special Report: How Mosul Fell: An Iraqi General Disputes Baghdad's Story," Reuters, Oct. 2014, reuters.com.

ensured by the Ba'ath party under U.N. sanctions, with only 60% of Iraqis having access to rations from the Public Distribution System (PDS) in 2006/2007, versus 96% in 2003 (Oxfam, 2008). The International Monetary Fund actually demanded these cuts in order to give Iraq a loan, while the country had unspent oil revenue in New York (Allawi, 2007).

Decades of war, plunder, looting, and smuggling across international boundaries deprived the nation—and its constituent ethnic and national groups—of their patrimony. By 2011, many Iraqis still lacked housing, clean water, and high-quality health care, and conditions only worsened for many in the conflict of 2014-2018, which destroyed many buildings and killed many professionals and community leaders, while driving survivors into camps (U.N. High Commissioner for Refugees [UNHCR], 2012). As of 2011 or so, a UN agency reported that 23% of Iraqis had incomes of less than US $2 per day to live on, as inflation "further aggravated undernutrition among children . . . " (UNHCR, 2012).

The economic, social, and cultural rights of Iraqis have not been well-respected. In addition to the tragic exodus of various populations from their homelands, there has been a destruction of urban environments and a reduction to poverty of many households. Many Iraqi 'homes' are "existing dwellings are dilapidated, overcrowded and structurally unsafe," and segments of the population resides "in informal housing, including squatting in public buildings and [in] small informal settlements, where living conditions are often sub-standard" (Republic of Iraq, 2010; UNHCR, 2012). Already by 2011, there were up to 4.5 million orphans due to Iraq's wars and poor health care facilities, and up to 600,000 of them lived homeless on the streets (UNHCR, 2012).

Internally-displaced persons in particular are living in poverty and sometimes without hope. Six million people were displaced from their homes after 2014, and eight million people remained dependent on some kind of aid in 2018 (Iraq Humanitarian Country Team, 2018). "Many IDP children are deprived of the right to education due to poverty, and are compelled to work in the informal labour market in order to help their families" (UNHCR, 2012). Even in the Kurdistan region, which has been spared some of the massacres and infrastructure destruction of other regions, displaced persons live in conditions of deprivation (UNHCR, 2012). In Mosul and Ninewa, 32% of hospitals and 14% of primary health care facilities have been destroyed (Iraq Humanitarian Country Team, 2018). Structurally, the Shi'a population was deprived of equal chances to become educated or wealthy alongside other groups; the "Black" or African-heritage Shi'a population of hundreds of thousands of persons is estimated to an unemployment rate of about 80%, a similar rate of illiteracy, and a pocket of poverty (UNHCR, 2012).

The economic and social rights to human development, with adequate housing, health care, access to employment, and income security, have not been realized in Iraq. By global standards, Iraq is very young, rather poor until recently, and inadequately educated (CIA, 2007). Many residents do not enjoy their rights to an education, to a high standard of health, to employment, or to their cultural heritage. While the conflicts (Iran, Kuwait/U.N., U.S./U.K./Spain, and insurgents/Saudis) and economic sanctions are partially to blame, the threat of corruption and the persecution of corruption-exposing activists and journalists may also be relevant. Despite massive increases in oil revenues and overall economic activity, many women in need reported not receiving humanitarian aid, fully one in three surveyed in 2009 (Oxfam, 2009). Conflict zones are often left in ruins, but a few families have allegedly reaped the benefits of illicit transfers of funds due

to corruption, irregular customs taxes, or other obstacles to development (Sassoun, 2016; Sulaivany, 2019; "Watch," 2014).

With the increase of oil prices and of private sector economic activity during the occupation and reconstruction, Iraq's GDP grew markedly, from $37 billion in 1995 to $106 billion in 2005 to $205 billion in 2016. GDP per capita in nominal terms hit $3,700 in 2009 and $5,500 in 2017 (United Nations Statistics Division, 2017).[4] In constant U.S. dollars, however, Iraq did not attain its GDP per capita from 1980 of more than $4,800 until the late date of 2013. By way of comparison, Iran's figure was double its 1980 level by 2013 (United Nations Statistics Division, 2017).

Criminal Law Reforms and Transitional Justice

Turning to criminal law reform, two key achievements were the suspension of the death penalty, especially for political crimes, and a reduction in censorship of public discourse. Executions were routine and affected thousands of Iraqis especially in the late 1970s, 1980s, and early 1990s, even if one does not accept the somewhat improbable U.S. official estimate of more than 300,000 bodies buried in mass graves (Fisk, 2007; see also, Bassiouni, 2005).[5] The CPA suspended the application of provisions of the Iraqi Penal Code that imposed the death penalty in Iraqi criminal courts (Newton, 2006). With the relaxation of censorship for publishing material that insulted or opposed the state, these provisions were enforceable only with the approval of transitional administrator Paul Bremer, so many new Internet cafes, television and radio stations, newspapers, and magazines sprung up. While many of these outlets might have been used at times to praise extremists and underscore sectarian divisions, the rise of an independent media helped vindicate the people's right of access to information. At the same time, educational reform tempered the Ba'athist state's suppression of Shi'a and Kurdish history and identity, but may have in this way reinforced ethnic differences.

At the time that the transitional justice process began for violations of human security during the regime of Saddam Hussein, Iraq was under a formal military occupation and the CPA and U.S. Central Command, both reporting to U.S. Secretary of Defense Donald Rumsfeld (Bassiouni, 2005; Bassiouni, 2006). The U.N. Security Council established the United Nations Assistance Mission in Iraq, to work alongside the U.N. Secretary-General and his Special Representative on human rights and political and electoral reform (Bassiouni, 2005). In December 2003 the CPA and its consultative body of Iraqi religious and political leaders, the Iraqi Governing Council, established the Iraqi Special Tribunal to try Ba'athist war criminals (Bassiouni, 2005; Scharf and McNeal, 2006).

