



# Repertoires of Punishment: How is Enemy Membership Defined in the Detention and Punishment Regime of 'Post-ISIL Iraq'

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Shahama Camp, Salahaddin- Jan 2018. Photo credits: Saba Azeem (author)

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## List of Acronyms

AFP	Agence France Presse
AP	The Associated Press
BBC	British Broadcasting Corporation
CIVIC	Centre for Civilians in Conflict
CRC	Committee for the Rights of the Child
DTM	Displacement Tracking Matrix
ECHO	European Civil Protection and Humanitarian Aid Operations
FES	Friedrich Ebert Stiftung
Gol	Government of Iraq
HCSS	The Hague Centre for Strategic Studies
HRW	Human Rights Watch
ICC	International Criminal Court
ICTJ	The International Centre for Transitional Justice
ID	Identification
IDP	Internally Displaced Person
INGO	International Non-Governmental Organisation
IOM	International Organisation for Migration
IRGC	Islamic Revolutionary Guard Corps (a branch of Iran's armed forces)
ISF	Iraqi Security Forces
ISIL	Islamic State of Iraq and the Levant, also known as the Islamic State of Iraq and Syria (ISIS), or simply the Islamic State (IS), and locally known as Da'esh
JCMC	Joint Coordination and Monitoring Centre (of the Government of Iraq)
KRG	Kurdistan Regional Government
KRI	Kurdistan Region Iraq
LSE	London School of Economics and Political Science
MILF	Moro Islamic Liberation Front
MoDM	Ministry of Displacement and Migration
MoH	Ministry of Health
NFI	Non-Food Items
NGO	Non-Governmental Organisation
NPR	National Public Radio
NSS	National Security Services
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PDS	Public Distribution System
PM	Prime Minister
PMF	Popular Mobilisation Forces, also known as Popular Mobilisation Units (PMU)
SDF	Syrian Democratic Forces
TAD	Al-Tahreer Association for Development
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UN Women	The United Nations Entity for Gender Equality and the Empowerment of Women
US	United States
USIP	The United States Institute of Peace

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## Abstract

Human rights abuses at the hands of the self-proclaimed Islamic State of Iraq and the Levant (ISIL) need no introduction; the mass atrocities carried out by the terrorist organisation have been documented at lengths. With the highly publicised defeat of ISIL in Iraq, the issue of punishing those with affiliation to the group has emerged, though behind closed doors. Western countries such as the United Kingdom (UK) have stripped their citizens accused of joining the group, while others, such as France, that have outlawed capital punishment are tacitly encouraging Iraq to eliminate their jihadi citizens. While many journalists have travelled to north-eastern Syria to document the plight of those detained in Al-Hol camp run by the Kurdish Syrian Democratic Forces (SDF), who have been asking for support in bringing those affiliated with ISIL to justice, the case in Iraq is quite different. Governmental forces, including the Iraqi Security Forces (ISF), are detaining families of ISIL members in prisons, camps and detention centres all over the country, lacking proper vetting systems. Journalists and humanitarian aid workers, even those working for the United Nations (UN) are denied access to these sites, with mounting fears that the Government of Iraq (GoI) and the Kurdistan Regional Government (KRG) too are engaging in outright human rights abuses. This research therefore aims to look at the 'repertoires of punishment' in post-ISIL Iraq where many feel that the 'enemy' has been defeated, while seeking to address the question: 'How is enemy membership defined in the detention and punishment regime of 'post-ISIL Iraq'? In doing so, this research will also seek to analyse how 'enemy membership' is defined, who are the penholders of these definitions, what are immediate repercussions of having been labelled as affiliated with the 'enemy', and what repertoires of punishment are exercised on those who fall into this 'enemy' category.

## Introduction

### Post-ISIL Iraq

On 9<sup>th</sup> December 2017, Iraq's then Prime Minister (PM) Haider Al-Abadi declared victory over ISIL (Chmaytelli and Aboulenien, 2017). Less than three weeks after this 'declaration of victory', driving from Tikrit to Baiji in the Salahaddin governorate of Iraq, as a staff member of an international non-governmental organisation (INGO), I saw a camp on the highway, which I mistook for an Internally Displaced Persons (IDP) camp<sup>1</sup>. Upon inquiry, I was told that this was one of the camps (Shahama camp, pictured on the cover page) where families of perceived ISIL members were detained. Despite calling focal points in Gol's Joint Coordination and Monitoring Centre (JCMC), we could not obtain relevant papers to access the camp and were told that this was just not possible; even UN agencies could not access it.

The following month, while discussing a project proposal with the European Civil Protection and Humanitarian Aid Operations (ECHO), the issue of what our humanitarian imperative should be regarding these detention camps came to question. There were three camps where families with perceived allegiance to ISIL were being detained at the time: Shahama in Salahaddin governorate; Bartella in Ninewa governorate; and, Daquq in Kirkuk governorate. While humanitarian aid organisations were not allowed access to conduct needs assessments or provide the needed aid, we debated that if we were to leave the needed aid at the camp entrance, there would no guarantee that it would reach the camp residents; there might even be a case of aid diversion, with groups such as the Popular Mobilisation Forces (PMF, locally known as Al-Hashd Al-Sha'abi<sup>2</sup>) taking the aid for themselves, as they are controlling the camps. On the other hand, there was also the potential reputational damage if humanitarian aid organisations were to provide aid, with the local population and some donors viewing the organisations as ISIL sympathisers. The issue, or rather the action plan on what should be done, was shelved, similar to the numerous conversations with the protection cluster on the same topic.

A few months later, as part of another project, the media and advocacy team in the organisation I worked for, interviewed and captured the lives of ten women with perceived allegiance to ISIL; either their husband, or a male member of their family had joined the terrorist organisation. The project aimed to show audiences that these women were not ISIL themselves, and ostracising them from their respective communities was rendering them more vulnerable. Punishing them for what a male member of the family had done was illegal. The donor, UN Women, was not ready to release this documentary; they deemed it far too sensitive despite assurances that this was meant for Western audiences to showcase a new form of and even unanticipated vulnerability arising<sup>3</sup>.

A year later, the European media covered the case of Shamima Begum, a British citizen, who had fled her home country of the UK four years ago when she was merely 15 to join ISIL as a bride. She was found in Al-Hol camp in north-eastern Syria, being run by the SDF, heavily pregnant at the time, asking to be returned to her home country. Instead, the British home secretary stripped Begum of her British citizenship, along with other British ISIL brides in the camp (Oilphant and Sawer, 2019); she may now face

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<sup>1</sup> The author was a humanitarian aid worker based in Iraq between January 2017 and August 2018.

<sup>2</sup> Details on the PMF as an actor are provided in Chapter 1: Discourses as Texts and Speech.

<sup>3</sup> In the screen tests run by the organisation the author was working for, it was indeed decided that this was a sensitive subject and viewers in Iraq, both Arab and Kurdish, even those who were not directly affected by ISIL.

the death penalty in Bangladesh, a country where her mother was born (BBC, 2019), but a country she has nothing to do with. Britain has cancelled the passports of more than 150 people thus far (Yee, 2019). This is not the only case though; thus far, only Kosovo, Kazakhstan and Indonesia have repatriated their citizens accused of being ISIL fighters, whereas France, Russia and the Netherlands are repatriating only orphaned children born from their citizens (Yee, 2019; and Stocker, 2019). Belgium has recently announced the same (Birnbbaum, 2019). But most foreign governments are reluctant to take them back, leaving them international pariahs wanted by no one — not their home countries, not their jailers.

While speaking with a journalist from the New York Times, Lorenzo Vidino, the director of the George Washington University Programme on Extremism said, ‘who wants to be the politician who decides to repatriate Individual A who, two years down the road, blows himself up?’ Vidino said that even though there are only exception cases where extremists have returned to stage attacks in their home countries, but these cases included the 2015 Paris attacks which claimed the lives of 130 people, and two of Tunisia’s most deadliest terrorist attacks; these have made the idea of repatriation unquestionable in many countries (Yee, 2019). An estimated 5,000 Europeans joined ISIL, and, of the thousand or more who have returned to their home countries, very few have been charged with crimes, owing to the near-impossibility of collecting court-level evidence in a foreign war zone. European intelligence agencies are overwhelmed; to carry out comprehensive surveillance on a single target requires a team of around thirty people. And so the countries that have outlawed capital punishment are tacitly encouraging Iraq to eliminate their jihadi citizens. ‘If the Iraqi government were just rounding up and killing Iraqis in this way, we could be more vocal,’ in criticizing it, a European diplomat said. ‘But we don’t have any idea what to do about our own citizens. There is no policy’ (Taub, 2018).

Recently eleven French citizens were sentenced to death in Iraq. France, which opposes capital punishment signalled that it will not stand in the way of the trials and will respect Iraq’s sovereignty (Birnbbaum, 2019). In fact, in April 2019, the Gol has asked for a \$10 billion fee upfront, and another \$1 billion annually to receive detainees, including Iraqi nationals currently detained in Al-Hol camp in Syria. The size of the proposed price tag has led some in Washington and London to view it as a rebuff of a US plan, rather than a willingness to take a stake in a politically sensitive and dangerous operation, just as a war-weary Iraq had begun to recover. Other pre-conditions imposed by the Gol include no access to humanitarian aid workers to any facilities on Iraqi soil which will hold the detainees, or objection to the death penalty (Chulov and Borger, 2019). In a new turn of events as the US is currently engaging in a standoff against Iran, the Trump administration may want to look at Iraq as a formidable ally, and hence would even consider conceding to the Gol’s demands.

By not taking their citizens who were ISIL fighters, the West is engaging in a case of what Keen (2008: 19) describes as ‘a system for limiting conflict and for ensuring that it happened to other people: the majority of casualties [a]re effectively ‘exported’ to the developing world’. The over-crowded Al-Hol detention camp is home to an estimated 73,000 people, 94% of them women and children (Arraf, 2019), belonging to 80 countries (Yee, 2019), living in dire conditions with children dying of cold, malnutrition and injuries sustained while reaching the camp (Arraf, 2019).

