

# Responses to Information Requests - Immigration and Refugee Board of Canada

Iraq: Investigation courts, including role, activities and locations, particularly in Baghdad; requirements and procedures to report a crime to an investigation court; requirements and procedures to obtain court reports, including their appearance (2016-January 2019)

## 1. Role and Activities

A copy of a chart showing the organization of the Iraqi federal court system, including investigation courts, prepared in 2012 by Raid Juhi, a former judge for the Iraqi High Tribunal in Baghdad, and published in a report on a 2014 joint Norwegian-Swedish fact-finding mission to Iraq, is attached to this Response (Attachment 1).

On its website, the Supreme Judicial Council of Iraq, which administers judicial affairs in Iraq (Encyclopaedia Britannica n.d.), states that crimes are categorized as follows:

- Criminal: The penalty is "execution," "life time jail," "20 years in [j]ail" or "temporary jail for 5 years";
- Misdemeanor: The penalty is three months to five years of jail, or "paying a fine";
- Violation: The penalty is "24 hours to 3 months [in jail]" or "paying [a] fine" (Iraq n.d.).

According to the same source, the court of investigation consists of "one [j]udge and one attorney" and can investigate "all crimes": criminal, misdemeanour and violation (Iraq n.d.). Other sources similarly report that the investigation court is presided over by a single judge and that the court can investigate all crimes (Laila Mar. 2014, 20; Mahmoud Oct. 2004, 42). During a telephone interview with the Research Directorate, a professor of law at the University of Pittsburgh, whose focus is on the Middle East and Islamic law, including in Iraq, stated that investigation courts are competent for crimes that are considered felonies or misdemeanours (Professor 30 Jan. 2019). The same source noted that one investigation judge is assigned per case (Professor 30 Jan. 2019).

A 2010 article on the Iraqi criminal justice system prepared by Dan Warnock [1] indicates that "[o]nce the police or other investigating officer has concluded the initial fact-gathering phase and turned over all reports, statements, and evidence, the investigative judge takes over the case" (Warnock 30 Nov. 2010, 15). The same source reports that investigative judges, as well as trial judges, "run the criminal investigation, issue arrest warrants, interview witnesses, determine appropriate charges, weigh the evidence, issue findings, and pass sentences" (Warnock 30 Nov. 2010, 4). Similarly, in correspondence with the Research Directorate, a senior Iraq

researcher at Human Rights Watch indicated that the role of investigative judges is to review the charges and evidence against individuals who have been arrested, to order their release or imprisonment, as well as to launch an investigation into the matter (Senior Iraq Researcher 18 Jan. 2019).

On its website, the Supreme Judicial Council states that

[i]n general, th[e] court [of investigation] is working on the cases presented by police stations that are related to the [M]inistry of Interior in each city of the province. The [j]udge has the right after completing the process of investigation to send the case to the court [of] misdemeanors (5 years or less)[,] or to the court of criminals (more than 5[ ]years) based on the type of crime and its penalty[, ] or [to] close the case when there [is] no evidenc[e].

The decision issued by the court of investigation should be [re]viewed by the [criminal court] in the province. (Iraq n.d.)

The Professor similarly indicated that the reports prepared by investigation courts are sent to the trial court for judgment (Professor 30 Jan. 2019).

## **2. Locations**

Sources indicate that there is an investigation court, "or more," wherever there is a court of first instance (Laila Mar. 2014, 20; Mahmoud Oct. 2004, 41-42). According to the Human Rights Watch researcher, there are "many" investigation courts across the country, "including at least one in each major city" (Senior Iraq Researcher 18 Jan. 2019). Sources report that there are at least two investigation courts in Baghdad (Professor 30 Jan. 2019; Senior Iraq Researcher 18 Jan. 2019). The Professor indicated that there is a combined total of approximately 20-25 investigating judges at two investigation courts in Baghdad (Professor 6 Feb. 2019). According to the joint Norwegian-Swedish report, a lawyer interviewed during the fact-finding mission to Iraq indicated that an investigating judge may "have responsibility over areas with one million people" and that "there are 25 judges in Karkh, one of the two jurisdiction areas of Baghdad" (Norway and Sweden 8 May 2014, 12). According to a 2004 report on the judicial system in Iraq, prepared by Medhat Mahmoud, then Chairman of the Court of Cassation and President of the Council of Judges, in 2004, there were 132 investigation courts in Iraq (Mahmoud Oct. 2004, 42). Further and corroborating information, including more recent statistics, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

## **3. Requirements and Procedures to Report a Crime to an Investigation Court**

Article 1 of the Criminal Procedure Code 23 of 1971 provides the following:

Article 1

1. Criminal proceedings are initiated by means of an oral or written complaint submitted to an investigative judge, a [judicial] investigator, a policeman in

charge of a police station, or any crime scene officer by an injured party, any person taking his place in law, or any person who knows that the crime has taken place. In addition any one of those listed can notify the Public Prosecution unless the law says otherwise. In the event of a witnessed offence the complaint may be submitted to whichever police officers or sub-officers are present.