The crisis of transitional justice in Iraq began in April 2003 but accelerated with the decisions made in setting up the Iraqi Special (later High) Tribunal. First, the authority of the CPA to establish such a tribunal was doubtful under the four Geneva Conventions of 1949. There was no statute of the Iraqi parliament, treaty between Iraq

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[4] These figures may be smoothed out over time, like certain other U.N. statistics, and therefore they may not match up with other estimates, which suggest a sharper decline in Iraq's economic activity per capita in 2003-2004, and faster growth from 2003 to 2008.

[5] There is some support for such a high number in the International Commission for Missing Persons receiving reports of 250,000 to one million missing persons due to the former regime's policies (U.S. Department of State, 2015).

and the United States, or U.N. Security Council resolution authorizing such a tribunal, and precious little U.N. input into it. The CPA promulgated the statute of the Iraqi Special Tribunal as an Attachment to CPA Order Number 48 (CPA, 2003), and its website described CPA "orders" as “binding instructions or directives to the Iraqi people that create penal consequences or have a direct bearing on the way Iraqis are regulated, including changes to Iraqi law” (CPA, 2004). Order Number 48 cited U.N. Security Council Resolution 1483 and the “laws of war” as its legal bases, but Resolution 1483 called upon the CPA to comply with the four Geneva Conventions of 1949 and the Hague Regulations of 1907 (U.N. Security Council, 2003). The fourth Geneva Convention, in turn, states that the penal laws of an occupied territory remain in force, unless they threaten the security of the Occupying Power or are an obstacle to the application of the Convention itself (Geneva IV, 1950). It is questionable whether the prosecution of Ba’athist officials for war crimes, murder, and torture under the Iraqi Penal Code threatened the CPA or would be an obstacle to fulfilling the fourth Geneva Convention. While, if Ba’athist abuses were legal under Iraqi penal or constitutional law, following it would prevent the CPA from following the Geneva Conventions' mandate to prosecute those perpetrating grave abuses of international humanitarian law, it may have been that these abuses were illegal under Iraqi law itself, and in any event this was not decided.

Second, the statute of the Iraqi Special Tribunal was written expressly to exclude members of the coalition or other non-Iraqis (CPA, 2003). In many respects, the officials of the member states of the U.N. Security Council were complicit in the crimes of the Iraqi government, including genocide and crimes against humanity targeting Kurds, Assyrians, and Shi’a Arabs, as well as communist or other dissident Sunni Arabs, aggression against Iran, Kuwait, and Israel, war crimes including mass executions, use of chemical weapons against civilians and Iranian soldiers, indiscriminate bombardment of Iranian cities, summary execution of Iranian, Kuwaiti, Kurdish, and Shi’a prisoners of war, widespread torture and officially-sanctioned rape, and economic blockades of northern Iraqi cities and towns inhabited by Kurds, Yezidis, and Assyrians (Travis, 2012).

The exclusion of non-Iraqis from the tribunal’s purview prevented any real investigation from being undertaken into the co-conspirators who enabled members of the Ba’ath party to take over Iraq and misuse its institutions to kill more than a million Iranians and Iraqis over a 30-year period. It is well-known and admitted by former U.S. officials that the Ba’ath party violently seized power from Iraq’s legitimate government in a U.S.-backed coup in the 1960s. The Soviet Union assigned 5,000 military advisers to Iraq in the 1980s, and provided the Ba’ath Party with access to large tranches of Soviet arms; France also sent billions of dollars’ worth of arms on credit (Adams, 2004; Lando, 2007; Simons, 2004; Smolansky and Smolansky, 1991). The U.S. reportedly transferred millions of dollars’ worth of biological toxins and chemical weapons components to Iraq, as well as $16 million in weaponry starting in 1972 to the Kurdish separatists under Mullah Mustafa Barzani (Lando, 2007; Pelletiere, 1991; see also Associated Press, 2002). U.S. and Iranian security services helped organize the Iraqi Kurdish revolt (Pelletiere, 1991). With Iraq enjoying such fulsome Soviet support, Iran backed down and reached the Algiers Agreement with Iraq that concluded border disputes and required Iran to withdraw its support for Barzani’s Kurdistan Democratic Party (KDP) (Middle East Watch, 1993). The Algiers Agreement empowered Iraq to deport tens of thousands of

members of Barzani-related Kurdish tribes into the arid south of Iraq where “they had to rebuild their lives from scratch” (Middle East Watch, 1993). Iraq established a buffer zone along its Iranian and Turkish borders by deporting 250,000 to 600,000 people from their villages, up to 1,400 of which were then destroyed (Lando, 2007; Middle East Watch, 1993; Yildiz, 2004). There was an understanding reached with the Gulf War coalition under which the government of Iraq used its tanks and helicopters, often Soviet-supplied, to attack Kurdish and Shi’a Arab rebels (Lando, 2007).

