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### **Factors impacting law enforcement in Iraq during the period 2014–2017**

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#### **Abstract**

Since 2014, Iraq's country has witnessed low law enforcement overall. This study aims to debate previous literature that investigates factors that affect law enforcement. This study proposes a conceptual framework that contains three main factors: characteristics of legal principles; implicit principles; and explicit principles toward law enforcement.

#### **Keywords**

characteristics of legal principles; implicit principles; explicit principles toward law enforcement

## **1. Introduction**

During the period between June 2014 and December 2017, the Islamic State of Iraq and the Levant The Islamic State (IS) took control of vast areas of Iraq as part of its so-called caliphate and led a wide-scale campaign of violence and systematic violations of international human rights and humanitarian law (Jäger et al., 2019). It may amount to war crimes, crimes against humanity, and possibly genocide in accordance with international criminal law (Hashim, 2018). So far, more than 200 mass graves have been discovered in areas previously under its control a legacy of the war against IS. It contains thousands of victims, most of whom remain unidentified. The large number of crime scenes are horrible places where people have died, suffered a lot, and been hurt badly.

A report prepared by the UNAMI Human Rights Office and the Office of the United Nations High Commissioner for Human Rights highlights the challenges faced by the Iraqi authorities in exhuming, conducting investigations, and identifying human remains, as well as the challenges faced by relatives of the victims in obtaining information about the fate and whereabouts of their missing relatives and obtaining their remains in the event of their death. The report also talked about how Iraq is required by international law and standards to look into mass killings that happened during this conflict (E. A. Mohammed, 2018). It also talked about the best ways to protect and look into mass grave sites, including criminal investigations of mass graves to help criminal operations.

From the beginning of 2014 to the end of 2017, the Office of the United Nations High Commissioner for Human Rights/UNAMI recorded approximately 30,000 civilians killed and 55,150 others injured in Iraq as a result of the conflict with IS. These figures should be considered the absolute minimum proportion of victims (Revkin, 2020). UN human rights reports during this period found that IS committed widespread and systematic violations and abuses of international human rights law and violations of international humanitarian law, which may amount to war crimes, crimes against humanity, and possibly genocide.

Thousands of civilians have been killed and abducted in areas controlled by IS (Arif, 2019), often in a systematic and targeted manner, of those whom IS considers to be opposed to its ideology and rule and those affiliated with or deemed to be affiliated with the Iraqi government, such as former government officials, election workers, and professionals such as doctors, lawyers, journalists, tribal leaders, clerics, and women candidates for political office (Broekhof et al., 2022). Others were abducted and/or killed on the pretext of helping or providing information to government security forces, or because of their perceived sexual orientation. Many people have been subjected to IS court decisions ordering the killing of countless people and imposing other illegal punishments. There are many examples of public killings by IS, including murder by shooting, beheading, bulldozer killing, burning alive, and throwing people from rooftops. Many people are still missing and some are believed to have been killed. Others are still being captured by IS or trafficked outside Iraq.

## **2. Literature review**

In order to talk about the role played by the government of Iraq towards the existence of mass graves in relation to the legal framework of the provisions and rules of international law and international standards, this entails many obligations, especially those derived from international human rights and humanitarian law, contractual obligations, and customary international law, in addition to international criminal law (H. Mohammed et al., 2019). These obligations include, inter alia, investigating, prosecuting, and punishing those accused of serious human rights violations; searching for and identifying the dead; disclosing to the victims and society in general all known facts and circumstances of past violations and abuses; providing victims with appropriate reparations, including measures to redress, compensate, rehabilitate, and achieve appropriate satisfaction; and ensuring that such violations and abuses are not repeated.

The most clear, obvious, prominent, and important questions that arise in this tragic situation are: when war erupts between two parties, but rather within the country itself, on its lands and territories, on its sky, and even within and inside its cities, what is the fate of these civilians? The destiny of these civilians who are caught in the middle, located in and under the hammer of war, and armed conflicts and deputies. And what is the legal protection granted for these civilians? Fisher et al. (2020) clarified that there is no doubt that the trial before national courts in accordance with the domestic or international law that is ratified is the best way to implement the law, justice, and conduct of the trial, but the failure, inability, or refusal of some states to do so should not allow criminals and murderers to flee justice, which defers the matter to the international criminal jurisdiction to take over.

