



Understanding

The Judiciary of Iraq

Organizational Structures

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Table of Contents

Section I The Iraqi Judiciary	7
Chapter 1. Historical Structure	7
Chapter 2. Transitional Justice After 2003	8
Judge Medhat	8
Chapter 3. Adjunctive Courts	10
Federal Supreme Court	10
Courts Martial	15
Internal Security Forces Courts (ISF Courts)	15
Chapter 4. The Judiciary	17
High Judicial Council (HJC)	17
Federal Court of Cassation	20
Federal Courts of Appeal (16 Regional Courts)	21
Federal Courts	21
<i>Civil Courts</i>	22
First Instance Courts (Civil)	22
Personal Status Courts (Civil)	22
Labour Courts (Civil)	23
Customs Courts (Civil)	23
<i>Criminal Courts</i>	24
Felony Courts (Criminal)	24
Investigative Courts (Criminal)	24
Misdemeanor Courts (Criminal)	24
Juvenile Courts (Criminal)	25
Central Criminal Courts of Iraq (CCC-I)	25
Chapter 5. The State Consultative Council (aka Shura Council)	26
<i>Administrative Courts</i>	26
<i>General Disciplinary Board</i>	26
Chapter 6. Extrajudicial Tribunals	26
Higher Criminal Tribunal	26
Chapter 7. Specialized Courts	27
Central Bank Court	27
<i>Addendum 1: Summary of Iraqi Courts</i>	28
<i>Index</i>	29

Introduction

For foreign attorneys, the Iraqi judicial landscape can seem like an overweening bureaucracy with a labyrinth of jurisdictional contradictions arising from scores of courts, commissions, and tribunals. Compounding these apparent complexities are overlapping origins and traditions of jurisprudence, inconsistent translations, and (especially for Americans) functional fixedness¹.

Depending upon your level of granularity, there are at least 21 distinct judicial bodies in Iraq (not counting the 98 local federal courts or the 16 regional Courts of Appeal). While this may seem like a lot, when you consider that the United States has more than 300 judicial bodies, Iraq pales in comparison. Often, confusion results from unfamiliarity. Part of the purpose of this paper is to identify the various courts and clarify their respective functions. This also is fraught with confusion because of jurisdictional inconsistencies; however, a brief discussion of these inconsistencies will help to understand existing issues within the Iraqi judiciary.

The confluence of the Ottoman, French and English legal systems that have been foisted upon the region throughout its history results in seemingly incongruous traditions. Understanding that history, however, puts these traditions in perspective and explains much of the courts current structure and operation.

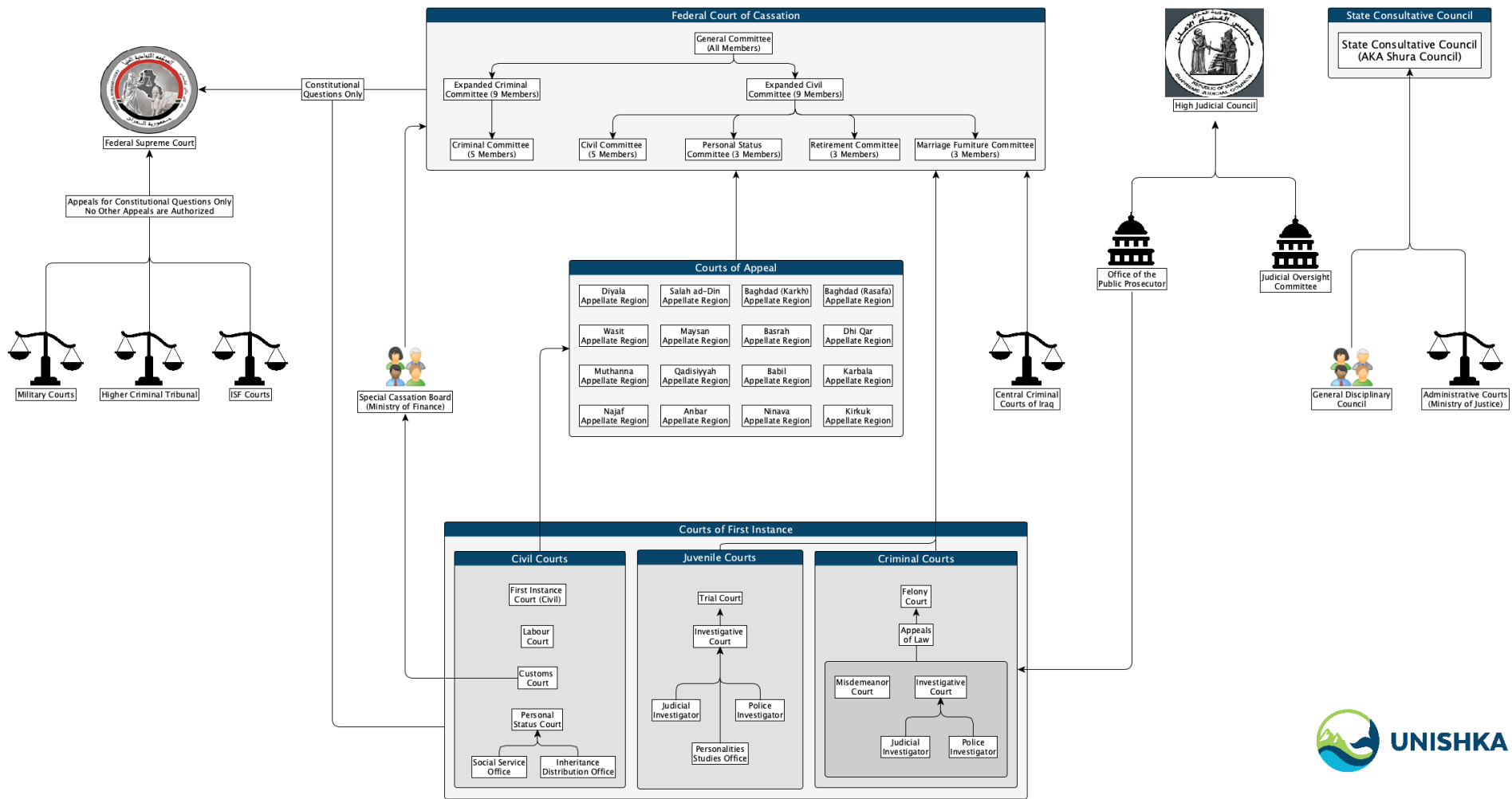
On a more mundane level, inconsistent translations have resulted in extreme confusion for Iraqis and foreigners alike. For instance, Article 90 of the constitution refers to the “Higher Juridical Council;” but the body is almost never referenced in that way. At various times, the Council has been known as: the *Supreme Judicial Council*, the *Council of Judges*; the *High Judicial Council*, the *Higher Judicial Council*, and the *Iraq Judicial Council*. These diverse names result from historical references and multiple translations. When multiplied by the 21 or so courts, the naming conventions alone can lead to a morass of confusion.

Finally, the issue of functional fixedness can result in misunderstanding court structure, jurisdiction, and authority. By way of example, the *Federal Supreme Court* seems indicative of the highest court with the greatest authority and jurisdiction. In Iraq, however, the *Federal Supreme Court* is a misnomer since the ‘court’ is not even part of the judiciary.

¹ Functional fixedness is a cognitive bias that limits a person’s ability to see an object beyond its traditionally use. For example, when confronted with “Iraqi Supreme Court,” functional fixedness might cause a person to attribute powers to the body more akin to the United States than what it actually has under Iraqi law.

With the imposition of adjunctive courts, administrative courts, extrajudicial tribunals, and independent commissions, even the most studied international student can find themselves groping to understand Iraqi jurisprudence. This basic primer will help clarify the Iraqi judiciary and its functions.