Third, the way that the tribunal's statute was written also deprived it of jurisdiction over American or British forces who tortured or murdered Iraqis on Iraqi soil between 2003 and 2006 (Bassiouni, 2005), leading to a perception and actually a reality of bias, one-sidedness, and a partially “law-free zone” in Iraq. Allegations of anti-detainee abuses and homicides reached the United States courts and the International Criminal Court in 2004-5 (Bassiouni, 2005; ICC, 2006; U.S. District Court, 2005). Yet the tribunal’s statute excluded all persons who were not Iraqi nationals from its jurisdiction. Human Rights Watch and other NGOs supported an independent and impartial tribunal that would exercise jurisdiction not simply over crimes against Iraqi Shi'a and Kurds but also against nations of Security Council member states, Iranians, Kuwaitis, Sunni Arab communists, and other groups (Bassiouni, 2005; Bassiouni, 2006). Such an international tribunal could have, like the Nuremberg tribunal, convened a unitary and comprehensive trial spanning the entire life spans of Saddam Hussein, his high officials, and other parties to violations against international law by, in, and against Iraq. It could have reviewed, in adequate detail to provide a historical record of Iraq’s last half-century, tens of thousands of tons of documents allegedly in U.S. archives, as well as the testimony of the officials and victims of the Ba’ath party and Iraqi rebel groups (Bassiouni, 2005). Instead, the IST’s advisers supported “mini-trials” starting with the relatively obscure incident in Dujail in 1982 in which 148 rebels and civilians were arrested, tortured, and/or killed following a failed assassination attempt in which gunshots were allegedly fired at a presidential motorcade (Scharf and McNeal, 2006).

Iraq's transitional justice process was plainly modeled on the one convened for the former Yugoslavia in 1993, although not so much on the Dayton Accords of 1995. In the 1990s, the State Department asked M. Cherif Bassiouni, who had chaired a commission that investigated war crimes in the former Yugoslavia, to perform the same role for a potential Security Council-approved commission on Iraq (Bassiouni, 2005). In 2002, the State Department convened a "Working Group on Transitional Justice" as part of a "Future of Iraq" project, and Professor Bassiouni wrote the working group's "plan" (Bassiouni, 2005). A fellow who worked with Professor Bassiouni in 2002 became the Iraqi ambassador to the United States (Bassiouni, 2005). The drafter of the statute of the Iraqi Special/High Tribunal apparently began with Prof. Bassiouni's proposal (Bassiouni, 2005). Like Yugoslavia, Iraq was arguably part of the Soviet orbit in its early years of post-monarchical rule, and again during the 1980s.

Still, Iraq's tribunals were not international ones, like those convened for the former Yugoslavia (alongside the courts of the former Yugoslav republics, which decided similar cases). The United States as occupying power under the Geneva Conventions “favored an Iraqi domestic court, rather than an international tribunal, because they felt that could exercise a greater degree over control over such an institution” (Scharf & McNeal, 2006). The Coalition Provisional Authority published the Statute of the Iraqi

Special Tribunal (IST) on December 10, 2003 as Decree number 48 (Order 48 in English), by which time the Iraqi Governing Council had also approved its terms (Scharf, 2006). The Statute required the IHT to "resort to the relevant decisions of international courts or tribunals as persuasive authority," but the tribunal apparently did not do this for over three years in the Anfal genocide case (Scharf, 2006).

On July 1, 2004, the charges against Saddam Hussein, as the principal target of "de-Baathification" and transitional justice, were identified as relating to five types of "intended killings" (washingtonpost.com, 2004). These were: those during the Anfal campaign against the Kurds, those of Kurds once again during the bombing of Halabja with chemical weapons, those of diverse groups including many Sunni Arabs during purges of Iraqi political parties, those of diverse groups but notably Shi'a scholars and the like during persecutions of religious leaders, and those killed during an unspecified episode in 1983, presumably a reference to the killings of Shi'a Arabs primarily that gave rise to the Dujail trial (washingtonpost.com, 2004). Press reports at the time added an additional charge that did not appear in the transcript of the hearing that was released to the press: directing widespread executions of Kurdish and Shi'a rebels in 1991 and 1992, after the Persian Gulf War (bbcnews.com, 2004).[6] Eleven other officials, notably Foreign Minister Tariq Aziz and Ali Hasan al-Majid, were also arraigned (Fischback, 2005).

An American adviser to the tribunal defended the decision to start with the comparatively obscure Dujail case on the basis that the evidence in that case was strong, fewer defenses were available, and it was a "less important and less complex case" in which procedural challenges may be disposed of (Scharf, 2006). These arguments appear to rest on the inaccurate premises that the evidence of genocide during the Anfal campaign was weak, or that Saddam Hussein has a multitude of valid defenses to the crime of genocide, or that the most important cases should be delayed. Precisely the contrary descriptions are justified by the facts, which show that genocidal operations were carried out on a par with those in Bosnia, with fewer excuses or provocations and with a degree of international complicity that demanded review.[7]

Fourth, the tribunal's statute was constructed to exclude crimes committed by members of the Iraqi security forces or other Iraqi institutions after May 1, 2003, compounding the problem of perceived bias (Cryer et al., 2007).[8] This contributed to a climate of further victimization and radicalization, rather than restorative justice and

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[6] "Charges facing Saddam Hussein, BBC News.com (July 1, 2004), http://news.bbc.co.uk/2/hi/middle_east/3320293.stm.

[7] There were 8,000 Kurdish men affiliated with the Barzani tribe or party who allegedly fell victim to massacres in 1983, and Iraq did not have the excuse of al Qaeda infiltration of the country that Yugoslavia had in 1994-1995. Middle East Watch, *Genocide in Iraq,* pp. 4-7. There were no documents uncovered from Yugoslavia which I am aware of that instructed all men in large Bosnian areas to be killed, as there were Iraqi documents. Ibid., pp. 58, 79-83. See also, Bruce Montgomery, "The Iraqi Secret Police Files: A Documentary Record of the Anfal Genocide," *Archivaria* 52 (2001): 69-90, 89-90, http://journals.sfu.ca. Compare Prosecutor v. Karadžić and Mladić, Trial Chamber, Rule 61 Decision, op cit., pp. 116-135. On al Qaeda in Bosnia, 1993-1995, see Dore Gold, *Hatred's Kingdom: How Saudi Arabia Supports the New Global Terrorism* (Washington, DC: Regnery, 2003), pp. 143-44. On other provocations including allegations of the killing of Serbian civilians by extremists, see Counter-Memorial of Federal Republic of Yugoslavia, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo.) (July 22, 1997), http://www.icj-cij.org/.