Qudaih (2013) came up with the most important result, stating that the change in the structure of the international system has enshrined the principle of international humanitarian intervention in international relations, as international support and interest in the principle of international humanitarian intervention have increased in light of the new international system in the post-Cold War era. On the other hand, the principle of non-interference has witnessed systematic undermining, and the human dimension of the intervention policy has witnessed a major development, whether in terms of scope, content, or intensity. Qudaih (2013) mentioned that the set of transformations that emerged in the post-Cold War period, especially those related to human rights, resulted in the connection between human rights and world peace and the legitimization of many humanitarian interventions by relying on the issue of threatening international peace and security and thus authorizing the use of force to protect human rights.

Qudaih (2013) indicated that international humanitarian intervention in Libya has been linked to dismantling tendencies and separatist movements in eastern Libya (the Barqa province) and its south, which could lead to the break-up of Libya into small states. He also indicated that the United Nations and Security

Council resolutions, in particular, have played a large and influential role in the international humanitarian intervention process in Libya. As the council's behavior is characterized by selectivity, double standards, and the policy of double standards in its applications of the intervention process, sometimes we find it unable to make fair decisions regarding widespread violations of human rights in other regions, especially Israeli violations against the Palestinian people.

As for the contemporary international humanitarian intervention calls, the researcher explained that they have come in the context of the evolution of the role of the United Nations and the Security Council. When the UN Security Council entered into its core competence in the maintenance of international peace and security, a new mission to implement the protection of human rights during non-international armed conflicts. This was based on the authorities conferred to it under the Charter of the United Nations and international and humanitarian principles.

The most important subjects recommended by Qudaih (2013) in his study are: the necessity of establishing a set of persuasions to communicate and interact positively with international theses in the field of human rights, since the rejection of these theses under the pretext of security and cultural identity cannot prevent countries from misusing the principle of international humanitarian intervention against them in the future, similar to what happened in Libya.

Qudaih (2013) recommended the necessity of redefining and controlling the concept of international humanitarian intervention so that it does not turn into an asset that major powers use whenever they want and refrain from it whenever they want, taking into consideration the results revealed by its applications on various political, security, and humanitarian levels; the intervention should not take place except in accordance with specific criteria and under a mandate from the Security Council and based on international consensus; and that humanitarian intervention should not be a cover for political goals and considerations in the interests of the major countries. Qudaih (2013) also recommended that the only way to respond to humanitarian intervention is to spread the culture of human rights and respect for fundamental human freedoms and to establish basic rules of international law.

Hamid (2014) crystallized that the importance of his study lies in talking about the protection of journalists and media institutions during wars and armed conflicts in the light of international humanitarian law, in which civilians, headed by journalists, are the first and most prominent victims of fire, despite the fact that international law has approved its protection for them, and even if some rant about its presence, it needs to be activated and implemented on the ground of reality.

Hamid (2014) came up with the most important results, clarifying that the international agreements, which provide protection for journalists, did not stipulate on a specific and unified definition for journalists. Rather, legal jurisprudence opinions differed between narrowing definitions and excluding groups of workers in this profession and an extended one that includes all workers in it, but the only

definition contained in this regard is what is stipulated in the agreement for the protection of journalists who are assigned to dangerous tasks. Hamid (2014) mentioned that international law protects journalists as civilians, and it also protects media organizations as civilian objects. Journalists remain covered by protection unless they commit any act that harms their status as civilians, and the media and press institutions likewise continue to enjoy general protection against attacks, as long as they are not used for military purposes or incitement to serious violations of international law.