Iraqi Courts and Tribunals



Section I

The Iraqi Judiciary

Chapter 1. Historical Structure

Prior to the reign of Sultan Abdulmejid (1839 – 1861), laws in the Ottoman Empire were based on interpretations of the Abu Hanifa school. Local religious councils generally provided those interpretations. As part of his Tanzimat reforms, Abdulmejid sought to make Ottoman law more acceptable to the Europeans through codification and the restoration of sovereignty. In short, the Tanzimat reforms transferred interpretation of the law to state courts as opposed to religious *ulemas*² (against the vehement opposition of the religious leaders). The Tanzimat reforms resulted in the promulgation of a commercial code (1850), a commercial procedure code (1861), a maritime code (1863), a penal code (1858) and, in 1877, a civil code called the **Majalla** (aka **Mecelle**)³. The Tanzimat reforms (especially the legal reforms), were heavily influenced by the Napoleonic Code and French law as a direct result of the increasing number of Ottoman students being educated in France at the time⁴. Consequently, Iraq, like the rest of the Ottoman Empire, entered the 20th century with a decidedly French legal system. The judiciary in Iraq, like France, consisted of **judicial courts** (those dealing with criminal and civil laws), and **administrative courts** (those dealing with the administrative acts of government agencies). The highest of the judicial courts is the Court of Cassation (*Cour de cassation*), and the highest appeal for administrative matters is the State Consultative Council (*Conseil d'Etat*). This was the structure heading into World War I. Following a long military campaign, in 1920 Britain set up a colonial regime in Iraq⁵. Generally, they kept the Ottoman Majalla for civil matters but adopted the *Tribal Criminal and Civil Disputes Regulation* for Iraq, which gave tribal Sheikhs the legal authority to collect taxes on behalf of the

² An *ulema* is a body of Muslim scholars recognized as having specialist knowledge of Islamic law and theology.

³ <https://www.britannica.com/place/Ottoman-Empire/The-Tanzimat-reforms-1839-76>

⁴ <https://en.wikipedia.org/wiki/Tanzimat>

⁵ <https://archive.globalpolicy.org/iraq-conflict-the-historical-background-/36418.html>

British administration and to settle all disputes between tribes and individuals, something that they had been unable to do since imposition of the Tanzimat reforms⁶.

The confluence of French and English legal systems can confuse novice Iraqi judicial watchers; however, with the imposition of adjunctive courts, administrative courts, extrajudicial tribunals, and independent commissions, even the most studied international student can find themselves groping.

Chapter 2. Transitional Justice After 2003

Judge Medhat

The Judicial Review Committee (JRC) was authorized by CPA Order #15 and established to create a truly independent judiciary. When it began, the JRC consisted of two American attorneys and two Iraqi attorneys (later this would be raised to three and three)⁷. The primary responsibility of the committee was to review the files and cases of current judges and prosecutors for affiliations with: the Ba'ath Party, the former Mukhabarat (intelligence), judicial corruption, or complicity in human rights violations. The only exception to their investigations was Judge **Medhat al-Mahmoud**, whom they were told was off limits⁸.

Immediately prior to the U.S.-led invasion of Iraq, Judge Medhat was Saddam Hussein's private legal advisor within the Iraqi Presidency Council. When Saddam wanted to institutionalize his plans, he would give Medhat an oral brief and Medhat would draft the legislation embodying Saddam's desires. For example, Judge Medhat was one of the judges who supervised the Presidential Referendum of 2002, declaring that Saddam Hussain won 100% of the vote. Judge

⁶https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjwme7b_wOH4AhVOEEQIHRv3AO4QFnoECAUQAQ&url=https%3A%2F%2Fapps.dtic.mil%2Fsti%2Fpdfs%2FADA491318.pdf&usg=AOvVaw2LUuhKQuQ72HTylxZOowYh

⁷ Initially, the two American members of the Judicial Review Committee were Mike Dittoe and MAJ Gregory Bowman; the two Iraqi members were Judge Dara Noor al-Zin, a well-respected Kurdish judge, and Hussein Merza from the Iraqi Bar Association. After about a month, MAJ Bowman's child became ill and he was replaced on the Committee by CPT Brian Clark. At about this same time, the number of members on the JRC increased to three each. Joining Mike Dittoe and CPT Clark was another DOJ attorney, Gary Shattuck and an Iraqi, Radhi al-Radhi, who would eventually lead the Commission on Public Integrity. Unfortunately, Gary needed to return home after about two months for personal reasons and he was replaced by a British attorney named "Rudy Gillanders". From that point forward the JRC remained stable.

⁸ The order that Judge Medhat was off limits came from Mike Dittoe; however, he indicated that it was Judge Campbell, a U.S. Army intelligence officer and JAG Officer with the rank of Major General who had instructed him that Judge Medhat was not to be discussed by the JRC.

Medhat followed this by writing a ubiquitously distributed paper entitled *The Greatest Leader to the Greatest People*. For his devotion, Saddam rewarded him with a luxury automobile⁹.

Consequently, most legal observers were incredulous when Medhat was not prosecuted for his participation in the Saddam regime. Judge Medhat, however, is a survivor and a skillful negotiator¹⁰. Just as he was willing to do the bidding of Saddam Hussein, he was equally as willing to do the bidding of the Bush White House. Therefore, with advocacy from Ahmed Chalabi in Washington D.C. and Salam Chalabi (Ahmed Chalabi's nephew) and Sarmed al-Sarraf (Judge Medhat's nephew) in Iraq, Judge Medhat was appointed to head the Ministry of Justice by the CPA on 12 June 2003. A few days later, on 15 June 2003, Judge Medhat was also appointed Deputy Chief Justice on the Court of Cassation; and, shortly thereafter, Chief Judge of the Court of Cassation. All of these appointments were against the collective advice, wisdom, and recommendations of the four United States Judges charged with advising the CPA¹¹.

Continuing its haphazard approach to the judiciary, on 18 September 2003, Ambassador Bremer signed CPA Order No. 35 that created a "Council of Judges" (the name eventually evolved to the "High Judicial Council")¹². The Order itself was not a problem, the Council of Judges had been part of the judicial fabric for decades before Saddam. Within the order, however, the membership of the Council of Judges called for the President of the Council to be the 'Chief Justice of the Supreme Court' and membership in the Council to include the "Deputy Chief Justices of the Supreme Court." To any Iraqi, the problem was obvious: there was no Supreme Court in Iraq and there never had been¹³. With lobbying by Ambassador Bremer's legal advisors¹⁴, Judge Medhat

⁹ Judge Medhat is credited with writing a decent history of the Iraqi judiciary: *Judicial Systems in Iraq*, 2-4 October, 2004. In point of fact, however, the paper was written by Hussain al-Abbasi, DG of Public Relations for Judge Medhat.

¹⁰ Medhat was also the legal architect of the Oil-for-Food scam that made Saddam and his family (as well as many internationals) immensely wealthy.

¹¹ Judge Gilbert Merritt, former Chief Judge of the United States Sixth Circuit Court of Appeals; United States District Court Judge John Walter from the Northern District of California; former U.S. District Judge Stephen Orlofsky from New Jersey, and Judge Alvin Goldstein a brilliant 86 year old former judge who had worked under U.S. Attorney General Robert Kennedy. Together, these men made up the Judicial Assessment Team (JAT).

¹² See Article 45 of the Transitional Administrative Law (TAL); Article.

¹³ In 1968, Iraq authorized the establishment of a Supreme Court but before the court was actually established, the law was repealed in 1970.

¹⁴ Salam Chalabi (Ahmed Chalabi's Nephew) and Sarmed al-Sarraf (Judge Medhat's nephew).

was appointed as the President of the Council of Judges (aka High Judicial Council) until such time as a Supreme Court was established.

Chapter 3. Adjunctive Courts

In Iraq there are three courts that are not part of the judicial or administrative courts but are still authorized to adjudicate legal matters. These three courts are the Federal Supreme Court, the Military Courts, and the Internal Security Forces Courts. For purposes of clarity, we'll refer to these courts as *Adjunctive Courts* since they are adjunctive to the judicial and administrative courts, but not part of either.