The SDF, managing the camp, is a supporter of the anti-ISIL coalition, and is therefore allowing access to humanitarian aid organisations and reporters to the site. Across the border in Iraq however, things are

different. Human rights groups have sounded an alarm since 2017 on Iraq's treatment of people accused of being affiliated with ISIL, warning that the government and its security apparatus are ensnaring many who worked with the group even against their will — thereby creating a pariah class that will not be able to reintegrate into society and could underpin a renewed insurgency (El-Ghobanshy, 2019). There is a lack of access to camps and detention centres in order to document the internal processes. While human rights abuses at the hands of ISIL need no introduction, there are fears that the GoI is engaging in them too. 'Whereas analysts have tended to assume that war is the 'end' and abuses the 'means', it is important to consider the opposite possibility: that the 'end' is to engage in abuses or crimes that bring immediate rewards, while the 'means' is war and the perpetuation of war' (Keen, 2008: 20). Therefore, in order to analyse the 'opposite possibility' in the post-ISIL era where many feel the 'enemy' is dead or at the very least defeated, this research aims to look at the 'repertoires of punishment'<sup>4</sup> in post-ISIL Iraq, while seeking to address the question: *'How is enemy membership defined in the detention and punishment regime of 'post-ISIL Iraq'?* In doing so, this research also wants to address what Stathis Kalyvas (in Keen, 2008: 15) calls an 'urban bias' in 'academic and media discussions of civil wars, leading to a neglect of local agendas, an overemphasis on ideological motivations and on fixed identities among the warring parties, and an adoption of an overly rigid distinctions between combatants and non-combatants'. This is especially true in the 'war against ISIL' where anyone who joined the terrorist entity, either wilfully or forcefully, is seen as a terrorist, even if they did not take up any arms. This research also aims to bring to light the 'hidden (or partially hidden) conflicts and oppressions' which are mainly going 'unaddressed in the middle of an officially sanctioned consensus on the nature of threat and the identity of the enemy' (ibid: 17), in a context where ISIL is painted as the enemy and affiliation to the group, and those against it, is seen in a black and white manner. In doing so, this research will also seek to analyse how 'enemy membership' is defined, who are the penholders of these definitions, what are immediate repercussions of having been labelled as affiliated with the enemy, and what repertoires of punishment are exercised on those who fall into the enemy category.

## Methodology

As explained in the section above, due to a lack of direct access to camp and detention centres, gathering primary data was not possible; therefore, this research relies primarily on reports by human rights organisations which have collected personal narratives of those in detention centres, particularly underage adolescent males, as well as by journalists on who have collected anecdotal evidence from detention camps, to make sense of the point of view of the detainees in Iraq. There is more anecdotal evidence from north-eastern Syria emerging, which this research also relies on to transpose it on the Iraqi case, as this is the closest case available. To collect data on the discourses, practices, narratives, space and necropolitical aspects, this research is relying again on reports from humanitarian organisations working on the ground, as well as newspaper reports, the laws and decrees passed by the GoI and the Kurdistan KRG, Iraqi tribal laws and practices, testimonies from lawyers working on such cases (also collected by humanitarian organisations) and television programmes (such as 'In the Grip' of Law').

Since this is a new phenomenon and access to camps and detention sites in both the Kurdistan Region of Iraq (KRI) and Federally controlled areas is limited, there is a lack of empirical academic literature

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<sup>4</sup> Term adapted from Tilly and Tarrow's 'repertoires of contention', defined in section 'Definition of Key Concepts'.



emerging on the subject. Therefore, one of the primary objectives for this research is also to bring this issue to light, especially to Western academic audiences. To supplement the research, various academics and practitioners working on Iraq were contacted to comment; however, most did not know about this, or were working on transitional justice from the point of view of those oppressed under ISIL rule (especially Yazidis), and hence did not comment on this particular topic<sup>5</sup>. For the average Iraqi, this topic is still too sensitive to discuss<sup>6</sup>; Mosul, the second largest city in Iraq was captured by ISIL only five years ago in June 2014. Living under ISIL atrocities was a horror, with many families being displaced multiple times. Moreover, people stopped trusting their neighbours, as they did not know them anymore. To make matters worse, there is a lack of trust among neighbours who did know each other, as the IDPs and returnees often viewed the remainees<sup>7</sup> as ISIL sympathisers (Carter and Dietrich, 2017-a). Community members also blamed their *mukhtars* and *sheikhs* for letting ISIL in, which is evidence of how the social capital in a close-knit society has eroded (Carter and Dietrich, 2017-b).

### Definition of Key Concepts

First and foremost, it is essential to define ‘repertoires of punishment’, a term that has been adapted by Charles Tilly’s ‘repertoires of contention’, which he defines as ‘whole set of means [a group] has for making claims of different types on different individuals’ (in Della Porta, 2013: 1). ‘Contentious repertoires are arrays of performances that are currently known and available within some set of political actors’ (Tarrow and Tilly, 2007: 8). ‘Repertoires vary from place to place, time to time, and pair to pair. But on the whole when people make collective claims, they innovate within limits set by the repertoire already established for their place, time, and pair’ (ibid). Similar to Tilly’s, and Tarrow and Tilly’s definitions, ‘repertoires of punishment’ in this research is being defined as ‘a set of means various groups have for making claims of different types on different individuals in order to legitimise and carry out acts of punishment’. Throughout the document, it will be seen, who these ‘groups’ making claims are, how are these ‘claims’ being made, how these claims are ‘vetted’, and what are the subsequent acts of punishment. Echoing Tarrow and Tilly’s work (2007), like repertoires of contention, repertoires of punishment also travel through time and mutate; in the case of Iraq, evidence below will show how these repertoires were documented during the 2003 invasion of Iraq and the subsequent de-Ba’athification process, which resonate with the repertoires of punishments emerging in the post-ISIL punishment regime. Similarly, as Tarrow and Tilly (ibid) show that while these repertoires can be manifested by elites, this is not a necessity; this will be explored in the chapters below, which will reveal that many actors, formal and informal, are engaging in these ‘known and available’ repertoires. In doing so, this will show the intimate connection between the power/ knowledge/ space triad, a complex nexus where structures of meaning are implicated in the production and use of power, which themselves are implicated and produced in specific places, such as detention camps (Sigona, 2015).

Looking at the phenomenon of punishment in a post-conflict context, Galtung’s concepts of positive and negative peace (in Demmers, 2017) are very crucial in this case, where negative peace is seen as the absence of direct violence intending harm (ibid; Galtung, 2012: 1; and, Galtung and Fischer, 2013: 173),

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<sup>5</sup> A list of the scholars and practitioners with their respective institutions who were contacted to comment is added as Annex 1.

<sup>6</sup> This was observed during the screen testing of a documentary which had case studies of 10 women whose male family members had joined ISIL, in May 2018 when the author was working with an INGO in Iraq.

<sup>7</sup> A term used for those who did not or could not escape, and lived under ISIL rule.

and positive peace is the absence of direct violence, structural violence (causing both intended and unintended harm), and intended and unintended cultural violence (Demmers, 2017; Galtung, 2012; Galtung and Fischer, 2013). The battle against ISIL may have ended signalling the presence of negative peace, despite numerous ISIL sleeper cells still remaining in the country, the massive collateral damage, destruction, and displacement caused by over three years of violence raise a new and vexing set of challenges (Revkin, 2018: 8). In the aftermath of 'war' violence has mutated into other forms. The GoI is seen to be using a 'containment' policy in creating an 'us versus them' dichotomy while defining 'enemy membership' or affiliation with ISIL, which is now very much being manifested through speech, metaphors, acts and space (the camps), as will be seen in the sections below. The research will look at how these 'us versus them' boundaries are drawn and manifested vis-à-vis affiliation with ISIL, what defines this 'enemy other', looking at enemy membership rules. Therefore, this research will rely on the discursive approach as a framework for analysis. Ontologically, the analytical framework used for the research analyses the interaction between structure and agency. In each of the sections, it will also be seen on who or which groups have the agency to carry out the punishments, and who or which groups have the agency to influence who gets punished. It will also seek to analyse within which structures, or lack thereof, are these punishments possible. Epistemologically, the research takes on an interpretative stance as operationalising discourses, politics of portrayal, framing and necropolitics, all seek to analyse perceptions, expectations, acts and choices. Similarly, the linguistics used in establishing cultural resonance, along with the political economy of camps, are interpretative since the variables are subjective, and hence open for discussion.

For defining discourses, this research looks at multiple definitions. The first one is from Benford and Snow (2000: 623) which define discourses as 'the talk and conversations – the speech acts – and written communications of movement members that occur primarily on the context of, or in relation to, movement activities'. While using this definition in the next chapter titled 'Discourses as Texts and Speech', this research will also draw upon the concept of collective action frames, which 'redefine social conditions as unjust and intolerable with the intention of mobilizing potential participants, which is achieved by making appeals to perceptions of justice and emotionality in the minds of individuals' (Tarrow, 1998). It will also look at the narrative fidelity or the cultural resonance of frames, which is defined as the 'extent to [which] frames resonate with the targets' cultural narrations, myths, domain assumptions and inherent ideology' (Benford and Snow, 2000: 622).

The second definition that this research will draw upon defines discourses as 'social relations represented in texts where the language contained within these texts is used to construct meaning and representation...the underlying assumption of discourse analysis is that social texts do not merely *reflect* or *mirror* objects, events and categories pre-existing in the social and natural world. Rather, they actively *construct* a version of those things. They do not describe things, *they do things*. And being active they have social and political implications' (Jabri, 1996: 95). This framework draws upon Giddens' theory of structuration, which makes an ontological statement on the relation between agency and structure (in Jabri, 1996; and, Demmers, 2017). This theory argues that any action, including force, can only be understood in terms of its relationship to structure, and that structure is instantiated through activities of knowledgeable social agents. Emphasising on this 'duality of structure', Cohen (in Jabri, 1996: 91), also points out that structure provides these knowledgeable agents with the practical awareness of the

'practice', 'relations', and the 'spatio-temporal settings' required in the reproductive process. However, this research will also question the 'knowledge' of some agents, and how the process of validating this 'knowledge' is missing. The discursive structuration therefore sees the 'legitimation of war as a social continuity...it is a social phenomenon (which) is produced and reproduced' (ibid, 1996: 90), which is also evident from the complication described above. Using Giddens' notion of the duality of structure, it can be seen that the social actors who are involved in communication usually draw upon pre-existing symbolic orders or modes of discourse which facilitate the creation of meaning (ibid), and discursive structures are instantiated in the 'practices and memory traces orienting the conduct of knowledgeable human agents' (ibid, 1996: 95).

