Al MONQITH ORG FOR HUMAN RIGHTS (M.O.H.R)

Submission of the Al Monqith Organization for Human Rights on counter-terrorism legislation, organized crime, and human rights in Iraq, prepared in response to the call for contributions issued by the Special Rapporteur on counter-terrorism and human rights.

About M.O.H.R:
Founded in 2004, our organization is an independent, voluntary, non-governmental humanitarian organization. We specialize in monitoring and documenting human rights violations, preparing reports, advocating for detainees, prisoners, victims of torture and enforced disappearance, supporting families of the missing, and promoting the rights and freedoms enshrined in national and international agreements. Our mission also includes advancing the principles of the Universal Declaration of Human Rights and the International Bill. Our slogan emphasizes the demand for equality in rights and responsibilities, and the utmost respect for human rights. Our organization's headquarters based in Baghdad.

Focal Point:

Kadhim Albidhani
Mobile: +964 770 390 7430

Email: monqith.humanrights@gmail.com

Iraq
14 June, 2026

Address: Iraq – Baghdad – Al Karrada

As part of its Concluding Observations on the Sixth Periodic Report of Iraq, adopted on 16 August 2022, the Human Rights Committee made the following recommendation concerning counter-terrorism measures:

17. The State party should take the necessary steps to ensure that its anti-terrorism legislation, including the draft amendment to the Counter-Terrorism Act and the national counter-terrorism strategy, is in line with international human rights standards, particularly by defining terrorism more precisely, limiting the use of anonymous statements, ensuring full victim and witness participation in trials and ensuring the full observance of fair trial guarantees. The State party is also encouraged to refrain from mandatory imposition of the death penalty for offences under the Counter-Terrorism Act.

During the Fourth Cycle Universal Periodic Review of Iraq, held on 27 January 2025, only one recommendation concerning terrorism and organized crime was issued. The recommendation was put forward by the Russian Federation and subsequently accepted by Iraq.

Terrorism in Iraqi Legislation

The Iraqi Penal Code No. 111 of 1969, as amended, treats terrorism as an ordinary criminal offense rather than as a distinct category of crime. The only notable exception is its exclusion from the scope of political crimes, even when committed with political motives, thereby denying perpetrators the privileges and protections traditionally associated with political offenses.

Although the Penal Code refers to terrorism, it neither defines the term nor specifies its constituent elements or applicable penalties. Consequently, acts characterized as terrorist conduct remain subject to the general provisions of criminal law, with legal doctrine serving as an important source for interpreting the concept of terrorism.

Nevertheless, the Penal Code contains several provisions that address conduct commonly associated with terrorism. These include acts committed by armed groups using explosives or firearms, armed attacks against civilians or public authorities, and the deliberate destruction or sabotage of public buildings, property, and critical infrastructure such as oil installations, power stations, bridges, dams, transportation networks, and other public utilities. Such acts are criminalized under various provisions of the Penal Code, including Articles 190 and 197.

Following the 2003 conflict and during the period of the Coalition Provisional Authority (CPA), several legislative measures were adopted to strengthen security and address emerging terrorist threats. These measures included regulations on the control of unlicensed weapons, the criminalization of media incitement to violence, the confiscation of assets used to support violent activities, and provisions governing the declaration of a state of emergency in response to terrorist attacks. The 2004 Transitional Administrative Law further affirmed Iraq's commitment to preventing the proliferation, development, production, and use of weapons of mass destruction and related materials. While these legislative instruments identified various forms of terrorist conduct and established penalties and enforcement mechanisms, none provided a comprehensive legal definition of terrorism.

The dramatic increase in terrorist activity following 2003, accompanied by significant loss of life, destruction of property, and threats to national stability, exposed the limitations of the existing Penal Code in addressing terrorism effectively. In response, Iraq enacted the Counter-Terrorism Law No. 13 of 2005. Despite consisting of only six articles, the law was intended to provide a dedicated legal framework for combating terrorism and safeguarding security, stability, and national unity.