Federal Supreme Court

In 2005, Iraq's Transitional National Assembly (TNA) negotiated creation of the new Iraqi Constitution. Unlike some of the other provisions in the constitution, the drafters' approach to the judiciary section appeared "unfocused"¹⁵. During negotiations on the constitution, the Shia Alliance¹⁶ seemed to advocate for a Constitutional Council¹⁷. In 1958, France had created a Constitutional Council (*Conseil Constitutionnel*) as an adjunct to its judiciary. The French *Conseil* reviews statutes before they are enacted as well as overseeing national elections and answering questions from citizens regarding the constitutionality of laws. With this as a backdrop, the Shia Alliance pushed for adoption of a Federal Council that would review all laws prior to enactment and would have authority to determine the legitimacy of the law (i.e. constitutionality). Some observers believed that the Shia Alliance was actually seeking to "fashion a Constitutional Council similar to Iran's Guardian Council, which consists of a group of Islamic clerics and jurists who ensure that all laws passed by the Islamic Consultative Assembly are compatible with Islam¹⁸." In the end, the 2005 Iraqi Constitution created a Federal "Supreme Court" that acts similarly to the French *Conseil Constitutionnel* with the exception that the Iraqi Supreme Court cannot review statutes before they are enacted.

The seemingly slapdash approach to the judiciary resulted in constitutional ambiguities and unclear lines of authority between the Supreme Court and the Court of Cassation. These

¹⁵ Deeks, Ashley S. and Burton, Matthew D. (2007) "Iraq's Constitution: A Drafting History," *Cornell International Law Journal*: Vol. 40: Iss. 1, Article 1.

¹⁶ Formally known as the United Iraqi Alliance.

¹⁷ Deeks, Ashley S. et.al.

¹⁸ *Ibid.*

ambiguities have yet to be fully explored and hold the possibility of a significant constitutional conflict. Some of the powers of the Federal Supreme Court outlined in Article 93 include: overseeing the constitutionality of laws and regulations in effect; interpreting the constitution; resolving federal law issues; resolving disputes between local governments; and, adjudicating accusations directed against the President, the Prime Minister and the Ministers as directed by law (under the current law, however, the Supreme Court only has jurisdiction over accusations against the President). Accusations against the Prime Minister and his ministers are referred to the CCC-I. Importantly, like its French counterpart, the Iraqi Supreme Court is also charged with ratifying the results of parliamentary general elections.

While the Shia Alliance did not get a Guardian Council, they successfully included “experts in Islamic jurisprudence” and “legal scholars” under the definition of justices. Consequently, this leaves the door open for greater participation by religious leaders should they garner the required two-thirds support in the Council of Representatives¹⁹. In fact, in 2019 a law was introduced to allow up to four Islamic clerics to sit on the Supreme Court²⁰. Under the draft law, these powerful clerics would wield veto power over the court’s decisions²¹.

As it was eventually adopted, Article 44 of the Transitional Administrative Law (TAL) detailed the structure and jurisdiction of the Iraqi Supreme Court. However, the TAL did not create the Supreme Court, it simply said that there would be a Federal Supreme Court which “shall be constituted by law.”²² By April 2005 no law had yet been passed and there still was no sitting Supreme Court. The actual creation of the court did not come about until the final days of Prime Minister Allawi’s administration. Like much of the Iraqi government, the administration of Ayad Allawi was noted for its corruption. In April 2005, during the waning days of his administration, his political competitors were pushing hard to indict him on corruption charges. The corruption charges stemmed from scores of Iraqi government contracts (especially MOD and MOI contracts) that were issued between June 28, 2004 and April 7, 2005. There were several on-going

¹⁹ Iraq Constitution, Article 92 (B):

“The Federal Supreme Court shall be made up of a number of judges, experts in Islamic jurisprudence, and legal scholars, whose number, the method of their selection, and the work of the Court shall be determined by a law enacted by a two-thirds majority of the members of the Council of Representatives.”

²⁰ <https://tinyurl.com/5xyhwkxr>

²¹ <https://www.al-monitor.com/originals/2019/06/iraq-federal-supreme-court.html>

²² TAL Article 44 (A) “A court called the Federal Supreme Court shall be constituted by law in Iraq.”

investigations and an indictment looked imminent. Even the local Iraqi broadcast media referred to Allawi's possible indictment. At this point, Allawi contacted Judge Medhat to address this precarious state of affairs. This was a marriage made in heaven. Allawi wanted absolution for the corruption of his administration and Medhat wanted the Supreme Court. Between the two, they reached an agreement. On Saturday, April 2, 2005 Allawi signed Prime Minister Order #50 establishing the Supreme Court. On Sunday, April 3, Judge Medhat (as the Chairman of the High Judicial Council) delivered the names of the nominees to the Federal Supreme Court to Allawi. Most notable among them, was Judge Medhat as the Chief Justice. On Monday, April 4, Allawi sent the names to the Presidency Council for approval as required by the TAL²³. On Tuesday, April 5, Allawi sent an official question to the new Supreme Court: "Were the actions including the contracts issued by the Transitional Government legally valid and according to the TAL?" On Wednesday April 6, the Supreme Court issued an opinion stating that all the actions taken by Allawi and his interim government between June 28, 2004, and April 6, 2005, were valid and legal under the TAL and were not subject to review. The consequence of this decision was that Allawi could no longer be subject to prosecution for the nefarious contract dealings that transpired during his administration. On April 7, 2005, Allawi turned the reins of government over to Ibrahim al-Jaafari who became the new transitional Prime Minister²⁴. Similarly, Ghazi al-Yawer turned the Presidency over to Jalal Talabani. The next week Judge Medhat went to see Talabani; the names that had been forwarded for appointment to the Supreme Court by Allawi were approved by the new Presidency Council that same day. Judge Medhat had hit the trifecta: he was the Chief Judge of the Court of Cassation, the Chief Judge of the Supreme Court, and the Chairman of the High Judicial Council (all with the support of the U.S. Embassy).

²³ At this time Ghazi al-Yawer was the President although he was scheduled to leave office within the week. Al-Yawer did not approve or reject the names but left the decision for Talabani.

²⁴ aka: Ibrahim Abd al-Karim al-Eshaiker (see: https://en.wikipedia.org/wiki/Ibrahim_al-Jaafari)

From a legal perspective, it is dubious whether the Iraqi Supreme Court is legally operating. The TAL (Article #44) required that the Supreme Court be ‘constituted by law’. Similarly, Article 92(2) of the Constitution specifically states: “the work of the Court shall be determined by a law enacted by a two-thirds majority of the members of the Council of Representatives.” In fact, the Supreme Court has only been authorized by Prime Ministerial Order. This is a major legal issue undermining the court’s authority even today (see text box).

Iraq’s Federal Supreme Court has no Legal Authority to Operate?

On February 15, 2022, the Federal Supreme Court in Baghdad ruled *the Oil and Gas Law of the Kurdistan Regional Government* No. 22 of 2007 unconstitutional²⁷. At issue was KRG’s exporting oil without first gaining approval from the central government in Baghdad²⁸. Masoud Barzani, head of the Kurdish Democratic Party (KDP), attacked the court’s decision as political, noting the Coordination Framework led by Nouri Al-Maliki (and aligned with Iran) is a “strict rival of the KDP’s alliance with the Sadrists and the Sunnis.²⁹” More importantly from a legal perspective, on June 4, 2022, the Judicial Council of the Kurdish Region issued a statement in which it determined that the Federal Supreme Court of Iraq lacked legal authority to operate³⁰:

Article 92(2) of the Constitution of Iraq requires that the Iraqi Council of Representatives pass a law to establish an Iraqi Federal Supreme Court. No such law has to date been enacted. Iraq, therefore, does not have a constitutionally established Federal Supreme Court. As such, the court that issued the 15 February 2022 opinion purporting to invalidate the Oil and Gas Law (No.22 of 2007) lacks the constitutional authority to do so and, consequentially, the Oil and Gas Law remains in full force as per the Iraqi Constitution.

Similarly, the KRG itself is challenging the authority of the Federal Supreme Court³¹:

“The court that issued the 15 February 2022 opinion purporting to invalidate the 2007 Oil and Gas Law has no constitutional authority to do so. On the contrary, the issuance of the 2007 Oil and Gas Law was entirely authorised under the Constitution of Iraq. As such, legally, the Oil and Gas Law remains in full force. [Iraq does not have] “a constitutionally established Federal Supreme Court,” referring to it as the “so-called” supreme court.