[8] Robert Cryer, Håkan Friman, Darryl Robinson, & Elizabeth Wilmshurst, *An Introduction to International Criminal Law and Procedure* (Cambridge: Cambridge UP, 2007), pp. 160-61.

reconstruction. The CPA actually amended the Iraqi Penal Code to state that no person shall be prosecuted for torture or murder based on work for the CPA (Bassiouni, 2005; CPA, 2003). The Iraqi government was therefore vested with the responsibility of trying its own security forces for torture or murder, but the Prime Minister, Interior Minister, and others did not always act swiftly against such activity.

In its first report on post-war conditions, the State Department charged that unlawful executions had taken place, involving 10 former Ba'athists, and 12 persons in Baghdad police custody (U.S. Department of State, 2005). The report cited Human Rights Watch for the fact that "torture and ill treatment of detainees by police was commonplace," with nearly 80% of prisoners interviewed claiming to have been mistreated, including by such means as beatings with "cables and hosepipes," electric shocks to the genitals, starvation and denial of water, and overcrowding (U.S. Department of State, 2005). The report identified widespread persecution on religious and sectarian grounds, including: (1) the deaths of thousands of Iraqis at the hands of insurgents and the disappearance "without a trace" of thousands more; (2) pervasive "Sunni-Shi'a violence" including a bombing near a Shi'a mosque in Baghdad, the bombing of dozens of children at a ceremony, and the bombing of a Karbala bus station; and (3) severe threats against Arab refugees such as Palestinians or Syrians (possibly suspected of being Sunnis?) including their detention and "severe treatment in prison" (U.S. Department of State, 2005). By 2008-2009, the department blamed Iraq's military and police for "large-scale death squad and kidnapping activities" against Sunni populations, and called the judiciary "weak and dependent on other parts of the government," potentially cowed by attacks from "insurgent, sectarian, tribal, and criminal elements . . ." (U.S. Department of State, 2009).

In 2006, the Iraqi Prime Minister, joined by other members of his cabinet but his zeal tempered by Iraq's President, pushed for the execution of Saddam Hussein prior to the conclusion of proceedings in the Anfal case. Iraq's President Jalal Talabani initially resisted the Prime Minister's timetable for imposition of the death penalty, but eventually did not try to stop it (Howard and Lewis, 2006). The U.S. Ambassador tried to delay the execution for 15 days, maybe longer. Saddam Hussein's lawyers also unsuccessfully appealed to the United States Supreme Court and European Court of Human Rights on grounds of due process and unfair proceedings, but his cases were rejected. The United Nations High Commissioner for Human Rights, Louise Arbour, took the unusual step of filing a brief with the Iraqi High Tribunal, characterizing the proceedings as lacking the guarantees of fairness needed to impose the death penalty on one of Saddam's co-defendants under the International Covenant on Civil and Political Rights. The President of the Iraqi Kurdistan Region, Massoud Barzani, called for the documentation of the Anfal genocide notwithstanding the execution having occurred.

The Iraqi Special Tribunal was opposed by many Sunni Arabs, particularly insofar as it appeared to be a creation of the CPA and U.S. advisers. The leader of the second largest Sunni Arab bloc in the Iraqi parliament warned in 2006 after the death penalty was handed down for Saddam Hussein that "[t]his government will be responsible for the consequences, with the deaths of hundreds, thousands or even hundreds of thousands" (Howard and Lewis, 2006). In Tikrit, an apparently Sunni Arab Iraqi government employee called the verdict "unfair and illegal under the occupation" (Howard and Lewis, 2006). In this sense, one mechanism of transitional justice in Iraq

may have contributed to societal divisions and increased the likelihood of a devastating civil war or even of a new episode of genocide.

Case Studies of Insecurity, Post-2003

Mosul

It was said, for a time, that violence had not impeded the progress of Iraq into a fledgling democracy with the rule of law. This was because violence in Iraqi cities declined from its 2006-2007 "highs," leading to "fair and credible" elections in 2009 (Trumbull and Martin, 2013). Despite such claims, there is evidence that violence targeting members of identifiable ethnic and religious groups impacted Iraq's electoral process, and laid the groundwork for the vicious civil war of 2013-2018 (or 2003-present, if you like). Threats and violence may have coerced support for dominant political parties, such as Iraqiya, the "State of Law" coalition, and the Kurdistan Democratic Party, and by sapping the demographic and social support of minority parties, while failing to resettle forcibly displaced voters.

Institutions designed to implement constitutional governance and transitional justice failed to protect the integrity of the January 2009 provincial elections in Iraq. In particular, political officials acting in the interest of political coalitions may have threatened to withhold government jobs and benefits unless voters supported the dominant parties. According to a few reports, these threats rose to the level of what would be considered electoral irregularities in the opinion of some in democratic states. Moreover, institutions of justice contributed to a climate of impunity for militia intimidation and massacres prior to 2009 drove many minorities and indigenous peoples from Ninewa province, leading to an overwhelming victory by parties linked in the press to various militias. Even during the more secure period in Iraq, in 2009-2010, there were "few official attempts … to improve security in minority areas," and "perpetrators of attacks on minorities were rarely identified, investigated, or punished." (U.S. Commission on International Religious Freedom, 2010). There were attempts to suppress the votes for the coalitions in which the Assyrian Democratic Movement and Shabak parties participated, and efforts to undermine support for the Yezidi Movement for Reform and Progress (ICG, 2009). Assassination campaigns against Sunni candidates and journalists as well as Kurdish, Assyrian, Yezidi, and Mandaean civilians may have resulted in distortions of the results after widespread refugee and IDP flight from Mosul and the Nineveh plains, and a chilling of activism (Dagher, 2009; U.K. Home Office, 2007; UNHCR, 2012).