Hamid (2014) explained that the violations that journalists and media organizations are exposed to are varied, including moral violations such as threats, prevention from coverage, etc., and other material ones, including killing, assault, physical abuse, arrest, kidnapping, and others. Hamid (2014) also explained that grave violations committed against journalists and media institutions are regarded as war crimes as stipulated by international law and do not fall with the passage of time. They require legal prosecution according to a number of methods and procedures, which vary, in order to obtain justice and prosecute the perpetrators of such crimes. And finally, the researcher emphasised the right of the victim's journalists or their inheritors to demand and obtain individual compensation before national courts or international bodies.

The most important subjects recommended by Hamid (2014) study are: the necessity of informing journalists and media men working in war and armed conflict areas of their rights, which are provided for by international humanitarian law and international agreements and treaties that ensure protection for them during their work, and this can be done by introducing this topic as a course taught in journalism and media colleges or through training courses, as well as the order to define the armed forces that carry out their military operations with international humanitarian law, as well as rights and duties.

Hamid (2014) recommended the necessity of working on adopting a special international agreement to protect journalists assigned to dangerous tasks, including covering wars and armed conflicts, and to provide them with a special situation similar to other categories that the profession of journalism and its employees in the present day are no less important than; and that will be based on extending the prescribed protection for journalists and media institutions, and removing any ambiguity surrounding it, so that journalists and media institutions can comfortably move the truth away from oppression, killing, and prosecution. Hamid (2014) also recommended establishing an international professional committee, whose mission is to monitor the commitment of the parties to the conflict to protect journalists and document the attacks they are subjected to, and may be affixed to the United Nations or the International Committee of the Red Cross, which operates in areas of armed conflicts.

And finally, Hamid (2014) recommended the necessity of activating the international judicial system in prosecuting the perpetrators of these crimes and not allowing them to go unpunished by tightening legal procedures and working to

establish a permanent private court that examines the violations faced by journalists and media institutions and brings the perpetrators of these crimes to trial before it.

### **3. Conceptual framework establishment**

This section discusses factors that associate to the law enforcement. According to Wilson et al. (2020), the most important are: in the sense of a very general norm, understood as one that regulates a case whose relevant properties are very general; in the sense of a programmatic norm or guideline, that is, a norm that stipulates the obligation to pursue certain ends; in the sense of a norm that expresses the higher values of the legal system; and in the sense of a particularly important standard, even if However, as the cited authors point out, this list of meanings is not exhaustive nor exclusive either, but rather, the previous features often overlap each other, and there are even occasions when the same norm could serve as a model of principle in practically all the indicated meanings.

An example would be article 15 of the Iraqi Constitution: " Everyone has the right to life, security, and freedom, and these rights may not be deprived or restricted except in accordance with the law and based on a decision issued by a competent judicial authority." From the above, it is possible to infer three essential characteristics common, at least, to most legal principles, such as fundamentality, generality, and vagueness. The fundamental nature of a rule means that its modification or substitution has the direct effect of transforming the rest of the legal system or the sector of the same in which it is inserted. The generality of a rule, for its part, refers to the breadth of the field of its application; that is, it indicates that both the factual assumption and the legal consequence are regulated in very general and abstract terms.

In short, although it is sometimes confused with generality, it nevertheless has a different meaning. Thus, it can be said that a norm is vague when, given its wide scope of semantic indeterminacy, it is difficult to make an identification between a case and the assumption of fact foreseen in it, for which borderline or doubtful cases appear or may appear, that are neither clearly excluded nor included in the standard. A paradigmatic case of a principle that brings together the characteristics of fundamentality, generality, and vagueness is Article 14 of the Iraqi Constitution: "The state guarantees equal opportunities for all Iraqis."

Legal principles, on the other hand, can be classified according to different criteria, although the main one is the one that distinguishes between explicit and implicit principles commonly known as general principles of law. The first are those that have been expressly dictated by a source of legal production and appear, consequently, collected in a normative text, while the implicit principles are deduced by the applicator of the law from express provisions of the legal system. If well, as we will see, for a sector of the doctrine, they must be understood as conclusions drawn from natural law (Brodie, 2020). These implicit principles certainly play a relevant role since they act as a means of bridging gaps and

allowing a correct understanding of the rules; or, as the Iraqi Constitutional Court has expressed, "the general principles of law, not included in the text of the Constitution, or accepted as guiding principles, which inform the constitutional order, in addition to being lighthouses in the task of interpretation and application, and may be subsidiary rules." All this poses different problems from the point of view of its legality or its integration into the law, as well as the scope of discretion allowed to legal operators (Violanti et al., 2019). These are problems that are accentuated if we take into account, as has already been pointed out, that the traditional doctrine defends that such principles must be connected with natural law and therefore places them beyond positive law.