... (Iraq 1971, brackets in original)

Articles 47 and 58 of the same code provide the following:

#### Article 47

1. Any person against whom an offence is committed and any person who learns that an offence has been committed in respect of which proceedings have been instituted without a complaint being submitted, or who learns that a suspicious death has occurred, may inform the investigative judge or the [judicial] investigator or the Public Prosecution or any police station.
2. If the complaint is about offences against the internal or external security of the state, crimes of economic sabotage and other crimes punishable by death, life imprisonment or temporary imprisonment and the informant asks to remain anonymous, and not to be a witness, the judge has to register this with the notification in a special record prepared for this purpose, and conduct the investigation according to the rules, considering the information included in the notification without mentioning the informant's identity in the investigative paper.

...

#### Article 58

An investigation is to commence with the recording in writing of the deposition of the plaintiff or informant, then of the testimony of the victim and other prosecution witnesses and of anyone else whose evidence the parties wish to be heard, and also the testimony of any person who comes forward of his own volition to provide information, if such information will be of benefit to the investigation, and the testimony of any other persons who the investigative judge or [judicial] investigator learns is in possession of information concerning the incident. (Iraq 1971, brackets in original)

A copy of the Iraqi Criminal Procedure Code 23 of 1971, last amended in 2010, including information on criminal proceedings, is attached to this Response (Attachment 2).

According to sources, individuals can report a crime by going to a police station (Senior Iraq Researcher 18 Jan. 2019; Professor 30 Jan. 2019; Norway and Sweden 8 May 2014, 10) or an investigation court (Professor 30 Jan. 2019) or judge (Norway and Sweden 8 May 2014, 10). The joint Norwegian-Swedish report adds that the investigating judge "may also be present at the police station" and that "police may otherwise bring the civilian to a court, where an investigating judge proceeds with the case" (Norway and Sweden 8 May 2014, 10).

## 4. Documents Issued by Investigation Courts

Article 57 of the Criminal Procedure Code 23 of 1971 provides the following:

1. An accused person, a plaintiff, a civil plaintiff, a person responsible in civil law for the actions of the accused and their representatives may attend the investigation while it is in progress. The judge or the [judicial] investigator may prohibit their attending if the matter in hand so requires, for reasons that he shall enter in the record, with the proviso that they shall be granted access to the investigation as soon as the need to prohibit their attendance ceases and that they shall not have the right to speak unless permitted to do so and that if permission is withheld a note to that effect shall he [*sic*] entered in the record of the investigation.
2. Any person who makes a request may receive a copy of the papers unless the investigative judge considers that to provide them would affect the course or confidentiality of the investigation.
3. No person other than those previously mentioned may attend the investigation unless the investigative judge gives permission. (Iraq 1971, brackets in original)

The Professor indicated that investigation courts issue reports, which are similar to "memorandum[s]," and which contain the facts, evidence and conclusions [of the case] (Professor 30 Jan. 2019). According to the US Department of State's Reciprocity Schedule for Iraq, court records are called "*Sijil almahkamah*" (US n.d.). The same source also indicates that the "[o]riginal [s]ignature of the [j]udge" appears on court records (US n.d.). A sample of an investigative court report, prepared by a court in Basra in 2015, and sent to the Research Directorate by the Professor, is attached to this Response (Attachment 3).

According to the Professor, the lawyer and his or her client "usually" obtain a copy of the report and it would be difficult for a third party to obtain such a document, as it is not possible to publish them (Professor 30 Jan. 2019). The Professor further stated that while it might be possible to obtain investigation court reports through an Iraqi embassy, the only method he is aware of is that of going in person to the court (Professor 30 Jan. 2019). The Human Rights Watch researcher indicated that court documents "are very hard to get a hold of" and that "even defence lawyers [have] struggled to access them" (Senior Iraq Researcher 18 Jan. 2019). The same source added that it would be "near[ly] impossible in Iraq" to obtain documents issued by investigation courts and that it would be "beyond impossible from [abroad], including via a third party" (Senior Iraq Researcher 18 Jan. 2019). The US Reciprocity Schedule for Iraq indicates that court records are only available "if there is a court decision," that they are issued by the court "having jurisdiction over the proceedings," and that they must be requested by directly contacting that court (US n.d.). According to the same source, there are no fees associated with such requests (US n.d.). Further information on the requirements and procedures to obtain investigation court reports could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Article 63 of the Criminal Procedure Code 23 of 1971 provides that:

1. Statements by a witness shall be entered in the record or the investigation

without any erasures, crossings out, amendments or additions to the text, which when complete shall be read through and signed by the witness, or if the witness cannot read shall be read out to him and then signed by the person who entered it in the record. No correction or alteration shall be accepted unless signed both by the investigative judge or [judicial] investigator and by the witness.