The third definition used by this research is by Foucault, which refers to discourses as 'ways of constituting knowledge, together with the social practices, forms of subjectivity and power relations which inhere in such knowledges and relations between them. Discourses are more than ways of thinking and producing meaning. They constitute the 'nature' of the body, unconscious and conscious mind and emotional life of the subjects they seek to govern' (in Becker and McCall, 2009). Foucault's writing treats the knowledge of space, spatialized knowledge and production of space as influencers of multiple important institutions of modernity, including clinics, prisons, factories, and as will be described in the chapter titled 'Spatialization of Punishment Regimes and Necropolitics', which looks at these phenomena in camps (Gribin, 2015). This analysis will also look at 'how truth is constructed, who has the right to speak what counts as the truth, and whose interpretations of reality are ignored, marginalised, forgotten or disqualified as anecdotal or unscientific' (Keen, 2008: 15). Elaborated upon in the third chapter, it will also look at the concept of 'biopolitics' and 'the actual practices of redefining the principles of citizenship' (Minca, 2015: 77). The latter resonates with Mbembe's concept of necropolitics, which states that the contemporary form of exercising sovereignty 'means the capacity to define who matters and who does not, who is disposable and who is not' (2008: 165).

This will be followed by a concluding chapter.

## **Chapter 1: Discourses as Texts and Speech**

For Keen (2008; 20), violence is never arbitrary or without meaning; in fact, there are also 'immediate psychological functions of violence, [which] may include the satisfaction of revenge, of reversing previous or present power inequalities and humiliations through the barrel of a gun, and even of the perverse cognitive satisfaction that may come from making your chosen enemy resemble your own propaganda'. While the GoI may be engaging in the new form of violence against family members with perceived allegiance with ISIL, this can also be seen as a tactic to reclaim its own 'monopoly of violence' in the Weberian sense of state-building (Fukuyama, 2007: 11) against the backdrop of the country's recent history of occupation and weak governance. It is also interesting to note that this is not the first time people have been punished in Iraq merely because of their association; in Saddam Hussein's Iraq, Kurdish were punished because of their ethnicity, and post-2003 members of the Ba'ath party and their family members were punished for their association. The Iraqi state, through recent history, has built an 'enemy other', a scapegoat of others to strengthen itself, playing out these punishment regimes in various manners, whether in Abu Gharib or Bucca prisons, or through the infamous Halabja chemical attacks.

This chapter seeks to analyse how framing is used as a mechanism to create this 'other' group (Brubaker, 2004). 'To impose a label or prevailing interpretive frame...is no mere matter of external interpretation, but a constitutive act of social definition that can have important consequences' (ibid: 43). The case of naming and thereby framing family members with perceived allegiances with ISIL is also in line with Bhatia's (2005: 6, 7) description of discourses, which as he aptly points out, 'discourse is...a tool for armed movements and a battleground and contested space in contemporary conflicts. The politics of naming is about this contest, examining how names are made, assigned and disputed, and how this contest is affected by a series of global dynamics and events'.

In doing so, this chapter therefore looks at the laws that exist and decrees that have been passed by both the GoI and the KRG, and to what extent they are being implemented. These laws and decrees are thus an embodiment of institutionalised discourses, which look at who is 'in' and who is 'out'; the latter are therefore deserving of violence, with these laws and decrees legitimising these various forms of violence. This chapter will only be looking at the laws and decrees and their definition of 'enemy membership', while how these laws and decrees are put in effect will be looked at in the next chapter. The chapter also looks at the 'speech acts' and the metaphors being used by key officials, which are essential components of 'framing'.

While texts and decrees are passed by the GoI and KRG, before delving deeper into these, it is essential to also bring to light another actor, the PMF, at this stage. The PMF was formed as a result of the Ayatollah Sistani's fatwa following ISIL's capturing of the city of Mosul in June 2014, calling for a religious call to arms to protect their homeland. Following the humiliating collapse the Iraqi army faced at the hands of ISIL while defending Mosul, the PMF filled a gap in helping secure Baghdad, also serving as a psychological boost for the majority Shi'a population in the South<sup>8</sup>. The total number of PMF brigades is estimated to be between 35 and 50, and the total number of fighters between 125,000 and 141,000 (Abbas, 2017). In March 2018, the then Iraqi PM Haider Al-Abadi issued a decree formalising the inclusion of the PMF into the ISF. According to the decree, members of the PMF have the same rights as members of the Iraqi military (Jalabi, 2018), however, it is important to note that some of the groups within the PMF are also included in the US terrorist lists (Majidyar and Hosoda, 2017). The PMF have also entered into the formal political arena thereby asserting their influence even further, as was evident during the May 2018 Iraqi

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<sup>8</sup> There were five categories of groups which came to be known as the umbrella organisation PMF:

- 1) the pre-existing Shi'a armed groups which were active since 2003, most of them Iran-backed, and considered to be the most resourceful and powerful on the ground, such as the Badr organisation. They played a major role fighting along-side the Iraqi army against ISIL. These groups have received training support and equipment from the Iranian Revolutionary Guards Corps (IRGC) and follow the Iranian Ayatollah Khomeini in matters of religious jurisprudence;
- 2) armed wings of Iraqi political parties, such as the Peace Brigades and the Liwa Ash-Shabaab Ar-Rasali (related to the cleric Moqtada Al-Sadr, whose party won the Iraqi Parliamentary election of 2018). These groups' alignment to the PMF is fluid, as they move in and out depending on the political developments in Iraq;
- 3) new armed groups which emerged specifically as a result of Sistani's fatwa, comprising of Shi'a volunteers from Southern Iraq, namely, Karabala, Najaf and Baghdad. They receive funds from independent foundations running shrines. While they are highly revered and primarily assisted in safeguarding Shi'a religious places which were systematically targeted by ISIL, these groups are the least resources;
- 4) smaller groups emerging across Iraq along tribal lines, driven purely by local security considerations. They have mostly been organised on self-help basis and their numbers are not as many as those in the first and second categories; and,
- 5) distinct PMF operates in Turkmen areas, collected under Brigade 12. A few also emerged in Christian and Shabak areas in the Ninewa plains.

Parliamentary elections; the Fatah Alliance (also a part of the PMF) under Hadi Al-Ameri came in second winning a provisional 47 seats (Ezzeddine and van Veen, 2018). In what is referred to as a 'Faustian bargain', the PMF, especially the groups trained, equipped and funded by the IRGC have a reputation for carrying out the kinds of sectarian abuses that had led many Sunnis to welcome the jihadis in Mosul. In speaking to a journalist from the New Yorker, a senior Iraqi intelligence official said, 'without the Al-Hashd Al-Sha'abi, there would be no security in this country. And yet, with them, there is no rule of law. They are above the army, the law, and the sovereignty of Iraq' (Taub, 2018). Hence, the PMF is seen as a paramilitary group with efforts being made by the Iraq government to legitimise and formalise this umbrella of actors.

## Laws and Decrees

### Existing Laws

**Anti-Terrorism Law:** Iraq's 2005 anti-terrorism law (no.13/2005), which is its leading piece on counter-terrorism legislation in Federal Iraq, defines terrorism in a broad and far-reaching term to include 'every criminal act committed by an individual or an organised group' that targets an individual, group of individuals, or official or unofficial institutions and causes damage to public or private properties 'with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals' (HRW, 2019-a: 46). Under this law, anyone who committed, incited, planned, financed or assisted an act of terror is punishable by death, and anyone who covers up such an act or harbours those who committed an act of terrorism under the definition provided, is sentenced to life (ibid).

In 2006, the KRG also passed its own counter-terrorism law (no.3/2006), which calls for the death penalty for anyone who has committed an act of terror, or joined, founded, coordinated, or cooperated with a terrorist entity, or incited, planned, financed or assisted in an act of terror. Those who have participated in criminal acts such as causing destruction to a building, hijacking, kidnapping, or financing a terrorist attack are sentenced to life imprisonment (HRW, 2019-a). However, this law expired in July 2016. At the time of expiration, a committee recommended bringing charges against suspects under the Iraqi penal code (no. 111/1969) in order to prevent a legal vacuum, however, prosecutors are still using the expired law as it allows giving harsher sentences than the penal code allows (Revkin, 2018).

Between 2013 and 2017, the GoI detained over 19,000 (Revkin, 2018; Keels and Nichols, 2019; El-Ghobanshy, 2019), and convicted at least 8,861 people on terrorism related charges, mostly related to ISIL membership; an estimated 4,000 were detained by the KRG during the same period. At least 3,130 have been sentenced to death penalties, and 250 have already been executed (Revkin, 2018). This number is based on an analysis conducted by the Associated Press (AP) of a spreadsheet containing names of 27,849 people imprisoned which they received from an Iraqi official who requested anonymity. Thousands more are believed to be held by other authorities such as the Federal police and the military intelligence (Abdul-Zahra and George, 2018).

A General Amnesty Law (no. 27/ 2016) was passed in August 2016 which theoretically offered amnesty to any individual who joined ISIL or any other extremist group against their will and did not commit any serious offence such as possession or use of weapons and explosives, and did not participate in maiming or killing people (HRW, 2019-a). However, the President of the Iraqi Bar Association, Ahlam Allami, has

confirmed that prosecutors do not differentiate between those who joined ISIL by choice and those who were coerced to join the group due to ISIL's complete control over the socioeconomic life of the areas it controlled (Revkin 2018). Moreover, as a result of the backlash received, the then PM Haider Al-Abadi's office submitted amendments to the law, which were ratified in November 2017, cancelled the provision that allowed amnesty for anyone who was coerced to join and did not undertake any criminal activities while associated with ISIL, precluding pardons for anyone convicted of terrorism regardless the mitigating circumstances. Even in the fifteen months the amnesty was applicable, prosecutors avoided applying the law, saying that anyone who joined ISIL did not deserve amnesty (ibid). Moreover, prosecutors remained fearful to grant amnesty to a person who would later potentially commit an act of terror after a few months after release (Yee, 2018).

**Juvenile Welfare Act:** Under Iraq's 1983 Juvenile Welfare Act, the minimum age of criminal responsibility is 9 years, whereas that in the KRI is 11 years (HRW, 2019-a). As per Article 52 of the Juvenile Welfare Act, no child below the age of 14 years is to be held in detention, and those above 14 years are only detained if accused of a felony carrying the death penalty. Even in the case of the latter, as per law, the juvenile court should pass a judgement sending the accused child to a youth rehabilitation school, for no longer than 15 years (ibid).

Under the anti-terrorism law and based on a report from the Human Rights Watch (HRW, 2019-a), by the end of 2018, Iraqi and Kurdish authorities had also detained upwards of 1,500 children under the age of 18 years for alleged ISIL affiliation (El-Ghobashy, 2019). These children, including an estimated 185 foreign children, convicted on terrorism charges, have been sentenced to prison terms in Iraq (HRW, 2019-a). While the both the GoI and KRG have specialised juvenile justice systems for minors, not all children suspected of ISIL affiliation have been held in juvenile justice facilities during their investigation and trial. Many of the children have been held in adult counterterrorism facilities, in dire conditions, where 'cells designed to hold two prisoners now hold six' (Abdul-Zahra and George, 2018).