²⁵ <https://www.iraqfsc.iq/news.4805/>

²⁶ <https://www.rudaw.net/english/middleeast/iraq/15022022> and <https://www.rudaw.net/english/middleeast/iraq/15022022>

²⁷ <https://www.rudaw.net/english/middleeast/iraq/15022022>

²⁸ <https://bit.ly/3xflxKz>

²⁹ <https://www.rudaw.net/english/middleeast/iraq/13062022>



GOV.KRD
Kurdistan Regional Government



<p>إقليم كوردستان - العراق</p> <p>مجلس القضاء</p> <p>مديرية مكتب الرئيس</p>	<p>Judicial Council</p>	<p>ههريمى كوردستان - عيراق</p> <p>نه نجومهنى دادومرى</p> <p>بهريوبهرايه تى نووسينگهى سه روك</p>
<p>No. _____</p> <p>Date: / / _____</p>	<p>شهريمى كوردستانى عيراق لههجومهنى دادومرى وهكسروه Judicial Council مجلس القضاء</p>	<p>زمانه: 10/11</p> <p>ريكهوت: 10/11</p>

Statement from the Judicial Council of the Kurdistan Region of Iraq

The actions of the Kurdistan Regional Government in relation to oil and gas operations are in accordance with the Iraqi Constitution of 2005. The provisions of the Oil and Gas Law (No. 22 of 2007) issued by the parliament of the Kurdistan Region do not violate the provisions of the Iraqi Constitution. Oil and gas exploration, production and export are not identified as exclusive authorities of the federal government in Article 110 of the Iraqi Constitution. The provisions of the Oil and Gas Law therefore continue in effect.

Article 112 of the Iraqi Constitution states that the federal government shall manage oil and gas “extracted from current fields”, together with the governments of the producing regions and governorates. This power of the federal government is conditional on the distribution of revenues in a fair manner in proportion with the population distribution in all parts of the country. That distribution must specify a share for a specific period of time for the damaged regions which were unjustly deprived of revenues by the former regime. No such distribution has taken place.

Article 112 applies only to current fields, which we interpret as meaning oil fields in commercial production before the Iraqi constitutional referendum of August 2005. This implies that the oil and gas operations that were established in the Kurdistan Region after August 2005 fall within the exclusive authorities of the Kurdistan Region. All oil and gas fields that are now in production in the Kurdistan Region began commercial production after August 2005. Therefore, they all fall within the exclusive authority of the Kurdistan Regional Government. It also follows that the provisions of the Oil and Gas Law (No.22 of 2007) – including the definition of “current field” in Article 1 of that Law – are compatible with the provisions of the Iraqi Constitution and do not contradict them.

Article 92(2) of the Constitution of Iraq requires that the Iraqi Council of Representatives pass a law to establish an Iraqi Federal Supreme Court. No such law has been enacted. Iraq therefore does not have a constitutionally established Federal Supreme Court. The court that issued the 15 February 2022 opinion purporting to invalidate the Oil and Gas Law (No.22 of 2007) has no constitutional authority to do so. The Oil and Gas Law remains in full force.

The Judge Abdul-Jabbar Hassan
President of the Judicial Council of the Kurdistan Region of Iraq.

04 Jun 2022

Courts Martial

Iraq has two other courts that are not part of the judiciary: military courts and Internal Security Forces (ISF) courts. As the name implies, military courts administer justice for members of the Iraqi Armed Forces. Unlike the United States, however, jurisdiction is limited. In the United States, criminal offenses need not be military-related to be tried by court-martial. In Iraq, however, the military only has jurisdiction over offenses committed by members of the Armed Forces in connection with their military duties. Like most military courts, Iraqi military courts are conducted by military officers with law degrees and specific certifications in military law. Appeals are confined to the Ministry of Defense with the Minister being the final arbiter.

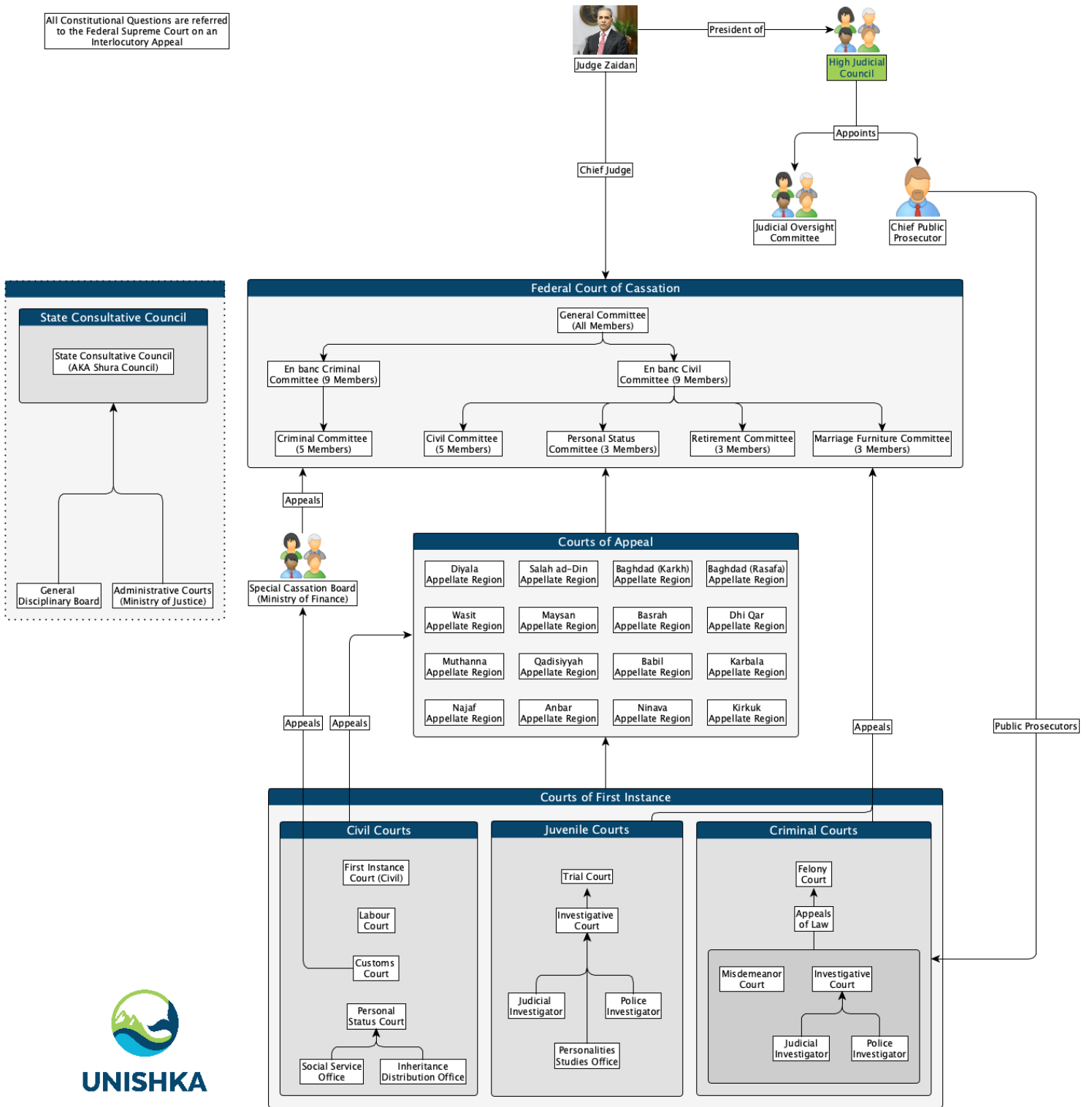
Internal Security Forces Courts (ISF Courts)

Similar to the military courts, ISF Courts are also not part of the judiciary. These courts administer the “Internal Security Forces Penal Code” pursuant to Law No. 14. of 2008. The ISF Courts have jurisdiction over offenses committed by members of the ISF in connection with their official duties. Crimes not affiliated with official duties are tried by Felony Courts. Trials in ISF Courts are conducted by ISF officers who are attorneys and who have had specific training on the ISF law. Appeals are confined to the Ministry of Interior with the Minister being the final appeal.