Certainly, Alrasheedy et al. (2020) indicates, the doctrine oscillates around these two basic positions: the natural law position, for which they are purely and simply equivalent to natural law, thus being norms that do not have a positive formulation nor are they sanctioned by any of the powers of the state, but they have an undoubted validity and virtually as expressions of universal legal truths dictated by right reason; and the positivist, which maintains that the implicit principles serve as the basis for a given positive law, but that they do not have a meta-legal nature, but are obtained through a process of successive logical abstractions of that positive law itself.

However, nowadays, this discussion is more theoretical than practical, since in reality, some principles of natural law can only be invoked to the extent that they substantially coincide with the basic principles of the current legal system. Thus, the position that seems most convincing today is the one defended, for example, by van Dijk et al. (2019), for whom "implicit principles are those rules or criteria considered as premises or consequences of normative provisions." They are obtained inductively or deductively, and their weight or importance is determined by the number and relevance of the norms from which they are derived ». In this sense, the general principles of law would be related either to legal norms or to jurisprudential decisions. This is also, as the aforementioned author points out, the vision that is identified with the use that judges and courts make of them. In any case and despite the above as Jennings and Perez (2020) points out, it is important to underline that the jurisdictional bodies create new norms through this rationalization of the legal norms that are part of the legal system. So, it's not a normative statement that needs to be interpreted. Instead, it's a new legal rule that needs to deal with an unregulated assumption.

This can generate doubts regarding judicial legitimacy because, as Tacconi et al. (2019) warn, this process can no longer be conceived as the launching of an investigation aimed at obtaining a response from the law for a conflictive case that is supposed to be expressly regulated and implicitly for him. "This is the continues what the rule of law and the legal system require of the judge: exclusive submission to the rule of law and certain methodological criteria." However, if other elements intervene in the process of judicial obtaining of the right, and especially if these elements are embedded in said process from its inception, conditioning recourse to

one method or another, guiding the search for the meaning of the norms and the sense of the facts, and even directing the doctrinal and dogmatic constructions, then the judge has a responsibility as the architect of the decision that cannot be transferred solely to the law (Enang et al., 2022). And this happens even if he acts correctly, that is, even if he acts as the Rule of Law and the legal system require of him.

In response to this objection, it is usually argued that although the implicit principles are constructed by the interpreter, the truth is that the interpreter does not enjoy absolute freedom in their elaboration since he has to take into account the set of rules that are part of the system, and if there is a normative change in the regulation of a certain matter, the interpreter is compelled to establish a legal principle that makes this set of rules consistent with each other and with respect to the rest of the legal system. In addition, as we have seen, the creation of these legal principles as rules of law is generally linked to the appearance of a legal loophole, so they are only applicable in the absence of a specific rule that regulates the assumption raised. However, in the opinion of the aforementioned Copenhaver and Tewksbury (2019), the general principles of law leave room for the discretion of the legal operator.

In the first place, because the determination that a case does not find an answer in the specific regulations of the Code, rules or explicit principles, entails a somewhat discretionary assessment, since the operator could choose to use interpretative mechanisms that imply the search for answers in its own statements. Second, because once you consider that there is a legal gap and that there is no rule that provides an answer, you can choose to use one of the other methods of legal integration, and when justifying why this method is used and others are discarded, there is also some discretion. Next, the rationalization of the legal norms of part of the Code or of all of it must be carried out, which also implies a subjective activity.