Of the two detention centres in Qayyarah and the police station in Hamam Al-Alil detaining children, HRW has found that the youngest child held was 13 years old (2019-a). Of the 1,400 foreign women and children who were detained after they surrendered with ISIL fighters in August 2017, 800 foreign children have been detained; children as young as 9 years old have been charged with illegal entry into the country and ISIL membership according to Iraq's counter-terrorism laws (ibid). An Iraqi lawyer who represents children accused of terrorism in Iraq has estimated that between 400 and 500 children have already been tried for ISIL affiliation in the country, with accused children being sentenced 5 to 15 years longer if tried by Federal Iraq compared to the KRG (ibid). Furthermore, the then PM Al-Abadi also indicated that children as young as 16 years were eligible for capital punishment (Revkin, 2018).

## Decrees

Since the battle to liberate territories from ISIL, governorates have also passed decrees which allowed for the detention and ostracization of families of ISIL members, as a form of collective punishment. These were mainly the Salahaddin decree and the Mosul district council decree, which are discussed in detail below.

**The Salahaddin Decree:** In August 2016, less than a year after the anti-ISIL coalition retook Tikrit and Baiji, and a month before the retaking of Shirqat (Al-Jazeera, 2016), the Salahaddin governorate council passed

a decree which stipulated that anyone proven to have been complicit or affiliated with ISIL has no right to return to the governorate. The decree also called for the immediate expulsion of all immediate relatives of ISIL members from the governorate for ten years to life, and would be only be allowed to return once they are deemed safe, thereby seen to be defining a 'membership rule'. The decree further established a committee to seize and redistribute property from all ISIL affiliates and their family members, and suspend their and their families provision cards, another form of 'membership rule'. Families that killed their ISIL affiliated members, or handed them over to Iraqi authorities were exempted, thereby also creating incentives for extra-judicial executions (HRW, 2017-a; Daycard and Castelier, 2017; Revkin, 2018). As will be seen in the next chapter, the 'proof' of affiliation in most cases is hard to verify. This is an example of 'guilt by association' and that of 'collective punishment', similar to what was practiced in Stalin's Russia (Alexopoulos, 2008). This is an example of a 'repertoire of punishment' showing how punishment is being legitimised by being institutionalised.

As a result of the decree, dozens of families accused of having relatives in the ISIL had been forcibly displaced to the Shahama camp (photographed on the cover page), known locally as 'Da'esh camp' (Potter, 2018), by the PMF. The camp has been described as an 'open-air prison', with reports of dirty water, residents barred from having mobile phones, and prevented from going out of the camp, unless it's a medical emergency. Even so, staff in the main hospital in Tikrit often times reject seeing the patients when they find out they have come from Shahama (Daycard and Castelier, 2017). In January 2017, there were reports that an estimated 345 families were detained in Shahama, and another 200 families were detained in nearby camp Rubaidha (Zucchini, 2017). Moreover, there have also been reports of the villagers and the PMF setting fires to homes of these accused family members and destroying them with explosives, after looting them (Daycard and Castelier, 2017), another 'repertoire of punishment'. Wahida Mohammed Al- Jumaily, who is referred to as Umme Hanadi, a female PMF commander leading 180 men while speaking with journalists from Al-Jazeera stated that, '[detentions in camps are] to take care of them and to protect them from being targeted by the families of those who died under ISIL rule. We, as Muslims, always have mercy...we could tell them to run away...but we took them to an IDP camp, where they can receive medication and access to aid agencies' (ibid). In one of the two videos which were released in January 2017 showing local PMF forces forcibly displacing families in military vehicles, Umme Hanadi is shown to say 'it is an honour for me to clean and cleanse Al-Shirqat with these elite forces' (HRW, 2017-a). This shows that while the laws and decrees were passed by GoI and KRG, they are being implemented by actors such as the PMF. A report by Amnesty International (2018) states that detainees are denied food, water and health care; blocked from obtaining relevant civil documentation; subjected to sexual harassment, rape and sexual exploitation; and are prevented from returning home, at the hands of the PMF.

**The Mosul District Council Decree:** Similarly, in June 2017, a month before Mosul was declared 'liberated from ISIL control' (BBC News, 2017), a decree was passed by the Mosul district council which ordered the expulsion of all families of ISIL members and proposed the creation of special camps where they could be rehabilitated psychologically and ideologically, seeing the alternation between discourses of discipline and punishment, protection and care. The decree stipulated that these families will only be allowed to return to Mosul after confirming their responsiveness to rehabilitation (Revkin, 2018). Within weeks, the first 'rehabilitation camp' was opened in Bartella, 14km east of Mosul. Within 4 days of opening the camp, ISF

had already forcibly displaced at least 170 families with alleged ISIL members to Bartella (HRW, 2017-b). The camp had a mobile medical clinic, but only very limited humanitarian services were being provided, with no education, training, or other programmes, despite what the decree stated. Medical workers around the camp said that at least 10 women and children had died traveling to or at the camp, mostly because of dehydration. The camp, managed by local authorities, draws funding and support from the Iraqi Ministry of Displacement and Migration (MoDM) (ibid). Another 1,500 family members with perceived allegiance to ISIL are detained in the Tal Keppe prison, 45km north of Mosul (Abu Zeed, 2018).

### Tribal Laws

Given high rates of corruption, lengthy bureaucratic process and the lack of trust in the government, tribal laws still play a significant role in the everyday lives of Iraqis, especially those living away from larger cities. While more than 100 sheikhs of tribes in and around the city of Hawija<sup>9</sup> in Kirkuk governorate made a path-breaking pledge to forgo traditional justice in dealing with ISIL fighters and supported embracing Iraq's formal legal system (Strasser, 2017), in other places, such as Anbar and Salahaddin, tribal laws still trump national laws, and justice and accountability mechanisms, perhaps also reflective of the growing schism between the Shi'a government and the primarily Sunni governorates.

In these governorates, kinship ties to ISIL are considered a sufficient basis for retaliation even if the relatives of ISIL members did not personally commit any crimes, so enemy membership is generalised to rules of kinship as well. A key principle of tribal law, which is influential in Iraq – particularly in areas where state authority is weak – is the attribution of collective guilt to the family or tribe of the perpetrator of a crime. This principle allows for the relatives of an ISIL member to be held vicariously responsible for crimes that he or she committed individually (Revkin, 2018). Moreover, customary justice is inaccessible to women as they need to be represented by a male member of their family (their husband, father, brother or son) (ibid). The way formal laws, and justice and accountability mechanisms are dealing with families of ISIL members do not seem to be far away from Iraq's tribal retribution, as will be seen in the chapter below. This is similar to how 'Western countries' are not letting the wives and children of former ISIL fighters to come back to their home countries as was recounted in the introduction chapter.

### Speech Acts and Metaphors

This section looks at how the speech acts by various Iraqi officials are shaping the way punishments are enforced and legitimised. As Steuter and Wills (2009) aptly state, the images and languages which are used to discuss the war on terror have a powerful impact on how the general public thinks about and treat other human beings, especially those who have been accused as accomplices of terrorist organisations. In doing so, it takes violence away from the human and comprehensible (Keen, 2008). The language used by mainstream news, media, politicians, military commanders, think tank scholars, religious leaders, pundits, columnists and bloggers in response to terrorism ironically makes us less safe by creating a world of discourse characterized by fundamental and insoluble divisions (Steuter and Wills, 2009). Public discourses, which rely heavily on both obvious and tacit metaphors, harness its powers to shape opinion, set or justify policy (ibid), as was seen in the section above on laws and decrees, and therefore, direct action. These narratives by Iraqi officials differ when speaking to national audiences who are still haunted

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<sup>9</sup> Hawija was also an ISIL stronghold until it was liberated from the terrorist group on 5<sup>th</sup> October 2017 (Al-Jazeera, 2017).



by the atrocities ISIL committed and where a deep cultural resonance still exists, and to international audiences, where Iraqi authorities need to appear responsible while at the same time not have the country's sovereignty undermined. These differences will be highlighted below.

While the Salahaddin decree came under scrutiny by human rights groups and the international humanitarian aid agencies, Amar Hekmat, the then deputy governor of Salahaddin said inside the barricaded provincial centre that, 'our aim is to defy terrorists and send a stern message to the families' (Zucchini, 2017). Similarly, when a member of Parliament from the governorate, Mishan Al-Jiboori, accused the governorate's security commander of human rights violation against the 'innocent and the repressed' while detaining family members with perceived allegiance to ISIL, Brigadier General Juma Enad Sadoon, who was then the Salahuddin Operations Commander, called critics like Al-Jiboori 'barking dogs and mercenaries' who should not interfere in the security matters of Tikrit (Cornish, 2019). This gives a clear message of being either 'with us' or 'against us', a very clear demarcation in group making. Brubaker and Laitin (1998; 442) discuss the:

'crucial role of ethnic elites [have] in engendering ethnic insecurity through highly selective and often distorted narratives and representations, the deliberate planting of rumours, and so on. [In doing so,] the success of such entrepreneurs of fear is seen as contingent on the historically conditioned cultural resonance of their inflammatory appeals; cultural 'materials' are seen as having an inner logic or connectedness that makes them at least moderately refractory to wilful manipulation by cynical politicians'. In most cases not out of their own will, but the families of those who joined ISIL, or even the remainees who lived under ISIL control, have been forced into the 'other group' and based on the 'cultural construction of fear, on the rhetorical processes, symbolic resources, and representation forms...a demonised, dehumanised, or otherwise threatening ethnically defined 'other' has been constructed' (ibid: 442),

although in this case, the group is not necessarily an 'ethnic' group. This shows the rules of 'enemy membership' being exercised in post-ISIL Iraq.

On the other hand, the wording of the Mosul district council decree, as was seen in the previous section, was more subtle, where it indicated sending family members with ISIL allegiances for psychological and ideological rehabilitation. Mohamed Salman Al-Saadi, Chairman of the National Reconciliation Council – a body established in 2007 to oversee the vetting of Ba'ath party personnel that is now primarily focused on ISIL related reintegration challenges – said that he is in favour of the isolation of ISIL affiliated families in special camps for three reasons: first, 'to protect them from revenge attacks'; second, 'to prevent them from communicating with Da'esh [ISIL]'; and third, 'to re-educate and rehabilitate them in order to reverse the effects of three years of brainwashing' (Revkin, 2018: 25). It is interesting to note how these 'systems of exclusion and violence in peacetime are modified and exaggerated in war time' (Keen, 2008: 15). Previously, there was the systematic exclusion of those who were members of the Ba'ath party, and now, there is the exclusion of those with perceived allegiances to ISIL; in both cases, the excluded groups have been Sunni by a mostly Shi'a government, showing how these 'repertoires of punishment' have travelled through time and mutated. The former led to grievances which worked in favour of ISIL, especially for recruitment.