The acquisition by Iraqi Prime Minister Nouri al-Maliki's "Coalition of the State of Law" of a plurality of seats in most provincial councils after the January 2009 elections surprised some observers of Iraq's political scene. One might have thought that the corruption and many tragedies of the 2006-2008 period would have undermined the governing parties. Due to electoral irregularities and ensuing violence, it may never be known whether a more constitutionalist, pluralist and/or secular political coalition was emerging, or how a fairly elected government might have responded to calls for an end to impunity, transparency and an end to corruption, the proposed referendum on the

independence of Kurdistan, or initiatives for more self-rule among the Shi'a Arabs of Basra, the Assyrians of the Nineveh Plains, or the Yezidis of Sinjar and Sheikhan.

The theory of democratic elections in Iraq was that democracy will contribute to a reduction in ethnoreligious violence, increased enjoyment of human rights, an improved rule of law, and popular sovereignty over oil revenues and other sources of national wealth (International Crisis Group, 2009). This theory was reflected, for example, by U.N. Security Council Resolutions 1546 and 1936, Iraq's Transitional Administrative Law of 2004, the Iraqi Constitution of 2005, and a number of statements by Iraqi, U.S., European, and U.N. officials (Mallat, 2012).

Despite these aspirations, in Mosul and Ninewa province in general, a feature of Iraq's 2005 parliamentary elections was human insecurity. According to a variety of sources, not fully reconstituting the former Iraqi army in May 2003 contributed to a pervasive climate of insecurity and impunity for political crimes as well as crimes of desperation of opportunity (Allawi, 2007). Sectarian parties and militias took over government ministries. Several cities fell under insurgent control, notably Fallujah, Najaf, and at times Mosul. Death squads emerged, targeting Baathists, secularists, and Christians in particular.

Mosul was affected by the boycott of the 2005 vote by several political parties. In 2003, Major-General David Petraeus mounted a mini-"surge" in Mosul, stepping up operations, integrating Kurdish peshmerga into security forces, and building the economy up in areas. Yet al Qaeda in Iraq took over much of Mosul in 2004 and in 2008 (Cambanis, 2004; International Crisis Group, 2009; Murphy, 2010). By 2007, kidnapping and murder were routine threats to the security of populations in Mosul (Asianews, 2007). As the U.S. Department of State (2015) reported:

> Disappearances and kidnappings were regular occurrences, and some kidnappers who did not receive a ransom killed their victims. There were also cases reported in which the abductor killed the kidnapped individual despite receiving ransom payments. Most kidnappings appeared to be financially motivated. Da'esh forces and illegal armed groups engaged in widespread kidnapping of members of Iraq's various ethnic and religious communities.... According to UNAMI estimates, there were numerous "execution style" killings of victims kidnapped for ransom to intimidate members of their communities.

Although it would be a prerequisite in most electoral processes, a census of Ninewa could not be conducted pursuant to the Constitution of 2005, because of violence and the threat of violence, e.g., between insurgents and peshmerga (Trumbull and Martin, 2013). In fact, plans for a new census had been revived in mid-2008, but were halted in 2009 out of concern that the census would lead to violence in areas along the disputed Kurdish border. At the time, the Iraqi government stated that it would take two years to release the results (Reuters, 2008). The number of seats allotted to each district (governorate) was proportional to the number of registered voters in the governorate, as determined for the January 30, 2005 elections, for which registration was based on the Public Distribution List (CPA, 2004a).

Both the 2005 and 2009 elections contemplated that some seats would not be allocated based on population, including a female quota of one in three seats, and minority quotas in the assembly, one reserved seat each for Christians and Sabian-

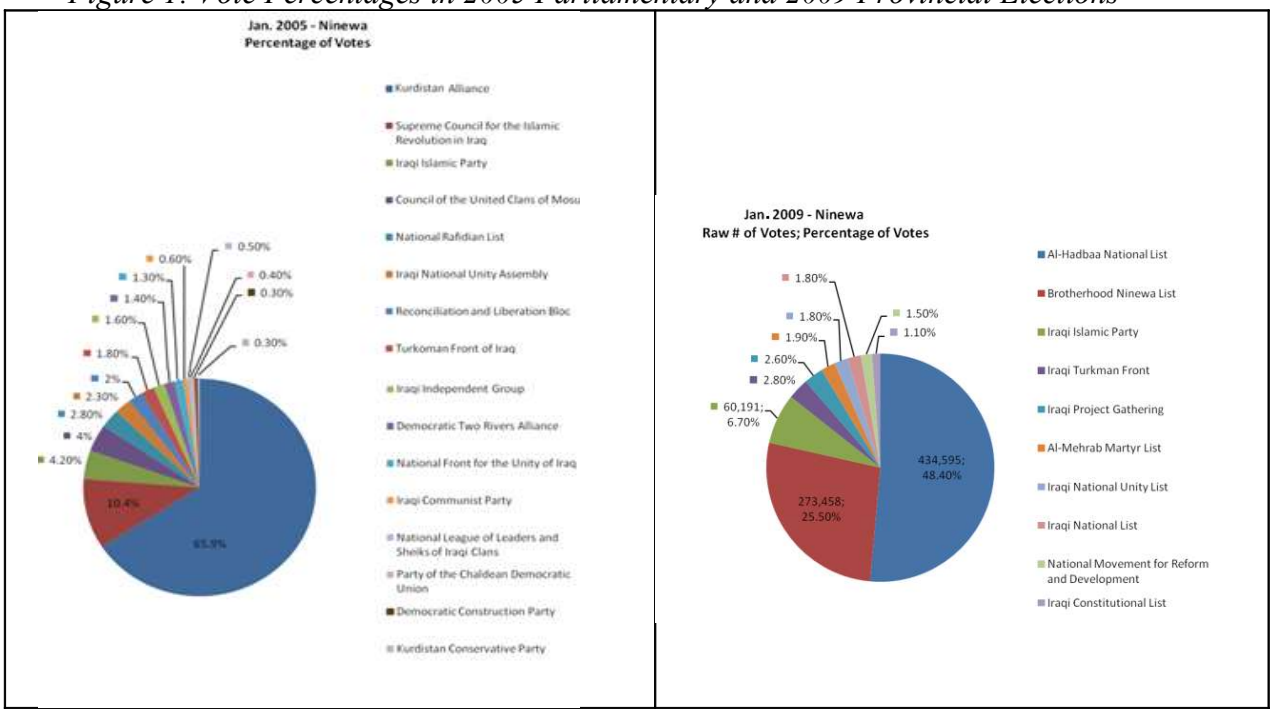
Mandeans in Baghdad; one each for Christians, Shabak and Yazidis in Ninewa; and one for Christians in Basra (ICG, 2009a).