Finally, it may also happen that two or more rationalizations of legal norms are equally plausible but offer different solutions. In these cases, the judge must evaluate the circumstances of the case and, fundamentally, the consequences that arise from the adoption of each legal principle, which also implies broad discretion. In all these moments, there are spaces of freedom in which the operator can choose between one possibility or another, although it is true that he will have to justify each of his decisions (Rolison et al., 2018). Precisely, because when making a decision based on the explicit principles, the judge is going to use elements different from those that the legislator has explicitly placed in his hands, it is necessary to redouble the controls of its activity since the reference to the aseptic syllogism is insufficient, it is necessary to go further. The judge must be subjected to legitimation requirements that directly affect not only the meaning of his decision, but also the development of the process through which he has made that decision. He has ultimately exercised his function. That is why the argumentative demands imposed on the judge are especially serious. Figure 1 illustrates the potential three factors that affect on the law enforcement based on the discussion above.



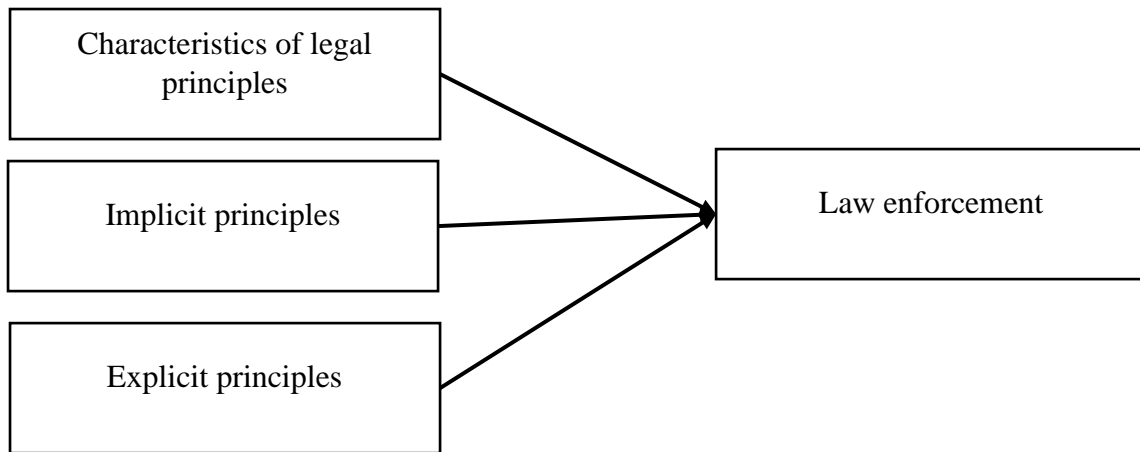


Figure 1: Proposed Conceptual framework

### References

- Alrasheedy, A. A., Alsalloum, M. A., Almuqbil, F. A., Almuzaini, M. A., Aba Alkhayl, B. S., Albishri, A. S., . . . Anaam, M. S. (2020). The impact of law enforcement on dispensing antibiotics without prescription: a multi-methods study from Saudi Arabia. *Expert Review of Anti-infective Therapy*, 18(1), 87-97. <https://doi.org/10.1080/14787210.2020.1705156>
- Arif, B. H. (2019). Iran's struggle for strategic dominance in a post-isis iraq. *Asian Affairs*, 50(3), 344-363. <https://doi.org/10.1080/03068374.2019.1636525>
- Brodie, N. (2020). Restorative justice? Questions arising out of the Hobby Lobby return of cuneiform tablets to Iraq. *Revista memória em rede*, 12(23), 87-109.
- Broekhof, M. P., Kitzen, M. W. M., & Osinga, F. P. B. (2022). A Tale of Two Mosuls, The resurrection of the Iraqi armed forces and the military defeat of ISIS. *Journal of Strategic Studies*, 45(1), 96-118. <https://doi.org/10.1080/01402390.2019.1694912>
- Copenhaver, A., & Tewksbury, R. (2019). Interactions Between Autistic Individuals and Law Enforcement: a Mixed-Methods Exploratory Study. *American Journal of Criminal Justice*, 44(2), 309-333. <https://doi.org/10.1007/s12103-018-9452-8>
- Enang, I., Murray, J., Dougall, N., Aston, E., Wooff, A., Heyman, I., & Grandison, G. (2022). Vulnerability assessment across the frontline of law enforcement and public health: a systematic review. *Policing and Society*, 32(4), 540-559. <https://doi.org/10.1080/10439463.2021.1927025>
- Fisher, A. D., Dunn, J., Pickett, J. R., Garza, J., Miles, E. A., Diep, V., & Escott, M. (2020). Implementation of a low titer group O whole blood program for a law enforcement tactical team. *Transfusion*, 60(S3), S36-S44. <https://doi.org/10.1111/trf.15625>
- Hamid, M. O. J. (2014). *The protection of journalists and media institutions during wars and armed conflicts in the light of international humanitarian law, an applied study of "aggression against the Gaza Strip in 11/2012"*. Al-Azhar University.