... (Iraq 1971, brackets in original)

Similarly, the Professor stated that investigation courts issue copies of statements that are signed by witnesses (Professor 30 Jan. 2019). The same source added that witnesses also get a copy of their statement (Professor 30 Jan. 2019). In a follow-up correspondence, the Professor noted that witness statements "do not really have a form" (Professor 6 Feb. 2019). The same source described witness statements as including "standard language" (such as the date, the name of the judge, the name of the witness, etc.), as well as a summary of the statements given by the witness (Professor 6 Feb. 2019). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

#### Note

[1] Dan Warnock is an attorney with the US Air Force Judge Advocate General's Corps; the article is based on his review of the Iraqi Criminal Procedure Code and discussions with Iraqi and Americans familiar with the Iraqi criminal justice system, as well as his military deployment to Baghdad (Warnock 30 Nov. 2010, 1).

## References

Encyclopaedia Britannica. N.d. John E. Woods, et al. "[Iraq - Government and Society](#)." [Accessed 30 Jan. 2019]

Iraq. 1971 (amended 2010). [Criminal Procedure Code 23 of 1971](#). Global Justice Project: Iraq (GJPI) annotated and amended translation. [Accessed 30 Jan. 2019]

Iraq. N.d. Supreme Judicial Council. "[The Judicial System](#)." [Accessed 29 Jan. 2019]

Laila, Nabil. March 2014. [Remarks on the Functions of the Iraqi Judiciary](#). Working Paper. Pázmány Péter Catholic University, Budapest. [Accessed 30 Jan. 2019]

Mahmoud, Medhat. October 2004. [Judicial System in Iraq: A Review of the Legislation Regulating Judicial Affairs in Iraq](#). Iraqi Judicial Forum - The Judicial System in Iraq: Facts and Prospects. [Accessed 14 Jan. 2019]

Norway and Sweden. 8 May 2014. Landinfo and Swedish Migration Agency, Lifos. [Iraq: Rule of Law in the Security and Legal System](#). [Accessed 29 Jan. 2019]

Professor, University of Pittsburgh. 6 February 2019. Correspondence with the Research Directorate.

Professor, University of Pittsburgh. 30 January 2019. Telephone interview with the Research Directorate.

Senior Iraq Researcher, Human Rights Watch. 18 January 2019. Correspondence with the Research Directorate.

United States (US). N.d. Department of State, Bureau of Consular Affairs. "[Iraq Reciprocity Schedule](#)." [Accessed 23 Jan. 2019]

Warnock, Dan. 30 November 2010. "[The Iraqi Criminal Justice System, an Introduction](#)." *Denver Journal of International Law and Policy*. Vol. 39, No. 1. [Accessed 30 Jan. 2019]

## Additional Sources Consulted

**Oral sources:** academic who published a book on Iraqi law; academic who worked in Iraq with international and local organizations; Council on Foreign Relations; expert on Iraq who worked for the UK government; Global Justice Project: Iraq; International Crisis Group; International Organization for Migration – Iraq Mission; Iraq – embassy in Ottawa, Supreme Judicial Council; Middle East expert who conducted fact-finding missions in the region; National Democratic Institute – Iraq; Siracusa International Institute for Criminal Justice and Human Rights; social anthropologist who conducted field research in Iraq; three law firms in Iraq; UN – Office on Drugs and Crime (Middle East and North Africa), United Nations Development Programme.

**Internet sites, including:** Amnesty International; eoi.net; EU – European Asylum Support Office; *International Journal for Court Administration*; *International Law Studies*; Iraq - Government; Middle East Consultancy Services; Middle East Forum; Rights in Exile Programme.

## Attachments

1. Juhi, Raid. 2012. [Chart of the Iraqi Federal Court System](#). Published in Norway and Sweden. 8 May 2014. Landinfo and Swedish Migration Agency, Lifos. *Iraq: Rule of Law in the Security and Legal System*. [Accessed 29 Jan. 2019]
2. Iraq. 1971 (amended 2010). [Criminal Procedure Code 23 of 1971](#). Global Justice Project: Iraq (GJPI) annotated and amended translation. [Accessed 30 Jan. 2019]
3. Iraq. 15 November 2015. Investigative court report. Sent to the Research Directorate by a professor of law at the University of Pittsburgh, 6 February 2019.