The Iraqi Constitution of 2005 further reinforced this framework by affirming the State's commitment to combating terrorism in all its forms. It prohibits any entity or approach that adopts, promotes, glorifies, justifies, or encourages terrorism; obliges the State to prevent Iraq from becoming a base, transit route, or operational arena for terrorist activities; prohibits granting political asylum to individuals accused of terrorist offenses; mandates compensation for victims of terrorist acts and their families; and excludes persons convicted of terrorism-related crimes from eligibility for presidential special pardons.

Together, the Constitution and the Counter-Terrorism Law constitute the principal legal framework governing counter-terrorism efforts in Iraq.

The Counter-Terrorism Law No. 13 of 2005 defines terrorism as:

"Any criminal act committed by an individual or an organized group targeting an individual, a group of individuals, groups, official or unofficial institutions, and causing damage to public or private property, with the aim of undermining security and stability, national unity, or introducing terror, fear, and panic among people, or creating chaos in pursuit of terrorist objectives."

This definition shares several common features with international approaches to defining terrorism, including its emphasis on the use of violence, the targeting of persons and property, the possibility of commission by individuals or groups, and the pursuit of terrorist objectives.

However, a number of shortcomings have been identified:

- It does not address the ideological, political, or religious motivations often associated with terrorism.
- It overlooks the international and transnational dimensions of terrorism, including terrorist financing and cross-border networks.
- It fails to recognize terrorism's broader objective of disrupting or transforming social and political structures.
- The definition is lengthy and contains broad and imprecise terminology, creating the potential for inconsistent interpretation and application.
- It relies heavily on conduct already criminalized under other laws without adequately distinguishing the specific nature of terrorist offenses.
- It defines terrorism without clearly defining what constitutes a terrorist crime.
- It focuses primarily on the external characteristics of the act rather than its unlawful nature, intent, and consequences.
- It does not fully encompass contemporary forms of terrorism, including kidnapping, enslavement, human trafficking, and large-scale mass-casualty attacks, thereby limiting its ability to address evolving terrorist methods.

Overall, the definition of terrorism under Iraqi law lacks sufficient precision and comprehensiveness. As a result, it does not fully capture the complex, evolving, and multidimensional nature of contemporary terrorism and may present challenges for consistent legal interpretation and implementation.

General Observations on Counter-Terrorism Law No. 13 of 2005

Despite its significance as the principal legal instrument for combating terrorism in Iraq, Counter-Terrorism Law No. 13 of 2005 exhibits several legislative shortcomings, most notably:

1. Lack of legislative specificity as a special law: The law frequently relies on the general provisions of the Penal Code and the Code of Criminal Procedure, rather than establishing distinct procedural rules tailored to the unique nature of terrorist offenses.

2. Overlap with the Penal Code: Many acts defined as terrorist offenses are already criminalized under the Penal Code and subject to similar penalties, resulting in duplication and legislative redundancy.
3. Insufficient attention to the international dimension of terrorism: The law does not adequately regulate key aspects such as terrorist financing, training, external support networks, or transnational organizational structures.
4. Inadequate definition of terrorism: The legal definition does not sufficiently emphasize the unlawful nature of the act or clearly articulate the causal relationship between the conduct and its consequences, namely the creation of terror, fear, and harm.
5. Failure to address the evolving nature of terrorism: The law does not adequately cover modern manifestations of terrorism, including kidnapping, enslavement, human trafficking, online recruitment, and logistical or financial facilitation of terrorist organizations.
6. Omission of certain forms of criminal conduct: It does not explicitly criminalize acts such as failure to report terrorist offenses or hybrid forms of conduct involving both action and omission.
7. Failure to criminalize preparatory and supportive acts independently: Activities such as incitement, glorification, recruitment, membership in terrorist organizations, and encouragement of terrorist acts are not comprehensively addressed as distinct offenses.
8. Absence of a clear standard of causation: The law does not establish a specific causation threshold for terrorist crimes, thereby leaving reliance on general principles of criminal liability under the Penal Code.
9. Terminological ambiguity in legislative drafting: The use of overlapping terms such as *aim*, *motive*, *incentive*, and *purpose* is not clearly defined, leading to potential interpretive inconsistencies.
10. Limited incorporation of international legal frameworks: The law does not fully integrate relevant international conventions and treaties on counter-terrorism, despite the existence of a well-developed global legal regime in this field.
11. Need for recognition of the autonomous nature of terrorist crime: Terrorism constitutes a distinct category of crime, characterized by its gravity, organized structure, ideological motivations, and wide-ranging impact on security and stability. This necessitates a more comprehensive, coherent, and specialized legislative framework.