- Hashim, S. J. (2018). Ratios of International Law Rules and Internal Law of the Republic of Iraq. *The Journal of Social Sciences Research*, 4, 238-241.
- Jäger, P., Rammelt, C., Ott, N., & Brand, A. (2019). Narrative Review: The (Mental) Health Consequences of the Northern Iraq Offensive of ISIS in 2014 for Female Yezidis. *International Journal of Environmental Research and Public Health*, 16(13). <https://doi.org/10.3390/ijerph16132435>
- Jennings, W. G., & Perez, N. M. (2020). The Immediate Impact of COVID-19 on Law Enforcement in the United States. *American Journal of Criminal Justice*, 45(4), 690-701. <https://doi.org/10.1007/s12103-020-09536-2>
- Mohammed, E. A. (2018). Mapping the spatial distribution of crimes in Iraq. *Journal of Physics: Conference Series*. 1032(1) (pp. 012053). IOP Publishing. <https://doi.org/10.1088/1742-6596/1032/1/012053>
- Mohammed, H., Jaff, D., & Schrock, S. (2019). The challenges impeding traffic safety improvements in the Kurdistan Region of Iraq. *Transportation Research Interdisciplinary Perspectives*, 2, 100029. <https://doi.org/10.1016/j.trip.2019.100029>
- Qudaih, T. I. H. (2013). *International Humanitarian Intervention: Libya Case Study 2011*. Al-Azhar University
- Revkin, M. R. (2020). Police Decentralization, Fragmentation, and Implications for Patterns of Violence: Insights from Iraq. *APSA COMPARATIVE POLITICS*, 16(18), 76-90.
- Rolison, J. J., Regev, S., Moutari, S., & Feeney, A. (2018). What are the factors that contribute to road accidents? An assessment of law enforcement views, ordinary drivers' opinions, and road accident records. *Accident Analysis & Prevention*, 115, 11-24. <https://doi.org/10.1016/j.aap.2018.02.025>
- Tacconi, L., Rodrigues, R. J., & Maryudi, A. (2019). Law enforcement and deforestation: Lessons for Indonesia from Brazil. *Forest Policy and Economics*, 108, 101943. <https://doi.org/10.1016/j.forpol.2019.05.029>
- van Dijk, A. J., Herrington, V., Crofts, N., Breunig, R., Burris, S., Sullivan, H., . . . Thomson, N. (2019). Law enforcement and public health: recognition and enhancement of joined-up solutions. *The Lancet*, 393(10168), 287-294. [https://doi.org/10.1016/S0140-6736\(18\)32839-3](https://doi.org/10.1016/S0140-6736(18)32839-3)
- Violanti, J. M., Owens, S. L., McCanlies, E., Fekedulegn, D., & Andrew, M. E. (2019). Law enforcement suicide: a review. *Policing: An International Journal*, 42(2), 141-164. <https://doi.org/10.1108/PIJPSM-05-2017-0061>
- Wilson, L. E., Kessler, M. P., Ellis-Smith, J., & Robertson, J. (2020). A systems approach to integration of military operations and law enforcement investigations: Toward a unified forensic intelligence model. *WIREs Forensic Science*, 2(2), e1358. <https://doi.org/10.1002/wfs2.1358>