The head of the Anbar Rescue Committee, Sheikh Mohammed Al-Hayes, appears to be stricter than Al-Saadi, 'if families of IS[IL] members were ever allowed to coexist alongside tribes, it would be a betrayal

to all those who sacrificed their lives. These families still pose a threat because they will be a new breeding ground for terrorism in the future' (Abu Zeed, 2018).

While speaking to a journalist from the New Yorker, Thaer Abd Ali Al-Juboori, the spokesperson for the Ministry of Justice, said:

'human-rights groups focus on the rights of suspects, but what about the rights of the victims and their families? We have undergone thousands of terrorist attacks. There is immense public pressure on the judicial authorities. 9/11 left three thousand people dead. The whole world obsessed over this attack. We cried for your innocent deaths. But, here in Iraq, we have had a terrorist death toll that has exceeded that by a factor of a hundred. Where is the sympathy that we have shown to the victims of 9/11? This is what Iraqis are upset about. We fight terrorists every day, on behalf of the rest of the world. And no one cares about our suffering' (Taub, 2018).

In other cases, politicians have taken up more metaphorical stances; 'these are small wolves and when they grow up, they will become troublesome', said Hakim Al-Zamili, a politician from Moqtada Al-Sadr's political party which won the 2018 Parliamentary elections in Iraq, and a former head of Iraq's Parliamentary Security and Defence Committee. 'It's genetic. Evil and terrorists will produce evil and terrorists' (Cornish, 2019). While metaphors, such as the one used by Al-Zamili, operate in the realm of thought, their workings reverberate in more concrete, active and tangible ways. Steuter and Wills (2009: 69) show how across wars and across cultures, animal metaphors have persisted as a central component in representing the fabricated enemy. It transforms people into vermin whose capture and extermination becomes justified and necessary (ibid: 76).

In another move, in December 2014, a state run television channel, Al-Iraqiya, in conjunction with the Ministry of Interior, started airing a new form of reality television; 'In the Grip of Law', is a show which is forcing perpetrators convicted of carrying out terror attacks, most of whom are ISIL members, to publicly confess and face families of their victims (Beck, 2014). Deemed too controversial by human rights groups, the show was initially launched as part of a media effort to attack ISIL and garner public support for the Iraqi forces that were humiliated by the terrorist group earlier in the summer (Boren, 2014). By February 2018, the show had racked over 150 episodes (AFP, 2018). 'It's the only program in this country that increases public trust and confidence in the security forces and judicial offices', Mujahid Aboalhail, the head of Al-Iraqiya said. 'It passes the message to the whole world that the fate of these terrorists is in the grip of the law!' (Taub, 2018). While the media too has played a significant role in creating and dispersing propaganda, Fairclough (in Steuter and Wills, 2009) believes that it is essential to understand the context of contemporary monopoly in which powerful political and economic forces significantly shape the content of news. In the case described above, this media house in question is state run. Media discourse is able to exercise a pervasive and powerful influence in social reproduction; its 'motivated representation' coupled with the audience's passivity and impressionability make an effective tool for propaganda, which relies on framing by bending the truth as opposed to flat out falsehood (ibid).

The repertoires above show how punishment and detention are institutionalised, and therefore seen as legal and thereby legitimate. The speech acts and the metaphors used by people in power also shape the way the general population will also think and act. These set the precedent for the acts that follow, discussed in the chapter below.

## Chapter 2: Spatialization of Punishment Regimes and Necropolitics

For Foucault (in Reid, 2008: 23), 'wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilised for the purpose of wholesale slaughter in the name of life necessity: massacres have become vital. It is as managers of life and survival, of bodies and the race, that so many regimes have been able to wage so many wars'. This echoes in post-ISIL Iraq, where the battle seems to be based on an ideology. While life is being governed in camps, in extreme cases of necropolitics, death is also being sanctioned (Wallace, 2018). The sections below will outline in detail how even common citizens are also engaged in battle and not only the political elites. In doing so, the sections will analyse these from the angle of necropolitics, or politics of the bodies, culminating with the detention camps as a disciplining space seeing how 'disciplinary powers seek to establish a subjection of the body' (ibid: 17). These sections seek to address the questions asked by Mbembe (2008: 152): 'under what practical conditions is the right to kill, to allow to live or to expose to death exercised? Who is the subject of this right? What does the implementation of such a right tell us about the person who is put to death and about the relation of enmity that sets that person against his or her murderer?'

Similar to repertoires of contention, repertoires of punishment are also embodied in place, networks, scales, material things, positionality and mobility as key spatialities (Leitner, Sheppard and Sziarto, 2017). This chapter will discuss the spatial repertoires of punishment by analysing how the boundaries of 'us versus them' are inscribed into spaces, such as houses and camps, and how these spatial boundaries are transformed into the politics of movability, space and bodies.

### Marking of Houses

Like Jabri (1996) said, discourses do things, and as Foucault (in Bhatia, 2005: 18) argued, 'it may be better to conceive discourses as a violence which we do to things', the act of naming has deep and profound effects.

'To name is to identify an object, remove it from the unknown, and then assign to it a set of characteristics, motives, values and behaviours. Names can fulfil a similar role as narratives, images, euphemisms and analogies. All serve as a natural reaction to surplus and abundant information, with the use of these and other knowledge structures to order, interpret, and simplify. For the recipient or audience, names, much like analogies, help define the nature of the situation confronting the individual, help assess the stakes and provide prescriptions, which are then evaluated in terms of their chances of success and their moral rightness' (ibid: 8 – 9).

This act of naming is thereby fulfilling the primary function of justifying an action, in the case described, the act of collective punishment, through labelling (ibid: 12).

In several governorates, notably in the majority Sunni governorates of Salahaddin, Anbar and Ninewa, residents suspected to have family members associated with ISIL have received 'night letters', warning them to leave by a certain deadline or else be expelled by force (Revkin, 2018). HRW (2017-b) also revealed that in June 2017, a circular was sent to alleged ISIL families in Mosul city asking them to leave the city by 15 July or 'you will be shot'. In July, an international organization said that some so-called ISIL family homes were set on fire, an example of repertoires of punishment are spatialized. Similarly, in Qayyarah, 60 km south of Mosul, a PMF fighter and a senior security officer said that a group of families

who were ISIL victims, with the backing of local tribal leaders, drew up a list of 67 families whom they demanded should leave the city. A video posted on Facebook on June 17 but later taken down showed residents going door to door, threatening the so-called ISIL relatives that if they did not leave, their lives would be at risk. The security officer said that some people threatening the families had resorted even to violence (ibid), thus showing the resultant actions of the naming process.

Shortly after the retaking of Mosul, a report by the Centre for Civilians in Conflict (CIVIC, 2018) also revealed that the Federal Police reportedly identified some houses as 'Da'esh houses' by marking the walls and either occupying these houses or depriving them of services, including electricity or water, as well as humanitarian assistance, another instance of repertoires of punishment being inscribed in space. While there are less frequent reports of such marking today, a Ninewa police officer in western Mosul confirmed this practice was still happening. A police officer who CIVIC talked to condoned retribution by community members saying:

'there are still ISIL families in the city and people still write on their houses. I don't feel bad about it; these families did not think about the community when they supported ISIL and occupied Mosul. We all suffered, our children have lost their future, their education and their house. They destroyed the city. If the house is empty, people have taken revenge, they looted the house and destroyed it' (CIVIC, 2018: 8).

For their part, security forces sometimes purposely harass families of suspected ISIL members. According to this same Ninewa police officer, 'when the family is still in the house, we will search it every single day, at every hour of the day or night, without prior notice'. This is an instance of invading private space and destroying a sense of home, also an instance of repertoires of punishment. Searching homes of suspected ISIL members for security reasons must be based on probable cause and not to 'harass' as a form of punishment. Family members of suspected or actual ISIL members should not be held responsible for acts committed by others (ibid). As Keen (2008: 19) states, 'since there is no impunity, many things become possible'. This is an example of how a perceived threat is depriving certain groups of basic social rights, transforming them into a form of symbolic and/or material 'living dead' (Montenegro, Pujol and Posocco, 2017).

## Generation of Lists

'The material culture of bureaucracy and empire is not found in pomp and circumstance, nor even in the first instance at the point of a gun, but rather at the point of a list' (Bowker and Star, 1999: 137).

Given the large number of detentions discussed in the chapter above, the question arises that how security forces and authorities know which person to prosecute and arrest. Civilians who fled ISIL in 2014 were asked by Iraqi and Kurdish intelligence officers to inform on neighbours who had allegedly joined the terrorist group. These names were then entered into databases of terrorist suspects, available to all Iraqi security branches, including the PMF (Taub, 2018). In January 2017, Brigadier General Juma Enad Sadoon, said that he ordered the forced displacements of 'ISIL families' following the passage of the Salahaddin decree. He confirmed that 'ISIL families' were identified by other residents and through intelligence gathered by the security forces. There were concerns about the family members being in communication with their ISIL affiliated relatives; he said he would not stop displacing these families (HRW, 2017-a). Lists are therefore material things, which 'do things'.

As the conflict dragged on, the lists became more and more unreliable. People began reporting their enemies, wielding threats of denunciation in personal, tribal and workplace disputes (Taub, 2018), evidence of how repertoires of punishment have mutated. A United Nations Development Programme (UNDP) official identified property disputes as the most pressing post-ISIL issue in the Iraqi city of Yathrib in Salahaddin governorate where some residents were ‘falsely accusing others of joining ISIL as a pretext for seizing their land’ (Revkin, 2018). These lists therefore do not only include ISIL members and their families; they swelled to include local business competitions as well. Many believe that this was reminiscent of the way the de-Ba’athification campaign was carried out indiscriminately over a decade ago; indiscriminate and without a proper vetting of individual behaviour (Abouauon, 2019), pursued without reference to modern experience, but instead reached back to a flawed model of five decades ago, that of de-Nazification (Sissons and Al-Saiedi, 2013). Similar to defining ISIL membership, the de-Ba’athification process made no assessment of an individual’s capacity, deeds or integrity, but was instead an evaluation based on party membership. Moreover, it was designed by long-term exiles and foreigners, formulated with fragmentary data about the Ba’ath party and the contemporary workings of the Iraqi state (ibid). This is how lists for ISIL affiliation were also generated as discussed above- by people escaping ISIL rule, making no difference between an ISIL member who served in a bureaucratic post, one who took a Quran course under the terrorist group, or one who took up arms. A lesson that needs to be learned from the process as Sissons and Al-Saeidi (2013) of the International Centre for Transitional Justice (ICTJ) state is to not create a ‘monster’ again, a monster that also fed into the creation of ISIL; disgruntled former Ba’athists joined the terrorist organisation, giving ISIL the military and governing capabilities in its top leadership (Oosterveld and Bloem, 2017). More than 25 of ISIL’s top 40 leaders once served in the Iraqi military (Thompson, 2015). This shows how these repertoires of punishment have also transposed through time, but yet are repetitive, and yet they remain within limits set by the repertoire already established.