* * *

Judicial and Administrative Courts

All Constitutional Questions are referred to the Federal Supreme Court on an Interlocutory Appeal



Chapter 4. The Judiciary

High Judicial Council (HJC)

The High Judicial Council (HJC) is authorized under Articles 90 and 91 of the Iraqi constitution. Although the English translation of the constitution reads “Higher Juridical Council,” it is almost never referred to in that way. In fact, under HJC Order #45 of 2017, the name is specifically established as the **Supreme Judicial Council** notwithstanding the constitution. Additionally, in the Judicial Supervision Law of 2016, it is referred to as the **High Judicial Council**. The HJC’s intent in establishing the name as the Supreme Judicial Council, is to demonstrate that it is above all courts including the Federal Supreme Court. Currently, the most common translation for the HJC is the **High Judicial Council**³⁰; however, it is often referred to as the **Supreme Judicial Council**³¹, the **Higher Judicial Council**³², the **Council of Judges**³³ and the **Iraq Judicial Council**³⁴. [It should also be noted that there is also a “**Judicial Council in Iraq’s Kurdistan**”.]

Supreme Judicial Council

Act of Supreme Judicial Council No.(45)of 2017

Article -1-Establishing a council named (Supreme Judicial Council), having a moral personality. It is independent financially and administratively and is represented by its president or who is authorized by the president. Its headquarter is in Baghdad.

Article-2- First: Supreme Judicial Council consists of :

- 1.The chief of the Federal Court of Cassation - A president
2. The vice - chiefs of the Federal Court of Cassation- Members
- 3.The chief of Public Prosecution - A member
- 3.The chief of the Judiciary Supervision Commission – A member
- 4.The heads of Federal Appeal Courts – Members
- 5.The president of the judicial Councils in the regions – Members

<https://web.archive.org/web/20200803235329/https://www.hjc.iq/sjcouncil-en.php>

³⁰ (e.g. <https://reliefweb.int/report/iraq/ceremony-iraqi-supreme-judicial-council-chief-justice-zidan-and-special-adviser-ritscher>)

³¹ (e.g. <https://www.hjc.iq/index-en.php> and <https://www.britannica.com/topic/Supreme-Judicial-Council-Iraqi-government>)

³² https://en.wikipedia.org/wiki/Judiciary_of_Iraq

³³ CPA Order #35

³⁴ <http://iraqieconomists.net/en/2020/12/28/iraq-judicial-council-calls-for-prosecuting-those-who-harm-the-economy/>

History of Iraq's Judicial Administration	
Name	Authority
Council of Judges	Judicature Act #26 of 1963
Council of Justice	Ministry of Justice Act #101 of 1977 (Partially ended judicial independence)
Council of Justice	Judicature Act #160 of 1979 Fully repealed the Judicature Act #26 of 1963 (Fully ended judicial independence)
Council of Judges	Coalition Provisional Authority (CPA) Order #35 Dated 18 Sept 2003
Higher Juridical Council	CPA Law of Administration for the State of Iraq for the Transitional Period. Article #45 (Transitional Administrative Law or TAL) Approved 8 March 2004 / Effective 28 June 2004
Higher Juridical Council	Constitution of Iraq, Articles 90 & 91 September 2005
High Judicial Council	Judicial Supervision Law of 2016
Supreme Judicial Council	Act of Supreme Judicial Council #45 of 2017

The HJC administers the courts, the judicial budget, the General Prosecution Office, and the Judicial Oversight Committee. Despite what might appear in the law, the HJC strongly controls the judiciary as well as the Prosecution Office. It is comprised of the Chief Judge of the Court of Cassation (President of the HJC), Deputy Chief Judges of the Court of Cassation, Chief Judges from the 16 Federal Courts of Appeal, as well as the Prosecutor General, and the Chairman of the Judicial Oversight Committee.

The High Judicial Council was originally created in Article 28 of the Judicature Act of 1963, although it was called a “Council of Judges” at that time. Until 1977 the judiciary was mostly independent of the other branches of government. However, in 1977 the Council of Judges was replaced by the Council of Justice under the Ministry of Justice (executive branch). The Council of Justice took over the duties of court administration ending the independence of the judiciary. In 1979, the Judicature Act of 1963 was fully repealed. In 2003, after the occupation of Iraq, the CPA promulgated Order #35 which re-created the Council of Judges. This was subsequently changed to the “Higher Juridical Council” in Article 45 of the TAL. The Higher Juridical Council was then

ratified in Articles 90 and 91 of the Iraqi Constitution. The Higher Juridical Council makes nominations for appointments to the Court of Cassation and administers the entire federal court system.

Article 91

The Higher Juridical Council shall exercise the following authorities:

First. To manage the affairs of the judiciary and supervise the federal judiciary.

Second. To nominate the Chief Justice and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the Chief Justice of the Judiciary Oversight Commission, and to present those nominations to the Council of Representatives to approve their appointment.

Third. To propose the draft of the annual budget of the federal judicial authority, and to present it to the Council of Representatives for approval.

Federal Judicial Supervision Committee / Judicial Oversight Committee

The **Judicial Supervision Committee** was created to review allegations of corruption against judges. The Iraqi constitution (Article 89) enshrines the “**Judiciary Oversight Commission**” within the judicial structure of Iraq. Although it has always been ensconced in the HJC, that was only formalized in the Judicial Supervision Law of 2016. The Committee is commonly referenced as the “**Judiciary Oversight Commission**,” although it is and always has been known as the **Judicial Supervision Committee** or **Judicial Oversight Committee**. Locally, the Judicial Supervision Committee is jokingly called the “cemetery of judges;” this is because the committee is mostly comprised of older, experienced judges who are nearing retirement, and the Committee generally has a very light workload. The Judicial Supervision Committee has very little power: they cannot remove judges, discipline judges, or take any adverse action. Essentially, their sole function is to review competency complaints against judges, write a report that substantiates or vindicates the complaint and submits their findings to the HJC. Since the HJC was re-established in 2003, the Judicial Supervision Committee does not consider corruption complaints or disciplinary complaints against judges, although they may be assigned such a task by the HJC. Corruption complaints against judges are generally investigated by the Commission on Integrity. The President of the Judicial Supervision Committee sits as a member of the HJC.

General Prosecution Office

The second major office under the High Judicial Council is the General Prosecution Office. It is headed by the Prosecutor General who is nominated to the position by the HJC and appointed by the President (subject to confirmation by the Council of Representatives). Under the Prosecutor General and reporting directly to him, is the Deputy Prosecutor General. Similarly, Deputy Prosecutors are assigned to every criminal court throughout the country. It is within the authorized power of the Prosecutor General to order any Deputy Prosecutor to take or not to take an action or prosecution. In Iraq, prosecutors represent the public (not the government). In law, the Prosecutor General has a wide range of powers; in practice, however, his powers are very limited (*emphasis added*). This is mostly due to the way judges are trained in the judicial institute and the long tradition of judicial dominance over prosecutors. For that reason, academically challenged students at the judicial institute are usually appointed as prosecutors, with the worst students ending up on a misdemeanor court in some far-flung outpost.

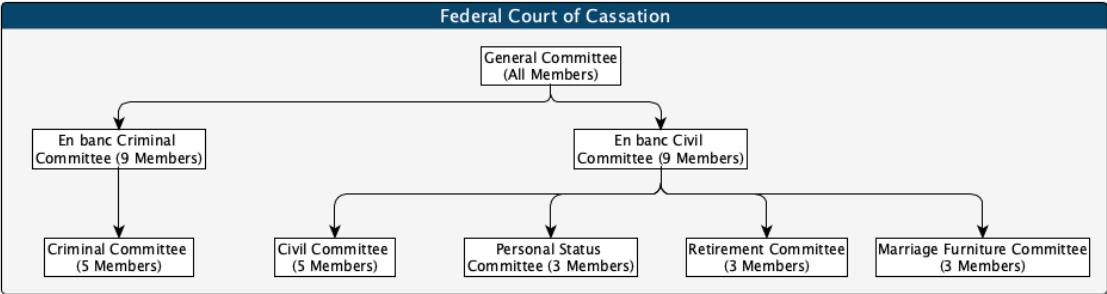
Federal Court of Cassation

For all judicial matters that do not involve a constitutional question, the Court of Cassation is the court of last resort. The court is comprised of a Chief Justice, five Deputy Judges and thirty judges (36 total). Prior to 2003, the court was largely nepotistic with vacancies filled based upon family alliances or cronyism. For example, just prior to the invasion of 2003, 28 out of 36 judges came from the single city of Fallujah and there were only 3 Shia on the court despite comprising more than 50% of the population. After the invasion, the CPA successfully changed the look of the court so that by 2004 the court was comprised of 12 Shia and 18 Sunni (including Kurds). Unfortunately, the court remained very provincial in its operation.