In Mosul, the provincial council was controlled after 2005 by the Kurdistan Alliance, which joined the previously rivalrous forces of the Kurdistan Democratic Party led by Mustafa Barzani with and the Patriotic Union of Kurdistan led by Jalal Talabani (ICG, 2009; Robertson and Farrell, 2009). Other political coalitions linked the outcome of the 2005 national assembly elections to the principal religious and ethnic groupings within the country. The Iraqi National List of Prime Minister Iyad Allawi enjoyed U.S. support. The United Iraqi Alliance (UIA) represented a coalition of Shi'a Arab parties and politicians. The Council of the United Clans of Mosul included politicians affiliated with Arab tribal leaders, and won two seats in Ninewa's 2005 provincial election (ICG, 2009). One part of the coalition not backed by the United States was the party of Muqtada al-Sadr, a part of UIA in Dec. 2005, but later an independent movement critical of the UIA. The Rafidain List, claiming to represent Assyrians and Chaldeans in Ninewa, won one (reserved Christian) provincial council seat (ICG, 2009). With strong links to the Kurdish leadership, the Chaldean Democratic Union won the reserved Assyro-Chaldean seat in Basra in 2009, but lost to the Ishtar Patriotic List in both Ninewa and Baghdad (ICG, 2009). The Iraqi Turkmen Front failed to secure seats in 2005 or 2009, Turkmen apparently favoring the Kurdish or UIA lists. By contrast, politicians not supportive of the Kurdish leadership won the Shabak reserved seat in Ninewa in 2009, as well as the Yezidi seat in Ninewa, which went to the Yazidi Movement for Reform and Progress with 54.8% of the Yezidi vote (ICG, 2009).

In Ninewa's 2009 provincial elections, al-Hadba routed the other parties, indicating the demographic strength of anti-occupation Arab voters in the province. It obtained 435,595 votes, or 48.4% of the total vote. This won the coalition a majority, or 19 of Ninewa's 37 provincial seats, an achievement otherwise associated with the popularity of Nouri al-Maliki's State of Law coalition in the south, mainly Basra (ICG, 2009). Additionally, al-Hadba's leader, al-Nujayfi, became governor of the province.

After winning control of Ninewa, al-Hadba has encountered difficulty asserting effective control over the province. For example, in light of al-Hadba's refusal to succumb to Kurdish demands following the election, including granting them a specific share of government posts, the Kurds withdrew from the government in April 2009 and boycotted the new provincial council. Furthermore, despite several attempt to mediate between al-Hadba and the Ninewa Brotherhood List, Ninewa's local government entered into a state of paralysis, with de facto partition into areas for Arabs and Kurds (ICG, 2009). The Kurdistan Alliance had won 25.5% of the vote, down from 65.9% during the 2005 boycott(s), while the Iraqi Islamic Party won 6.7% of the vote, the Iraqi Turkomen Front won 2.8% of the vote and no seats, and SCIRI/ISCI 1.9% but no seats, losing five seats (ICG, 2009). Figure 1 illustrates the results of the 2009 provincial elections in Ninewa.

Figure 1: Vote Percentages in 2005 Parliamentary and 2009 Provincial Elections



In the lead-up to the election, the security bubble of 2008 began to deflate. Sectors of the Sunni Arab neighborhoods "joined or supported the insurgency" after the perceived Kurdistan Alliance's exclusion of al-Hadba (Robertson and Farrell, 2009). As in Anbar, Diyala, Muthana, and Baghdad, the voting in Mosul featured complaints of party abuses at polling stations (Institute for War and Peace Reporting, 2009). The major non-UIA movements alleged that some members of the security forces voted more than once, taking advantage of early voting availability for their positions (Institute for War and Peace Reporting, 2009). In 2005, elections regulators had been threatened by insurgents, and electoral offices closed due to fears of being attacked, notably in Anbar, Baghdad, and Diyala (U.S. Department of State, 2005).

Some of these irregularities would be viewed, in other countries and perhaps in circumstances of varying severity, as making an election unfair or illegitimate. For example, use of official resources to support candidates and intimidation contributed to observers finding the Bangladeshi parliamentary election of 2019 unfair and/or unfree (Siddiqui and Paul, 2019). The presence of party activists on electoral commissions and arrests of activists for minority or out-of-power parties have been deemed evidence of unfree or unfair votes, for example, in Azerbaijan in 2003 (Human Rights Watch, 2003).