While civilians have often been the key targets of violence, in this case, they are also key perpetrators of violence (Keen, 2008) in how they are using the post-war climate to their own material benefits. Little attention has been given to how this would affect the social fabric of the country in the long-term, already very much eroded by the conflict and the mass displacement<sup>10</sup> (Carter and Dietrich, 2017-a and 2017-b), inspiring deep grievances of those affected by these policies. Those grievances were later capitalised on by leaders of extremist terrorist groups such as Al-Qaeda in Iraq and later ISIL, seeking legitimacy and influence in the post-Saddam security vacuum (Abouauon, 2019), and ended up recruiting trained former military personnel excelling in military strategy and extremely knowledgeable about the country (Lister, 2014). Some PFM fighters even ran an extortion racket, demanding thousands of dollars from civilians, threatening to add their names to the terrorism database if they didn’t pay (Taub, 2018), showing the power of lists. Many find themselves in these camps at the hands of both security and non-security through an arbitrary vetting system, who do not cross-check information to ensure that someone who has already been deemed innocent by one group will not be later picked up and held by another. There seems to be no unified, publicly established criteria by which an individual’s innocence or guilt is

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<sup>10</sup> Over 3.6 million people being displaced at the peak (International Organisation for Migration (IOM) Displacement Tracking Matrix (DTM), accessed 23<sup>rd</sup> June 2019), and over 1.6 million still displaced, with over 4.2 million returnees (ibid)

determined. For this reason, entire families are being held inside the camps with no prospect of leaving (Abouauon, 2019).

While ISIL had as many as 30,000 fighters in Iraq and Syria in August 2018 (Cafarella, Wallace and Zhou, 2019), with estimates provided by the US Department of Defence stipulate that between 3,000 and 5,000 ISIL fighters defended Mosul, according to Iraqi intelligence officials, the list of ISIL suspects now includes approximately 100,000 names. These lists include people who were suspected of involvement with ISIL in any capacity, including support functions such as drivers or cooks. Some on the list may have had no involvement with ISIL at all, but are under suspicion because of family members' involvement, or because community members suggested names for the lists based solely on personal or local grievances (HRW, 2019-a). Abdelaziz Al-Jerba, the Director of Al-Tahrir Association for Development (TAD), a peacebuilding organisation in Iraq mostly working in Ninewa, estimates that at least 45,000 names from Mosul have been added to the lists (Revkin, 2018). By 2019, Iraq's Implementation and Follow Up National Reconciliation Committee presented a proposal to PM Adil Abdul-Mahdi calling for the internment of up to 280,000 people, a majority of them women and their children (Ekklesia, 2019).

HRW has called this illegal stating, 'the government's proposal, if implemented, would violate Iraq's obligations under international law. In the context of a non-international armed conflict, such as in Iraq, international human rights law continues to apply. International human rights law prohibits arbitrary detention and requires promptly taking people in custody before a judge and charging them with a criminal offense or releasing them' (Adel, 2019).

While lists are seen as a means to bring order to the world in relatively straightforward ways and are considered relatively innocuous by security professionals (de Goede and Sullivan, 2016), the above repertoires show that they are anything but. These lists are reminiscent of secret kill lists used by US authorities for their targeted killing programmes, including drone strikes in Pakistan, Yemen and Somalia which were carried out on the basis of such lists. As a former Chief of Staff admitted, 'this isn't science, this is judgments made off of, most of the time, human intelligence' (ibid). Lists are therefore seen as 'inscription devices' that do things (ibid).

In addition to the role of secret informants in mass arrests, their testimonies are also used to prosecute suspected ISIL members once they have been taken into custody, in violation of defendants' right to confront the witnesses against them – a right that is enshrined in the International Covenant on Civil and Political Rights<sup>11</sup>, which Iraq has ratified (Revkin, 2018).

## Convictions

The definition of terrorism under Iraq's anti-terrorism law as it currently stands, as seen in the chapter above, is susceptible to a wide range of interpretations. Therefore, anyone can be prosecuted, including women and children, who fail to report activities suspected of terrorism of their family members. The definition does not differentiate between those who held arms in an act of terrorism, or who were only a

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<sup>11</sup> Article 14.3, which stipulates: In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (UN General Assembly, 1966).

member of a terrorist entity in a support function; meaning, that the law does not differentiate between an ISIL member who took up arms against the state and carried out mass atrocities including killings and human rights violations, from an ISIL member who was merely a cook or a messenger, and therefore did not cause any direct civilian harm. The law also does not differentiate between those who willingly joined a terrorist entity, and those who were forced to join. Similarly, under the act, family members, including wives and children of ISIL members can be convicted and given life sentences, as they are seen to be 'harbouring' terrorists or 'covering up' acts of terrorism, showing that 'enemy membership' in this case is based on a loose criteria.

Trials, if at all, last for an average of 10 minutes, with a conviction rate of 98% (Revkin, 2018). Family members of those on trial rarely show up for the hearings out of fear that they will be detained too. It is fairly common for the relatives of the defendant to be rounded up by security forces, after the hearings, and sent to remote camps in deserts, where they are allegedly denied food, medical services, and access to relevant documents (Taub, 2018). For Mosul's residents, the announcement of the caliphate within their city meant that those who remained, their lives would from there on end be defined by their proximity to ISIL. The remainees are resented by those who were displaced, viewing the former as ISIL sympathisers, even though in most cases they were victims of ISIL abuses as well (Revkin, 2018). This shows how mobility is a spatial master narrative (Leitner, Sheppard and Sziarto, 2008). The same holds true for those who were displaced; their area of origin determined if they were viewed by residents of their host area as ISIL sympathisers or not (Carter and Dietrich, 2017-a and 2017-b). An official from the UNDP estimates that 'only 5% of IDPs are 'ISIL families' and 95% have no relation to the group'. Nevertheless, in many areas, IDPs are collectively stigmatised and distrusted (Revkin, 2018).

Pretrial detentions can last years; even if detainees don't die from the dire conditions of the prisons, camps and detention centres, they may still never see the inside of a courtroom. A multitude of files have been misplaced within the complex bureaucracy of the country, with many officials changing posts multiple times a year. Detained have also been transferred among sites being managed by overlapping security forces, meaning that on paper, these suspects are missing. An Iraqi senior intelligence officer speaking to a reporter has said that hundreds have also been killed during interrogations, with the Ministry of Health (MoH) officials classifying the cause of death as 'unknown' or a 'heart attack' before disposing off the corpse (Taub, 2018). This is an example of biopower, which 'appears to function through dividing people into those who must live and those who must die' (Mbembe, 2008: 156).

Authorities are sentencing ISIL suspects based on interrogations which have involved torture, speculation about family affiliations, mistaken identity (Mohammed is the most common name in the world) and accusations by community members with no concrete evidence; children and adults with only minimal association or even no association at all have been accused. Of the 29 boys that HRW interviewed, 19 reported that they were tortured by plastic pipes, electric cables and rods by the Aasayish<sup>12</sup> officers, often by more than one at a time, during interrogation<sup>13</sup>; the torture, they claimed, continued over several days until a confession was made. This is despite the fact that Article 37 (1) of the Iraqi constitution stipulates

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<sup>12</sup> Kurdish security intelligence

<sup>13</sup> Three of the boys also described being tied in a stress position called the 'scorpion position' with one arm extended over the shoulder and the other pulled behind the back with wrists bound together, for hours (HRW, 2019-a).

that 'all forms of psychological and physical torture and inhuman treatment is prohibited' and that 'any confession made under force, threat or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damaged incurred in accordance with the law' (HRW, 2019-a). The 'confessions' are usually a thumb print taken on a blank piece of paper, which is then filled in by the interrogators (Taub, 2018). According to the Iraqi law, if a subject has been subjected to torture during interrogation or detention, the investigating judge must be informed who must then carry out an investigation, which however is not being practiced.

Under Iraqi criminal procedure, suspects must be brought before a judge within 24 hours of their detention and grants the detainees the right to pick their own lawyer, or have one appointed by the state, who should be present during the entire investigation period. The children interviewed also did not know that they had a right to a legal representative, while some were given a list of lawyers they could hire for a fee (HRW, 2019-a). Even with the Iraqi law stating that a person can only be prosecuted in the presence of a lawyer, public defenders are paid less than \$20 per case; consequently, they have no incentive to invest time in cases. Furthermore, Iraqi authorities have issued arrest warrants of an estimated fifteen lawyers since July 2017 on charges related to affiliation with ISIL. All the lawyers arrested were defending ISIL suspects at the time of their arrests, raising concerns that the Iraqi authorities are trying to discourage private legal representation of ISIL suspects through intimidation (Revkin, 2018).

Given the high number of ISIL inmates, even the prisons in KRI (which hold fewer numbers compared to the ones in federally controlled areas) acknowledge they are unable to cope with the load; some detained children have no choice but to wait between nine months to a year before they are able to see a judge. Lengthy pre-sentencing periods are compounded with the fact that children are not automatically released once they have served their due time. Because of the law *Makkamat Al-Tameez*, or court of cassation, in both KRI and federally controlled areas, children with perceived affiliation with ISIL must have their sentences looked and approved by a panel of nine judges before being finalised. However, as a result of the enormous backlog, many children end up spending their entire sentences in detention before their case is even looked at, forcing them to remain in detention even after their sentences have been completed (Mednick, 2019).

Iraqi children who have been arrested for suspected ISIL involvement say that once released, they are afraid to go home because their arrest automatically brands them as an ISIL member making them vulnerable to revenge attacks. Children detained by the KRG said they feared re-arrest by Federal Iraqi forces if they return to GoI controlled territories. This stigma can lead to permanent separation from their family and community (HRW, 2019-b). This is similar to how Bhatia, describing the 'politics of naming' in the Philippines regarding the Moro Islamic Liberation Front (MILF) and the 'axis of evil' rhetoric used by the anti-coalition forces in Afghanistan, says that 'these examples strongly contradict the old childhood axiom of 'sticks and stones' for, in contemporary armed conflict, 'names' do matter and are seen to hurt' (2005: 6). Language itself, in the way it invites us to understand the enemy, is a potential weapon (Steuter and Wills, 2009). As Jean Paul Sartre said, 'words are loaded pistols' (ibid: 69).