Currently, any case within the judicial system may be appealed, through the Federal Courts of Appeal, to the Court of Cassation. An exception exists for conflicts in jurisdiction, which are adjudicated *de novo* by the Court of Cassation. Judgements of the Court of Cassation are final and there is no appealing their decisions. The Court of Cassation does not interfere with constitutional cases which are decided by the Supreme Court.

When required, the Court of Cassation establishes a panel to consider a case. These are generally divided into two committees but may include others at the discretion of the court. The Criminal Committee and the Civil Committee are the most common. **The Criminal Committee** consists of

five (5) members and hears most criminal appeals. Appeals from the Criminal Committee (called an *en banc* hearing in the United States) are heard by the **Expanded Criminal Committee**, consisting of nine (9) members. The **Civil Committee** also has five (5) members. Appeals from the Civil Committee are heard by the **Expanded Civil Committee** (9 members). Other common committees include the **Personal Status Committee** (3 members); the **Retirement Committee** (3 members); and the **Marriage Furniture Committee** (3 members). Appeals from these committees are also heard by an **Expanded Civil Committee**. Special committees may be established by the court at its discretion; these might include Labour Committees or other such specialized committees.

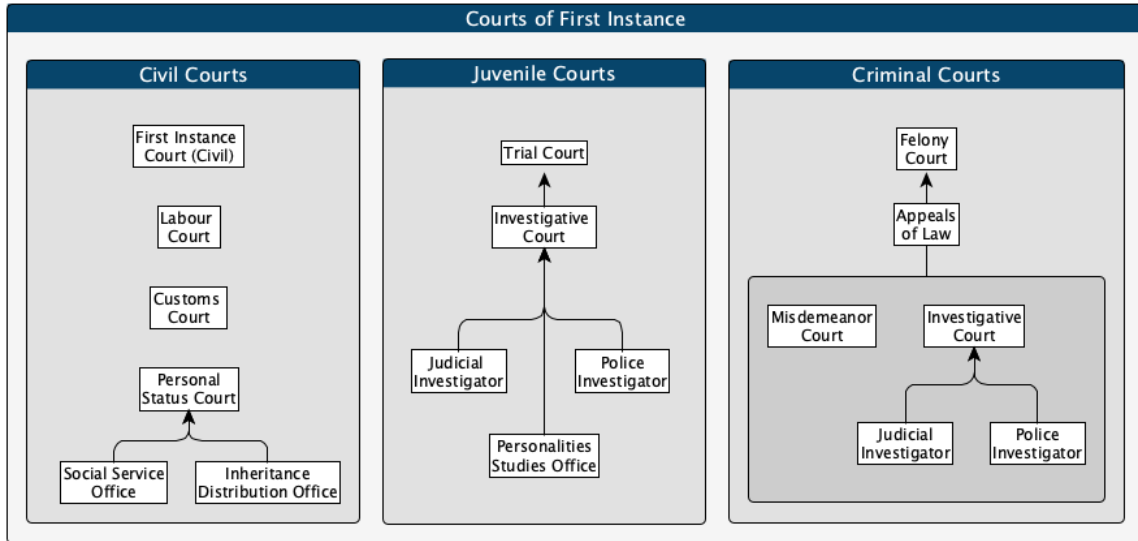


Federal Courts of Appeal (16 Regional Courts)

The Federal Courts of Appeal are the highest judicial body in each of the (15) southern provinces except for Baghdad which has two Courts of Appeal (Karkh and Rasafa). Consequently, there are a total of sixteen (16) Courts of Appeal in Iraq (excepting Kurdistan, which has an independent judicial system). The Chief Justice of each provincial Court of Appeal is considered the highest-ranking member of the judiciary in the province and is automatically appointed as a member of the Higher Judicial Council by virtue of their position.

Federal Courts

There are 98 local federal courts across Iraq. These federal courts are administered by the 16 Federal Courts of Appeal. The local federal courts are trifurcated into Civil Courts (called First Instance Courts); Criminal Courts (including Felony, Misdemeanor, and Investigative Courts); and Juvenile Courts (with a Trial Court and Investigative Court).



Civil Courts

First Instance Courts (Civil)

The Courts of First Instance specialize in civil matters including property disputes, contract law, family law for non-Muslims, civil commitments, etc. The court consists of one Judge and the litigants. Appeals from Courts of First Instance are to the regional Court of Appeals and then, when warranted, to the Court of Cassation.

Personal Status Courts (Civil)

Article (26) of the Judicature Act provides that "a personal status court shall be formed in any location that has a Court of First Instance." In essence, Personal Status Courts are akin to Family Law and Probate Courts but reserved exclusively for Muslims (non-Muslims must use Courts of First Instance for family law and probate matters). The authority of Personal Status Courts derives from Articles 300, 302, and 305 of the Civil Procedure Code which is administered pursuant to the Personal Status Act No. 188 of 1959. Personal Status Courts consists of one judge and well as the litigants. Appeals from Personal Status Courts will be viewed by the Court of Appeals or may go directly to the Court of Cassation, depending on the nature of the verdict.

There are two administrative offices under the Personal Status Courts: The **Inheritance Distribution Office** and the **Social Service Office**. As the name suggests, the Inheritance Distribution Office oversees the distribution of assets of a decedent under Sharia Law. This can be

an exceptionally important court when you consider that a vast majority of Iraqis die intestate. The Social Service Office is focused on mediation and resolving cases without a trial.

Labour Courts (Civil)

Article 127 of Labor Act No.71 of 1987 provides that a Labour Court shall be formed in each province. The court itself consists of one judge and two representatives of the Ministry of Labor and Social Affairs that are not judges. The Labour Courts have jurisdiction over both civil and criminal actions arising under the *Labour Act* and the *Retirement and Social Security Act* as well as other related legislation. On occasion, some provinces may not have a Labour Court due to low caseloads. In these instances, the duties of the Labour Court are delegated to the Court of First Instance. Rulings from Labour Courts may be appealed by the Court of Appeals and then to the Court of Cassation, as appropriate.

Customs Courts (Civil)

The Customs Court hears cases pertaining to civil customs violations pursuant to Customs Act No 23 of 1984. It is comprised of one judge, a representative of the Customs Department from the Ministry of Finance; and a representative of the Ministry of Interior (Customs Police). The Customs Court may settle a civil dispute, or it may refer a case to the criminal courts. Appeals from the Customs Court do not go to the Courts of Appeal but go to a special Cassation Board formed under the Ministry of Finance and headed by a Level 1 judge appointed by the High Judicial Council. In the event there is an appeal from the special Cassation Board, the Court of Cassation will establish a special Labour Committee to hear the appeal.

Criminal Courts

Felony Courts (Criminal)

In each province, there is one Felony Court consisting of three judges and one Deputy Prosecutor. The presiding judge is customarily the Chief Judge of the regional Court of Appeals or his designee. The other two judges are assigned to the Felony Court.

The Felony Court generally hears cases where penalties include more than five (5) years of incarceration; however, Felony Courts have general jurisdiction which means that they can take control of any criminal case within their jurisdiction—felony or misdemeanor. Appeals from Felony Courts go directly to the Court of Cassation and not the Courts of Appeal.

Investigative Courts (Criminal)

Investigative Courts grew out of Iraq's French judicial roots, although they are statutorily authorized under Article 35 of the Judicature Act. Investigative Courts consists of one judge and one Deputy Prosecutor. As a matter of custom, the Investigative Court is divided into three tiers: felony investigations, misdemeanor investigations, and disorderly conduct investigations. Judges conduct felony investigations where penalties can include more than five (5) years imprisonment; similarly, they conduct misdemeanor investigations where the potential punishment includes five (5) years or less (or imprisonment); finally, disorderly conduct investigations are completed for crimes with potential jail time from 24 hours to three (3) months. In the past, this final tier was called a Court of Conciliation, however, these courts were abolished in 1971 and cases are now handled by the Misdemeanor Courts.