Meanwhile, Kazimi reported (2011) that the destabilization of Iraq after 2003 provided strategic depth for al Qaeda in Syria:

> [T]he arid lands of western Iraq, abutting the Syrian border, could quickly become a Waziristan-like haven from which [Al Qaeda] could restock munitions, raise funds, and train new recruits. Sunni Iraq has ejected Al Qaeda but will likely sympathize with these Syrian insurgents for sectarian and cultural reasons. After all, the people on either side of the border of the Euphrates Valley, and farther north toward the lands west of Mosul, are indistinguishable by accent, tribal

> affiliation, and sect....
> Strategically, Syria would be an ideal cauldron in which militants could fan the flames of a jihad that is dying out in Iraq and Afghanistan....

That al Qaeda could make significant inroads in a Syria undergoing protracted civil war, transitioning to a new regime, or experiencing a power vacuum was likely given al Qaeda's stated intention to take both Syria and Iraq, and the long history of conflicts from Afghanistan and western Pakistan, to Somalia, Yemen, etc. (Kazimi, 2012). The rising death toll among Syrian security forces, and the prospect of economic ruin as sanctions and war ended investment and trade made a Somali or Afghan scenario more likely.

In 2015, a U.N. committee announced that "children and families belonging to minority groups … are systematically killed, tortured, raped, [etc.] … in a reported attempt by its members to suppress, permanently cleanse or expel, or in some instances, destroy these minority communities" (U.N. Committee on the Rights of the Child, 2015). Similar events had been happening since 2006-2007 (Asia News, 2007; U.K. Home Office, 2007).

Foreign fighters flooded into Iraq from Saudi Arabia, Jordan, Egypt, Tunisia, Libya, Afghanistan, Chechnya, Turkey, Britain, and the Balkans, and to a lesser extent from France, Germany, Spain, northern Russia, etc. (CNN, 2015). Members of Iraqi Sunni tribes joined the General Military Council of Iraqi Revolutionaries in alliance with the former Awakening Council militias and al-Qaeda in Iraq and the Ba'athist *Jaysh Rajaal al-Tariqa al-Naqshabandia* to make up the forces of ISIS in Fallujah and Mosul (Wasfi, 2015). The tribes and Ba'athists joining ISIS may have believed that it had better access to weapons and money from Qatar and Saudi Arabia (Wasfi, 2015). A scan of a document posted to ankawa.com suggested that persons linked to the Kurdistan regime "systematic[ally] disarm[ed] Assyrians and several other ethnic groups so that it could use their weapons in its own struggle" (Abed, 2017).

Armed with M1 Abrams tanks from Mosul and advanced weaponry looted in Syria or imported, including sniper rifles, ISIS swept through Fallujah, Mosul, the Sinjar and Nineveh Plains regions, and parts of Baghdad, Irbil, Kirkuk, and other governorates. The ancient Yezidi people, branded as pagans due to the persistence of ancient Assyro-Babylonian names and concepts in their religious practice, suffered several large massacres, especially at Kocho, which has been called Iraq's Srebrenica (Isikoff, 2014; U.S. Holocaust Memorial Museum, 2015).

After Baghdad, Ninewa may have been among the governorates most-affected by forced displacement, with 16% of the population fleeing Ninewa between February 2006 and December 2008. Around that time, there was an estimate that 37% per cent of Ninewa's IDPs were Assyrians and Chaldeans (and "Syriacs") from the Nineveh plain (International Organization for Migration [IOM], 2008; IOM, 2009). Turkomans and Arabs, whose leaders were often at odds with the KDP, were about half of Ninewa's IDPs (IOM, 2008; IOM, 2009). Meanwhile, 70,000 Kurds fled presumably Arab districts of Mosul by 2007, while the *Kurdish Globe* cited an estimate of 120,000 Kurds leaving by 2008. Thousands of Assyrians and Chaldeans (and "Syriacs") also left Mosul for surrounding towns and villages, from which many of them would be displaced again in 2013-2015 (Fadel, 2008).

During periodic lulls in the chaos and destruction, Iraqi and U.N. institutions would facilitate some limited returns of the forcibly displaced to their communities, if not their original homes, which may have been destroyed or occupied by others. Since 2014, 300,000 Yezidis, 200,000 Assyrians, and hundreds of thousands of other persons have moved to displaced persons camps (Iraq Humanitarian Country Team, 2018; Nadia's Initiative, 2018; Warda, 2014). Figure 2 illustrates the scale of displacement inside contemporary Iraq; external refugees are another matter.

Figure 2: Camp and Out-of-Camp Displaced Persons Estimates for Iraqi Districts

	In Camps	Out-of-Camps
Mosul	142,249	247,342
Erbil (E. of Mosul)	6,194	186,810
Sumel (N. of Mosul)	71,694	104,511
Sulaymaniyah (E. of Mosul)	13,148	79,972
Kirkuk (E. of Mosul)	9,576	91,827
Zakho (N. of Mosul)	48,826	62,698
Tikrit (N. of Baghdad)	10,532	61,835
Dahuk (N. of Mosul)	15,139	37,919
Shikhan (W. of Mosul)	28,804	27,048
Sinjar (W. of Mosul)	?	23,562
Makhmur (E. of Mosul)	10,122	?
Ramadi (W. of Baghdad)	9,054	?
Hamdaniya (E. of Mosul)	48,118	?
Falluja (W. of Baghdad)	29,627	?