The treatment of children described above is in violation of numerous Paris Principles, mainly principles 3.6<sup>14</sup>, 7.0<sup>15</sup>, 8.7<sup>16</sup> and 8.8<sup>17</sup>. The above is also against the Convention on the Rights of the Child, which Iraq has both signed and ratified. Main articles violated include article 9.1<sup>18</sup>, article 12.2<sup>19</sup>, article 37-b<sup>20</sup>, 37-d<sup>21</sup> and article 40.2-b<sup>22</sup>. Interestingly, in January 2015, the Committee on the Rights of the Child (CRC) acknowledged that while Iraq was facing numerous challenges as a result of war crimes and atrocities perpetrated by ISIL, many of the issues impeding the implementation of the convention were in fact as a result of laws and legislation dating back to before ISIL made any territorial gains in Iraq. The committee also questioned the measures being taken to provide psychosocial support to children who had lived in multiple armed conflicts in the country, and also noted that there were gaps in Iraqi laws in terms of protection and rehabilitation of former child soldiers, and children traumatised by armed conflict (OHCHR, 2015).

This shows that not only do judges and security forces have engaged in naming and assigning blame, even regular citizens have been involved in defining who is a 'good citizen' and who is a 'bad citizen' in post-

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<sup>14</sup> Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law which offers children special protection through numerous agreements and principles (UNICEF, 2007).

<sup>15</sup> At all stages, the planning and programming for children who have been associated with armed forces or armed groups should have the objective of enabling children to play an active role as a civilian member of society, integrated into the community and, where possible, reconciled with her / his family (ibid).

<sup>16</sup> Children who have been associated with armed forces or armed groups should not be prosecuted or punished or threatened with prosecution or punishment solely for their membership of those forces or groups (ibid).

<sup>17</sup> Children accused of crimes under international or national law allegedly committed while associated with armed forces or armed groups are entitled to be treated in accordance with international standards for juvenile justice (ibid).

<sup>18</sup> States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence (UN, 1989).

<sup>19</sup> For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law (ibid).

<sup>20</sup> No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (ibid).

<sup>21</sup> Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action (ibid).

<sup>22</sup> Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings (ibid).

ISIL environment of Iraq. ‘The actual ability to name, and to have that name accepted by an audience, holds great power’ (Bhatia, 2005; 9). However, this power is being abused for personal interests, as shown in the previous section.

## Denial of Official Documents

While under ISIL, civilians could not obtain relevant official documentation such as birth certificates, marriage certificates, security clearance documents, death certificates etc. as they were unable to leave areas governed by the terrorist groups. While ISIL did take over the bureaucracy of the areas it governed and issued certificates or personal status documents to maintain that it is a state to distinguish itself from any other terrorist entity (Gill, 2019), these documents are not being recognised by any authorities, Iraqi or Kurdish, anymore. Moreover, both the Iraqi and Kurdish authorities are also not issuing replacements for these documents in question. Children denied birth certificates may be considered stateless and unable to enrol in school (CIVIC, 2018), thereby showing how different bureaucratic regimes have significant direct impact on people’s everyday lives, including at times governing life and death. Material things which seem trivial as identification (ID) documents have a profound impact on the way life and death are governed, hence the need to study them.

Many women who lived under ISIL under occupation were used as sex slaves, while numerous others, willingly or un-willingly, were married off to ISIL fighters. In many cases, the marriage itself was performed with no paperwork; in cases where there was an *Aqd Nikkah*, or marriage contract signed, it used the males’ alias- both for the name of the husband and the names of witnesses of the marriage contract (e.g. Abu Muhammad, Abu Omar, etc.). With the ‘defeat of ISIL’ in Iraq, these wives of ISIL members do not have adequate acceptable legal documentation to prove their marriages. Those without legal documents, have no way of attaining them, especially for children born from ISIL fathers. Subsequently, the children born to these women cannot be registered under the Iraqi law without a father’s name. In cases where women were younger than 18 years of age, the marriage is also void as per Article 7 of the personal status code (Vilaro and Bittar, 2018). Women are therefore seen as having had these children out of wedlock, which is not only taboo, but also against the Iraqi law. There is now a whole generation of children who are not registered, and hence will be unable to access basic services such as register with the public distribution system (PDS), access healthcare, get enrolled in schools, or be able to earn a livelihood as they grow older. In cases where birth certificates of children born under ISIL control, whether to ISIL member or not, were issued by the terrorist organisation, the government refuses to recognise it or replace it; as with thousands of other Iraqi children, they are now rendered stateless (Taub, 2018). In March 2017, a London-based think tank, working on the counter-terrorism, the Quilliam Foundation, published a report estimating that there were 31,000 pregnant women in ISIL territory (Gill, 2019), which would be a fair way to estimate the number of children born without valid, or recognised documents.

Furthermore, families of suspected ISIL members are also routinely denied security clearance documents by the National Security Services (NSS). Security clearance is usually delivered after screening by the NSS, but anyone with an immediate relative whose name appears on a list of suspected ISIL members will fail the security check and be unable to obtain the security clearance documents. The lack of security clearance documentation has far-reaching effects. Clearance is required to obtain civil documentation, such as identity cards, birth, death, marriage and divorce certificates, welfare cards, and passports. Nearly

all families who lived in areas ruled by ISIL are missing one or more civil documents. Furthermore, 88% of Iraq's 3 million displaced persons have cited missing documents as one of their main concerns (Revkin, 2018). Individuals without valid IDs see their freedom of movement restricted, as they are vulnerable to arrest if they travel within Mosul. Even traveling outside the city, these identity documents are the only way to cross checkpoints which are dotted across the country at small distances. As an officer said:

'if someone new is visiting the neighbourhood, we will ask for their ID. We will take it away from them and only give it back when they leave the area. If someone does not have an ID, we will call his or her family to bring the IDs. If they do not, then the person will be a suspect and we will check with the mukhtar and may bring him or her to the police' (CIVIC, 2018).

Women unable to obtain death certificates for their spouses cannot inherit property or remarry unless they are granted a divorce. Civil documentation is also required to apply for jobs or welfare benefits, rent a house, register with the police in a neighbourhood, or sell a car or other large items (ibid). These accounts are evidence of how repertoires of punishment are spatialised.

### Geography of the Camps

In Foucault's concept of power/knowledge, 'space is denoted as the medium of – and the instrument for the practice of power, a power whose strength lies in applied knowledge of space craft. It is the practice of power/knowledge in, through and by space. Foucault insisted that the space is very important category of analysis because it reveals domains in which the power, or some other social category, becomes visible' (West-Pavlov in Grbin, 2015: 310). Space, 'is where discourses about power and knowledge become actual relations of power rather than merely residing in abstract notions and ideologies' (Foucault, 1993). The detention camps are therefore seen as an extension of the disciplining function which the state has assumed, as 'extensions of necropolitical power' (Wallace, 2018). In the case of Iraq, the compromising or corrupting presence is that of families of ISIL members. There are an estimated 94 camps across Iraq, where thousands of people are being detained against their will, denied basic services, education and legal documentation needed for employment, marriage, property inheritance, even simply passing through checkpoints. As mentioned in the sections above, anyone who is suspected or reported of having ties to ISIL members are detained in these facilities, regardless of whether or not they condoned the group's activities (Abouauon, 2019).

The Qayyarah airstrip camp in Ninewa, which holds upwards of 1,100 ISIL affiliated men, women and children is set like a concentration camp, where there are no spaces for the children to play (Taub, 2018). Cells measuring 24 square meters are holding up to 114 detainees, with not enough space for the detainees to lie down to sleep. At least four deaths have been recorded due to inadequate health and hygiene standards (HRW, 2019-a). A prison official is reported to have said about the camp that, '[it] is set up like a concentration camp. All the barbed wire, the division of sectors. There are no social spaces. There are no spaces for the children to play. There are no places for people to gather. There's one entrance in and out. And have you seen the guys at the entrance? Most of them are from militias' (Taub, 2018). While most of the camps are being managed by the PMF, especially those in Federally controlled territories, HRW witnessed a PMF unit of ethnic Shabak fighters manning a checkpoint outside another one of these camps in Bartella, Ninewa. Officials from Ninewa governorate told HRW that the camp, intended as the first of many, was constructed for 2,800 families, and that officials were planning to bring in ISIL families

from other camps and areas (HRW, 2017-b). Again, from a Foucauldian lens, discourses are also about the hegemony over information and knowledge; in the case described, the information on the camps is being controlled by the PMF, including on who is going in and coming out of these camps.

The largest concentration of those with ISIL related convictions are detained in the Nasiriyah Central Prison, 320km southeast of Baghdad. The sprawling maximum security prison complex is holding more than 6,000 people accused of terrorism-related offenses (Abdul-Zahra and George, 2018). Cells designed to hold two prisoners now hold six; a prison official speaking to the *New Yorker* said that overcrowding makes it difficult to segregate prisoners charged with terrorism from those with less serious convictions; moreover, an inadequate number of guards means ISIL members can openly promote their ideology inside the prison. Even though prisoners are barred from giving sermons and recruiting fellow inmates in Nasiriyah, the official said that he still witnessed prisoners circulating extremist religious teachings (Taub, 2018). Many believe that the relative free rein for extremists is reminiscent of the Bucca Prison (Dent, 2019; Taub, 2018), a now-closed facility that the US military ran in southern Iraq in the 2000s. In what became a 'pressure cooker for extremism' (Dent, 2019), the Bucca prison proved to be a petri dish where militant detainees mingled; even Abu Bakr Al-Baghdadi, the head of ISIL, spent months in the facility, radicalising other prisoners, joining forces with other militants who later became prominent members of the group (Taub, 2018). This shows how repertoires of punishment and rules of defining 'enemy membership' in post-ISIL Iraq are similar to the way the US and its allies exercised these after the 2003 invasion of Iraq. The camps as have therefore evolved from 'a topology of power that, in the name of custody and protection, isolates its inmates from the rest of society, in the attempt to cleanse the body politic from their corrupting or compromising presence' (Minca, 2015: 79), to a hub of recruitment for terrorist entities.