“National legislation should criminalize crimes against humanity, as defined in the Rome Statute of the International Criminal Court, as autonomous international crimes, thereby enabling the prosecution of perpetrators even when such acts are committed within a terrorist context or by terrorist organizations.

Where crimes against humanity are perpetrated by terrorist groups or organizations, this does not alter their legal characterization; rather, it may constitute an aggravating circumstance in the application of counter-terrorism measures and in the framework of international cooperation for prosecution and accountability.

In the Iraqi context, there are very few documented examples of conventional organized crime groups (such as drug cartels, mafias, gangs, or maras) committing terrorist crimes in the way seen in parts of Latin America. The Iraqi security landscape has historically been dominated by insurgent, extremist, and terrorist organizations rather than profit-driven criminal syndicates.

However, there are several areas where organized crime and terrorism have intersected:

1. ISIS / Da'esh Criminal Enterprises

The most prominent example is the relationship between terrorism and organized criminal activity within the terrorist organization Islamic State. Although ISIS is primarily a terrorist organization rather than an organized crime group, it engaged extensively in criminal activities, including:

- Oil smuggling;
- Extortion and protection rackets;
- Kidnapping for ransom;
- Human trafficking and sexual enslavement;
- Antiquities trafficking;
- Cross-border smuggling networks.

These criminal enterprises financed terrorist attacks and military operations. In this sense, ISIS combined characteristics of both a terrorist organization and a transnational criminal network.

2. Kidnapping and Extortion Networks

Following 2003, several criminal groups engaged in kidnapping for ransom and extortion. Some of these networks cooperated with insurgent or terrorist groups, sharing resources, logistics, forged documents, weapons, and financing channels. In certain cases, criminal gangs conducted kidnappings whose proceeds were used to support terrorist activities.

3. Smuggling Networks Supporting Terrorist Organizations

Various smuggling networks operating along Iraq's borders have been accused of facilitating:

- Movement of fighters;
- Weapons trafficking;
- Financing transfers;
- Illicit trade in oil and commodities.

While these networks were primarily profit-motivated, their activities sometimes directly supported terrorist organizations, blurring the distinction between organized crime and terrorism.

4. Human Trafficking by Terrorist Organizations

ISIS's systematic enslavement and trafficking of Yazidi women and children constitutes an example where conduct typically associated with organized crime (human trafficking) was carried out as part of a broader terrorist campaign and may also amount to crimes against humanity.

Legal Perspective

From a legal standpoint, Iraq has generally treated **terrorism and organized crime as separate categories of criminality**. The principal challenge has not been organized crime groups transforming into terrorist organizations, but rather terrorist organizations engaging in organized criminal activities to finance and sustain their operations.

There is limited evidence of traditional organized crime groups in Iraq independently committing terrorist crimes comparable to the activities of drug cartels or maras in other regions. Rather, the Iraqi experience is characterized by terrorist organizations, particularly ISIS, engaging in a wide range of organized criminal activities—including trafficking, smuggling, extortion, kidnapping, and illicit financing—to support their terrorist objectives.

This distinction is important because it avoids conflating organized crime with terrorism while acknowledging the significant overlap between the two phenomena in Iraq.