Sinjar and Sheikhan

When ISIS advanced on Sinjar, 9,000 pro-Kurdish militia members allegedly fled without warning the civilians thereby exposed to massacres, or putting up a strong fight (Abed, 2017; Rasho, 2016; Rasho, 2017). The main assault on Sinjar culminated in the massacre of 500 Yezidis at Sinjar (Isikoff, 2014; U.S. Holocaust Memorial Museum, 2015). When ISIS came in from Syria, many surviving Yezidis – mostly women and children, it appeared from some photographs – fled to Mount Sinjar, where they suffered in extreme heat of summer, drinking dirty water, some eating grass. Hundreds, perhaps thousands of Yezidi boys, men, girls, and women had been kidnapped, with ISIS attempting to enslave them for various criminal purposes, including sexual harm and conscription of boys and men and child soldiers or forced converts (CNN, 2015; U.N. Committee on the Rights of the Child, 2015; U.S. Senate, 2014). In 2018, Sinjar town and some surrounding areas still lacked clean water, reliable electricity, functioning hospitals and schools, and other services (Deutsche Welle English, 2018; Nadia's Initiative, 2018; TRT World, 2018).

The right of self-determination resulted in a roiling controversy in 2017-18. The Kurdistan Regional Government had allegedly been denied revenues due from Iraq's government, and after victories by the government and the "international coalition" in

Mosul, organized a referendum on Kurdistan's independence from Iraq in 2017 (Phillips, 2018). In the 2000s, the Kurdish separatist leadership "learned the hard way that Iraq's stability [sic] was more important to Bush than their goal of self-determination" (Phillips, 2018). In 2016, independence was described to Washington by Kurdistan's leader as being a matter for negotiation with Baghdad (Phillips, 2018). In 2017, the vote was held despite Iraqi (and American) leaders' "objections," resulting in a majority of the 'Kurdistan' population voting for independence. When Iraq moved its forces en masse to Kirkuk and other disputed areas to confront the Kurdish leadership's ambitions, the separatists faced a political crisis (Phillips, 2018). Whether at the national or the ethnic/regional level, Iraq's transition had not necessarily brought about what everyone could agree was the self-determination of a "people."

Basra

In 2006, Deutsche Presse Agentur reported that living conditions for children were catastrophic:

> More children than ever before are dying of diarrhoea-related diseases in the British-occupied Iraqi city of Basra, an Austrian aid worker said Tuesday.
> Vienna physician Eva-Maria Hobiger, initiator of the medical aid project Aladin's Lamp for children with cancer, said the health system in Basra was in a grave crisis....
> Not even the most necessary items such as infusion solutions were available, and there was scant prospect of improvement, she said on Vienna's Radio Stephansdom, according to the Catholic press agency Kathpress.
> Not a single medical consignment has reached children in Basra, she said, adding that "without Aladin's Lamp and our deliveries, the children would die."
> The situation of water supplies in the city was also catastrophic, Many who survive diarrhoea-related diseases contracted from contaminated drinking water were severely undernourished.

By 2008, Iraqi continued to lack significantly behind its neighbors in terms of mortality and life expectancy, and Basra was unhealthy within Iraq. Societal breakdown and imbalances of power inherited from Iraq's half-century of Arabization policies followed by sanctions and war may have been to blame. Syria was significantly more prosperous than Iraq, Palestine, or Yemen in 2010, as illustrated by Figures 3 and 4. Substantial food and fuel subsidies kept child mortality much lower than in those three countries, and life expectancy higher in Syria than in Iraq.

Figure 3 – Economic Indicators in Selected Middle East Nations in 2009

		Syria	Lebanon	Turkey	Iraq	Basra	West Bank	Gaza Strip
GDP Per Capita		$2,900	$9,200	$10,100.00	$2,600.00	$3,155*	$1,100	$1,100
Unemploy-ment		8.5%	10%	14.1%	18%	12% male 20% female	19%	40%

Key: ~ = 2003, *=2006-2007, +=2010

Sources: CIA (2009 Unemployment), World Bank (GDP Per Capita); COSIT (Basra)

Figure 4 – Human Development in the Middle East in 2008 (Unless Otherwise Noted)

	Lebanon	Jordan	Syria	Turkey	West Bank / Gaza Strip	Iraq	Basra	Yemen
Total life expectancy at birth (years)	74.79^	73+	2	72+	71.8+	66	53 (m.) 60 (f.)*	61.1
Infant mortality rate (per 1000 live births)	18.6	23	15.5*	19+	25+	24+	27*	68.5
Under-five mortality rate (per 1000 live births)	19.1	28	22	20+	28	29.5+	34*	78.2
Adult literacy rate 15+ years, total (%)	87.4#	93+	83	87.4&	94º	65*	81 (m.) 54 (f.)*	50.2~
Gross secondary school enrolment ratio (%)	79&	82º	37*	82+	75º	49	52 (m.) 39 (f.)*	37+

Key: '=2001, #=2002, ~=2003, &=2004, ¯=2005, *=2006, º=2007, +=2009, ^=2011

Protests related to inequality and lack of electricity and jobs in Basra in 2018 and 2019 were particularly intense. A network of government agencies, tribal chiefs, and armed militias apparently repressed political expression and organizing (Kittleson, 2019).

Conclusion

Human security law, if its aims include preventing mass atrocities, restoring justice, providing communities with a sense of safety and hope for the future, and promoting prosperity and economic growth, has a long path before it in Iraq. Hundreds of thousands of Iraqis, including thousands of members of persecuted ethnic and religious minority groups, have lost their lives during the occupation of Iraq and the regional and international war against insurgents and terrorists. As is well known, a number of towns and urban neighborhoods were reduced to ruins, and unemployment, hunger, and poverty continued to affect sectors of society.[9] Murder and torture have been perpetrated on a scale hardly imaginable in other contexts, often without being punished. Justice is a distant dream for some victims of such widespread violations of various human rights.

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