A senior Iraqi military intelligence officer, speaking with a journalist from the *New Yorker* described the systematic criminality within the security forces, detailing patterns of battlefield executions, murders in detention centres, and coverups organized by the state. He spoke as a witness, but also as a participant; although he is in a position to have stopped certain abuses, by intervening he would have risked incurring accusations that he is sympathetic to the group he has sought to destroy. He believes that the Iraqi government's response is as much a tactical blunder as it is a moral one; it plays directly into the jihadis' narrative—that Sunnis, who make up a minority of the Iraqi population, cannot live safely under a Shi'a government. 'The reaction is one of vengeance—it is not well thought out,' he said. 'We rarely abide by the law' (Taub, 2018). This corroborates with 24% of civilians in Mosul city having personally witnessed about cases with the federal police or members of the PMF had stolen property or money from civilians, suggesting many residents see these security forces as threats rather than as protectors (Revkin, 2018). Thousands of men and boys have been convicted of ISIL affiliation; hundreds have already been hanged. But, according to the official, these cases represent only a small fraction of the total number of detainees. 'A few of the suspects are sent to court, but only to maintain the illusion that we have a justice system', he said (Taub, 2018). This is reminiscent of the Weberian construct where the state needs to exercise its monopoly over violence, or in this case, the violence that comes with the perception of having a justice system.

The official battle may have ended, but ‘these camps are meant to stay. If you are ten years old now, and you have no food, no assistance, and your mother has to prostitute herself to survive, and the whole of Iraqi society blames you because you were close to ISIL—in two, three, four years, what are you going to do? It’s clear. The seeds for the next conflict are all here,’ said a director for an NGO (Taub, 2018). Even though the camps are carefully guarded, similar to the case of Guantanamo described by Neal (2006: 44), ‘the very existence of the[se] camp[s] appear to be for domestic and global public consumption’.

Although the multitudes of Yazidi women who were kidnapped by ISIL and forced into sexual slavery were accepted back by their communities, the children born to them were not. The children have been sent to orphanages. In some facilities, humanitarian workers offer aid in exchange for sex. Many women are pregnant from having been raped by the security forces or from having sex to feed themselves and their children. Some women try to carry out abortions inside their tents. Others give birth and discard the babies in unpopulated parts of the camp (Taub, 2018).

Instances above show that how repertoires of punishment in post-ISIL Iraq have been derived from how the US defined ‘enemy membership’ and carried out the de-Ba’athification process. Moreover, these repertoires are not only exercised by the state and its forces including the PMF, the general population is very much engaged in actively defining this ‘enemy membership’ as well. Material things such as lists, IDs, security clearance documents have a profound effect on governing life and death, drawing limits on movability, defining good and bad citizens. A study conducted by Keels and Nichols (2019) of 63 countries in which civil war occurred between 1976 and 2005 shows a 95% increase of another civil war in places where governments engage in torture, political imprisonment, killings and disappearances; similar to what the Iraqi governments- both from federal Iraq and KRI- are currently undertaking, and have undertaken in the past during the de-Ba’athification process. This is something policymakers and international stakeholders need to remain wary of.

## Conclusion

‘The phrase ‘the war on terror’ has been used so frequently that it is deeply entrenched in our thinking, so deeply that we might not realize that the phrase itself is not a description but a metaphor’ (Steuter and Wills, 2009: 7). It has reduced an impossibly large, abstract or disconcertingly complex problem to a well-defined, simplified, and somewhat ‘manageable’ entity. It seems almost ignoble not to answer this war’s metaphorical call to arms. It is etched into our minds as an either/or phenomenon, similar to President George Bush’s (in)famous sentence in his address on 21st September 2001, to a joint session of Congress and the American people in the aftermath of the 9/11 attacks, ‘either you are with us, or you are with the terrorists’. It has made us think in black and white terms, where even those wanting to take a neutral stance are not allowed to do so. In the same way as the Nazi state opened the way to a formidable consolidation of the right to kill which culminated Project Final Solution, the Iraqi government is also biologically extrapolating the theme of the political and even moral enemy, organising a war against its adversaries while at the same time, exposing its own citizens to conflict (Mbembe, 2008).

‘War is no longer waged between armies of two sovereign states. Instead it is waged by armed groups acting behind the mask of the state against armed groups that have no state, but control very distinct territories; both sides having as their main targets civilian populations that are unarmed or organised into militias’ (ibid: 172).

In this case, the war seems to be between the predominantly Shi'a GoI allied with the PMF, and ISIL, between Shi'a and Sunni Muslims, capitalising on cleavages in the Iraqi society, which have only deepened since the 2003 American invasion. This is eerily reminiscent of the de-Ba'athification process, as shown in the repertoires described above in this document. Even Dent (2019) believes that history is repeating itself in Iraq, how prison breaks and an incapacity to deal with terrorist detainees can cause an insurgency to spread like wildfire. The seeds of ISIL 2.0 are already being sown in the prison population being held in detention centres by coalition partners in liberated areas.

However, it seems that no insights have been gained from mistakes made in recent history. Although the Iraqi government officially declared victory over ISIL in December 2017, the massive collateral damage, destruction, and displacement caused by more than three years of violence have only raised a new and vexing set of challenges. First, the conflict with ISIL unfolded in the context of a long history of unresolved ethno-sectarian disputes that are now being reactivated. Second, the blanket stigmatisation of all individuals associated with ISIL – whether as combatants, civilian employees, family members, or merely residents of ISIL-controlled territory – has hindered the restoration of trust and social cohesion in areas retaken from ISIL. Third, ISF's collective punishment of Sunnis who lived in ISIL-controlled areas and failure to address the political and economic grievances that contributed to the rise of ISIL in the first place could potentially fuel a new insurgency. All of these new and emerging challenges risk sowing the seeds of future conflict and will need to be taken into account in any Iraqi strategy to defeat ISIL while contributing to a sustainable transition away from conflict (Revkin, 2018).

While talking about punishment, the Kurdish-led administration that runs much of northern Syria called for an international tribunal to be set up in their region to try the thousands of suspected ISIL members rounded up in the nearly five-year anti-ISIL campaign, there has been little in the way of a response. The Trump administration, which is openly hostile to the world's permanent war crimes tribunal, the International Criminal Court (ICC), says foreign ISIL fighters should be repatriated to their home countries and then prosecuted. But the ICC has no jurisdiction there because Iraq and Syria are not members. Moreover, as seen in the text above, countries can also not collect court level evidence to try their citizens back home. The UN Security Council can refer the case to the ICC, but heavyweight members like Russia and China are against such a move, which would also open up Syria's pro-government and other forces to scrutiny (Reinl, 2019). In the case of Iraq, this may also be opposed by the United States as it looks at Iraq as a formidable ally in the region against its new standoff against Iran. Furthermore, Iraq has also not ratified the Optional Protocol to the Convention against Torture (OPCAT) (HRW, 2019-a), which will make bringing Iraqi authorities which have participated in violations against detained prisoners to justice an uphill battle. The case above also shows that since traditional means of transitional justice take a long time, many Iraqis feel that punishment needs to be served now, as was seen in the section on tribal laws.

Despite the heavy sentences being handed to family members of ISIL, Kao and Revkin (2018) revealed that many Mosul residents are still willing to allow the reintegration of ISIL 'collaborators' back into their neighbourhoods who are subjected to more lenient and restorative punishments – such as community service – than the current legal framework allows. This shows that if handled with care and framed as such, there is the possibility of persons with perceived allegiance to ISIL can be reintegrated back into

their communities, or at least in pre-dominantly Sunni communities like Mosul. However, this may also further lead to generalisations on Sunnis being branded as having 'terrorist' ideologies.

Even with Iraq taking matters into its own hands, it has not learned lessons from the past. Firstly, a thorough vetting programme has not been designed or implemented; lists of suspects with ISIL affiliation are based only on word of mouth, lacking accurate and detailed up-to-date information, showing that anyone can make claims defining 'enemy membership'. When this was done post-2003, it contributed heavily in the creation of the ISIL monster; one can only wonder what monsters this will create now. Moreover, the current process is also not looking at how ISIL was structured to analyse who to punish and how, as has been described above that someone who served as a cook or was a part of the bureaucracy that the terrorist group took over when it captured strategic areas are being punished the same way those carrying arms are being punished. While this may be in accordance to the Iraqi anti-terrorism laws, this is not observing any standards of fairness. Lastly, as Sissons and Al-Saiedi (2013) discuss during the de-Ba'athification process, it was not analysed who was corrupt or who lacked the capacity to do their job or who had violated human rights, the only thing assessed was party membership. Therefore, a multitude of those who were unsuitable for public service yet were not members of the Ba'ath party remained a government employee. ISIL members are being targeted for their affiliation, yet those who are also committing human rights violation such as the PMF or ISF members, are still lauded. Iraq is hence setting the precedent once again where membership is punishable rather than an act of violation.

While this research is just an introduction to the topic, more needs to be done in terms of bringing ISIL fighters, who carried out mass atrocities against civilians, to adequate and timely justice. Only once they are brought to justice, it will be possible to bring Iraqi authorities who have committed gross violations as a result, to justice as well. While Kao and Revkin (2018) and the Ceasefire Centre for Civilian Rights (2019) have done some research on what options are available for the bringing ISIL members to justice, delivering justice and accountability mechanisms also remains a challenge.

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### Annex 1 – List of Academics and Practitioners Contacted for Comments

Person Contacted	Institute	Date of Contact	Response (if any)
Dr. Fanar Haddad	Middle East Institute, National University of Singapore	27 <sup>th</sup> February 2019	Pointed to the Conflict Research Programme of the LSE
Robin Beaumont	Noria Research	5 <sup>th</sup> March 2019	No Response
Lauren van Waas	Institute of Statelessness and Inclusion	11 <sup>th</sup> March 2019	No Response
Ileen Verbeek	Institute of Statelessness and Inclusion	11 <sup>th</sup> March 2019	No Response
Dr. Renad Mansour	The Royal Institute of International Affairs, Chatham House and the Cambridge Security Initiative at the University of Cambridge	25 <sup>th</sup> March 2019	No Response
Kyra N. Luchtenberg	Conflict Research Programme, LSE	25 <sup>th</sup> March 2019	No Response
Mark Lattimer	The Ceasefire Centre for Civilian Rights	25 <sup>th</sup> March 2019	Felt he was not informed enough on the topic to comment
Dr. Zeynep N. Kaya	Conflict Research Programme, LSE	28 <sup>th</sup> March 2018	Felt she was not the right person to respond as her work looks at Yazidi women
Erwin van Veen	Clingendael Institute	28 <sup>th</sup> March 2018	Felt he did not know enough to comment on the topic
Dr. Dylan O’Driscoll	Manchester University	1 <sup>st</sup> April 2019	Did not feel he could comment
Dr. Zahra Ali	Rutgers University	1 <sup>st</sup> April 2019	Said she was interested in findings of the research and shared 2 articles (one of which I contributed towards while in Iraq)