Generally, Investigative Courts work directly with police stations in their province. When an arresting officer presents a potential case, the investigative judge conducts the required investigation before disposing of the case. An investigative judge may dispose of a case in one of three ways: he may refer the case to the Felony Court; he may refer the case to the misdemeanor court; or he may dismiss the case for lack of evidence.

Misdemeanor Courts (Criminal)

Misdemeanor Courts are comprised of one judge and one Deputy Prosecutor and are situated among the cluster of First Instance Courts around the country. Misdemeanor Courts adjudicate

cases referred from the Investigative Court. Some Misdemeanor Courts specialize, such as traffic courts. Appeals from Misdemeanor Courts are taken directly to the Felony Court.

Juvenile Courts (Criminal)

Juvenile Courts have jurisdiction over children who commit crimes when they are at least nine (9) years of age and less than 18 years of age pursuant to Article 3 of the Juvenile Care Act No. 76 of 1983. Children less than nine (9) years of age are considered infants under the law. There are two types of juvenile courts: Investigative Courts (Juvenile) and Trial Courts (Juvenile). The **Juvenile Trial Court** consists of one judge, one Deputy Prosecutor, and two representatives of the Juvenile Department of the Ministry of Labour and Social Affairs. When adjudicating a felony, decisions of the Trial Court are subject to mandatory appeal whether challenged by the defendant or not. These appeals are directly to the Court of Cassation in accordance with Article 16 of the Public Prosecution Act No. 159 of 1979. The **Juvenile Investigative Courts** examine the child's home life, school, social circle, etc. The investigative judge builds a composite of the child's environment and provides that study to the Trial Court judge. An additional office within the Juvenile Court is the **Personality Studies Office**. Like the name implies, the Personality Studies Office develops a psychological profile of the child's mental, emotional, and personality characteristics. As with the investigative judge, the results are shared with the Trial Court for its consideration.

Central Criminal Courts of Iraq (CCC-I)

The CCC-I (called "the triple "C" eye) was created on November 11, 2003, pursuant to CPA Order No. 13. The court currently has jurisdiction over terrorism cases and high-profile corruption cases concerning the prime minister or other ministers. Similar to Felony Courts, the CCC-I is bifurcated into an Investigative Court and a Trial Court. The Trial Court consists of two panels with three judges on each panel. The Investigative Court consists of five chambers, each with one judge who refers cases to the Trial Court as appropriate. Appeals from the CCC-I go directly to the Court of Cassation. The CCC-I operates from four (4) regional locations: Mosul, Basrah, and two courts in Baghdad. Although the Law of the Central Criminal Courts is still in effect; the powers of the court have been circumscribed by the High Judicial Council. For example, under CPA Order 13, an Investigative judge can take control of any case in the country at any time; in reality, however, the HJC has curtailed this power.

Chapter 5. The State Consultative Council (aka Shura Council)

The **State Consultative Council**, also known as the **Shura Council**, provides advisory opinions to the Prime Minister's Office. Only the Prime Minister's Office is authorized to request an advisory opinion of the State Consultative Council. Within the State Consultative Council are the **Administrative Court** and the **General Disciplinary Board**.

Administrative Courts

Located in Baghdad, Iraq's Administrative Court was created under Law 106 of 1989 to determine the validity of administrative orders and decisions issued by employees and officials of the government that are not otherwise being challenged before any court. The Administrative Court consists of a Counselor from the State Consultative Council and two assistant Counselors. If the complainant believes a decision of the Administrative Court is lacking, he may request referral to the State Consultative Council to review the decision.

General Disciplinary Board

The General Disciplinary Board adjudicates appeals filed by government employees concerning disciplinary action issued against them from their ministry, agency, or organization. The Board consists of the President of the State Consultative Council (or his designated judicial representative) and two other judges from the Council. Decisions by the General Disciplinary Board may be appealed by the employee during the plenary session of the State Consultative Council.

Chapter 6. Extrajudicial Tribunals

Higher Criminal Tribunal

The Iraqi Higher Criminal Court (also called the High Criminal Tribunal, and the Supreme Criminal Tribunal³⁵) was established on October 18, 2005³⁶. The Iraqi Higher Criminal Court was the successor to the Iraqi Special Tribunal (IST),³⁷ both of which were created for the purpose of trying crimes of the former regime (crimes between 1968 and 2003). The Higher Criminal Court

³⁵ https://en.wikipedia.org/wiki/Supreme_Iraqi_Criminal_Tribunal

³⁶ <https://bit.ly/3RorHku>

³⁷ The Iraqi Special Tribunal (IST) was created on 12 December 2003 by the Iraqi Governing Council. In August 2005, the Statute of the Tribunal was revoked by Iraq's Transitional National Assembly and replaced by an amended Statute that renamed the Special Tribunal the High Tribunal and was promulgated as Law No. 10 on 18 October 2005. <https://bit.ly/3AVOtJu>

has been criticized internationally because it is not part of the Iraqi judiciary and the judges who served in the court are not “judges” under the Iraqi judicial system³⁸ (see specifically *Iraq: Flawed Tribunal Not Entitled to U.N. Legitimacy*)³⁹. Currently, the court does not hear cases and it only exists in law. All “judges” are retired although actual judges who served on the IST or Higher Criminal Court are not credited for any time they served on either tribunal. Decisions of the IST/Higher Criminal Court are not appealable outside of the court. A cassation panel was created as part of the court so that it was fully independent and self-contained.

Chapter 7. Specialized Courts













Central Bank Court

The Central Bank Court has jurisdiction to adjudicate regulatory disputes between commercial banks and the CBI as well as the Government and the CBI. This court is comprised of five (5) judges including three judges from the High Judicial Council and two administrative judges from the Ministry of Finance. Decisions of the Central Bank Court may be appealed directly to the Court of Cassation.

³⁸ “The Iraqi High Criminal Court: Controversy and Contributions” by Michael A. Newton; [International Review of the Red Cross](#) , Volume 88 , Issue 862: Truth and Reconciliation Commissions , June 2006 , pp. 399 - 425

³⁹ <https://www.hrw.org/news/2004/01/14/iraq-flawed-tribunal-not-entitled-un-legitimacy>.

Addendum 1: Summary of Iraqi Courts

	Higher Judicial Council (HJC)	The HJC administers the Iraqi Judiciary, including: the judicial budget, the appointment of all judges, and judicial discipline. The Federal Judicial Supervision Committee under the HJC administers judicial discipline.																																																																																
	General Prosecution Office	Iraqi prosecutors are judges within the <i>General Prosecution Office</i> which is part of the High Judicial Council. Consequently, all prosecutors are appointed by the HJC																																																																																
	Federal Supreme Court	The Federal Supreme Court has jurisdiction over constitutional questions only. No other court may offer an opinion on a constitutional matter. The Federal Supreme Court also approves or disapproves all parliamentary elections.																																																																																
	Higher Criminal Tribunal	Jurisdiction over crimes involving genocide; crimes against humanity; war crimes; criminal interference with the Judiciary; waste of national resources; and abuse of power [Law No. (10) 2005] Intermittently referred to at various times as the Iraqi High Tribunal, the Iraqi Special Tribunal, the Special Iraqi Criminal Tribunal, and the Supreme Iraqi Criminal Tribunal. Under the existing law, the correct name is the Higher Criminal Court.																																																																																
	Court of Cassation	The Court of Cassation is the highest court of appeal in the country. They are the final appeal for any judicial decision on all matters except constitutional questions and military/ISF cases.																																																																																
	Federal Courts of Appeal (16 Regional Courts)	<p>Appeals from the Federal Courts of Appeal go to the Court of Cassation</p> <table border="1"> <tr> <td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td> </tr> <tr> <td>** Anbar</td><td>** Babel</td><td>*** Baghdad-Rusafa</td><td>*** Baghdad - Karkh</td><td>*** Basrah</td><td>** Diyala</td><td>** Karbala</td><td>** Missan</td><td>** Muthanna</td><td>** Najaf</td><td>*** Nineveh</td><td>** Qadisiya</td><td>** Salah al-Din</td><td>** Tameem</td><td>** Thi-Qar</td><td>** Wassit</td> </tr> </table>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	** Anbar	** Babel	*** Baghdad-Rusafa	*** Baghdad - Karkh	*** Basrah	** Diyala	** Karbala	** Missan	** Muthanna	** Najaf	*** Nineveh	** Qadisiya	** Salah al-Din	** Tameem	** Thi-Qar	** Wassit																																																
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	CCC-I*	<p>The CCC-I has four courts. Although independent, CCC-I courts are co-located with the Federal Courts of Appeal in Basra, Nineveh, Baghdad (Karkh), and Baghdad (Rusafa).</p> <p>The Central Criminal Courts of Iraq (CCC-I) only hear cases of "Terrorism" or "Grand Corruption" in accordance with a Decree of the Higher Judicial Council.</p>																																																																																
	Appellant Courts - Civil*	<p>Appeals from these civil courts go to the relevant Federal Court of Appeals, except Customs Courts.</p> <table border="1"> <tr> <td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td><td>7</td><td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td> </tr> <tr> <td colspan="6">Felony Court</td> <td colspan="10">Customs Court</td> </tr> <tr> <td colspan="6">Misdemeanor Court</td> <td colspan="10">Labour Court</td> </tr> <tr> <td colspan="6">Juvenile Court</td> <td colspan="10">Personal Status Court</td> </tr> <tr> <td colspan="6">Investigative Court</td> <td colspan="10">First Instance Court (Civil)</td> </tr> </table> <p>Customs Courts may not be active in some locations. Cases are then heard by the First Instance Civil Court</p>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Felony Court						Customs Court										Misdemeanor Court						Labour Court										Juvenile Court						Personal Status Court										Investigative Court						First Instance Court (Civil)									
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	Appellant Courts - Criminal*	<p>Appeals from the Felony Court go directly to the Court of Cassation.</p> <p>Appeals from the Misdemeanor Court, the Juvenile Court, and the Investigative Court are heard by the Felony Court.</p>																																																																																
	Ministry of Justice	Administrative Courts hear cases between government employees and their respective ministries – Administrative judges are not part of the judiciary but are part of the Executive Branch. Decisions may be appealed to the State Consultative Council .																																																																																
	Ministry of Defense	Courts Martial (Military) Military Courts are not part of the Federal Judiciary. All judges are military officers. They administer the military Justice and the only appeal is to the Minister of Defense except for constitutional questions.																																																																																
	Ministry of Interior	Internal Security Forces (ISF) Courts ISF Courts are not part of the Federal Judiciary. They administer the Internal Security Forces Penal Code and the only appeal is to the Minister of Interior except for constitutional questions. (Law No. 14 of the year 2008)																																																																																

All Constitutional questions go from the court where the question arose directly to the Federal Supreme Court

Courts shaded in gray are NOT part of the judiciary

Index

A

Abu Hanifa, 7
 Adjunctive Courts, 5, 8, 10
 Administrative Courts, 5, 6, 7, 8, 10, 16, 26
 Allawi, Ayad, 11, 12
 Article 44 of the Transitional Administrative Law, 11, 13
 Article 91 of the Constitution, 17, 18, 19
 Article 92 of the Constitution, 11, 13
 Article 93 of the Constitution, 11

B

Ba'ath Party, 8
 Barzani, Masoud, 13
 Bowman, Gregory, 8
 Bremer, Paul, 9

C

Campbell, Maj.Gen. (Judge), 8
 Cemetery of Judges, 19
 Central Bank Court, 27
 Central Criminal Courts of Iraq (CCC-I), 6, 11, 16, 25
 Chalabi, Ahmed, 9
 Chalabi, Salam, 9
 Civil Committee, 6, 16, 20, 21
 Clark, Brian, 8
 Commission on Public Integrity, 8
 Constitutional Council, 10
 Consultative Assembly, 10
 Coordination Framework, 13
 Council of Judges, 4, 9, 10, 17, 18
 Council of Justice, 18
 Council of Representatives, 11, 13, 19, 20
 Court of Cassation, 6, 7, 9, 10, 12, 18-25
 Court of Conciliation, 24
 Courts of Appeal, 4, 6, 16, 18, 20, 21, 23, 24
 CPA Order No.(15), 8
 CPA Order No.(35), 9, 17, 18
 Criminal Committee, 6, 16, 20, 21
 Customs Act No. 23 of 1984, 23
 Customs Court, 6, 16, 23
 Customs Police, 23

D

Dara Noor al-Zin, 8
 Dittoe, Mike, 8

F

Felony Court, 6, 15, 16, 22, 24, 25
 First Instance Court, 6, 16, 21, 22, 24

G

General Disciplinary Board, 6, 16, 26
 General Prosecution Office, 6, 16, 18, 20
 Gillanders, Rudy, 8
 Goldstein, Alvin, 9
Greatest Leader to the Greatest People, 9
 Guardian Council, 10, 11

H

Hanifa, 7
 High Judicial Council, 4, 6, 9, 10, 12, 16, 17, 18, 20, 23, 25
 Higher Criminal Court (aka Tribunal), 6, 16, 26, 27
 Higher Juridical Council, 4, 17, 18, 19

I

Ibrahim Abd al-Karim al-Eshaiker (Ibrahim al-Jaafari), 12
 Inheritance Distribution Office, 6, 16, 22
 Internal Security Forces Courts, 6, 15, 16
 Internal Security Forces Penal Code, 15
 Investigative Court, 6, 16, 21, 22, 24, 25
 Investigative Court (Juvenile), 6, 16, 22, 25
 Iraqi Special Tribunal, 26

J

Jaafari, Ibrahim al-, 12
 Judicature Act of 1963, 18, 22, 24
 Judicial Assessment Team, 9
 Judicial Council of the Kurdish Region, 13
 Judicial Courts, 6, 7, 16,
 Judicial Investigator (Juvenile), 6, 16, 22, 25
 Judicial Oversight Committee, 6, 16, 18, 19
 Judicial Review Committee, 8
 Judicial Supervision Committee, 19

L

Labour Act, 23
 Labour Committee, 21, 23
 Labour Court, 6, 16, 23

M

Mahmoud, Medhat al-, 8, 9, 12
 Majalla, 7
 Maliki, Nouri al-, 13
 Marriage Furniture Committee, 6, 16, 21
 Merza, Hussein, 8
 Merritt, Gilbert, 9
 Military Courts, 6, 10, 15, 16
 Ministry of Defense, 15
 Ministry of Interior, 15, 23
 Ministry of Justice, 9, 18
 Misdemeanor Court, 6, 16, 20, 24, 25
 Mukhabarat, 8

N

Napoleonic Code, 7

O

Oil and Gas Law of the KRG, 13
 Oil-for-Food, 9
 Orlofsky, Stephen, 9
 Ottoman Empire, 4, 7

P

Personal Status Committee, 21
 Personal Status Court, 6, 16, 22
 Personality Studies Office, 6, 16, 25
 Police Investigator (Juvenile), 6, 16, 22
 Presidency Council, 8, 12
 Presidential Referendum of 2002, 8
 Prime Minister Order #50, 12, 13
 Public Prosecution Act No. 159 of 1979, 25

R

Radhi, Radhi al-, 8
 Retirement and Social Security Act, 23
 Retirement Committee, 6, 16, 21

S

Saddam Hussein, 8, 9
 Sarmed al-Sarraf, 9
 Shattuck, Gary, 8

Shia Alliance, 10, 11
 Shura Council, 26
 Social Service Office, 6, 16, 22
 Special Cassation Board, 6, 16, 23
 State Consultative Council, 6, 7, 16, 26
 Sultan Abdulmejid, 7
 Supreme Court, 4, 6, 9-13, 16, 17, 20
 Supreme Judicial Council, 4, 17, 18

T

Talabani, Jalal, 12
 Tanzimat Reforms, 7, 8
 Traffic Court, 25
 Transitional Administrative Law (TAL), 9, 11, 12, 13, 18
 Transitional Justice, 8
 Transitional National Assembly (TNA), 10, 26
 Trial Court (Juvenile), 6, 16, 21, 22, 25
 Tribal Criminal and Civil Disputes Regulation, 7

U

Ulemas, 7

W

Walter, John, 9

Y

Yawer, Ghazi al-, 12



