

**RESPOND**

# **Iraq Border Management and Migration Control Regime**

**Iraq/Research report**

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Table of Contents	
Acknowledgements	5
About the project	6
Abstract	7
1. Introduction	8
Iraq Borders	8
The EU and Iraq	10
The Federal- Regional Relations	11
2. Methodology	13
3. Legal Framework	14
The Political Refugee Law No. 51 of 1971	15
3.1. Key Developments Since 2011	16
3.2 Pre-Entry Measures	17
3.3 ‘At the Border’ Controls	20
3.4 Internal controls (Within Iraq, and within Kurdistan Region)	21
4. Key narratives: conceptualisation of border/ migration control, problems, solutions	23
5. Implementation	25
6. Conclusion	30
7. Recommendations	31
Appendices	32
References	34

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William Khammoo Warda

Iraq Team Leader

Baghdad- May 2019

## About the project

RESPOND is a comprehensive study of responses to the 2015 Refugee Crisis triggered by the Syrian Civil War from 2011 onward. It aims at enhancing the governance capacity and policy coherence of the EU, its member states and neighbours.

One of the most visible impacts of the refugee crisis is the polarization of politics in EU member states and intra-member state policy (in) coherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms, and more research is needed to determine how to mitigate conflicting needs and interests.. In this context, RESPOND brings together 14 partners to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research;
- Critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

RESPOND studies migration governance along five thematic fields: (1) border management and security, (2) refugee protection regimes, (3) reception policies, (4) integration policies, and (5) conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centers, and in some cases, ending with their integration into new homes.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and policy analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview-based analysis, and photo voice techniques.

The research is innovatively designed as a multi-level research since migration governance now operates beyond macro-level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not simply the passive recipients of policies, but are also shaping policies from the ground-up.

Also, the research focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

RESPOND focuses on the Eastern Mediterranean route, especially the mass migration triggered by the Syrian Civil War from 2011 onward. The countries included in the project and the target refugee populations have been selected accordingly. The selection is also guided by the significance of the chosen countries as source, transit, and destination countries. The source countries are Syria, Iraq and Afghanistan. The transit countries are Turkey, Lebanon, Greece, Italy, Poland, and Hungary. The destination countries are Germany, Sweden, the United Kingdom and Austria

## **Executive summary/ Abstract**

This report focuses on Border Management and Migration Control in Iraq through discussing three main issues, these are: First, it discusses Iraq legal framework defining the pre entry measures; procedures for return, detention and readmission; and key actors involved in Border Management and Migration Control. Second, it provides a conceptualization of Iraq decision makers on the importance of Border Management and the process of regulating the status of refugees and asylum seekers. This includes discussing the challenges and fears of Iraqi politicians paralyzing the process of enacting some important legislations aiming at further development of Iraq legal framework. Thirdly, it discusses the applicable policies and practices, and their compliance with the Iraqi legal system and with the international standards. Additionally, the report includes a conclusion part summarising the main findings of the researching team and their recommendations.

The report helps us to better understand the Iraqi context of Border Management and Migration Control through studying relevant legislations and how they are connected to the moral and human dimension of the international legal standards. In addition, the report provides a theoretical scientific frame to study the rights of refugees and means to protect them through providing the tools for objective analysis to the reality of Border Management and Migration Control in Iraq.

The report provides an overview of how the State of Iraq deals with migration management and the protection of refugees. It sheds the lights on main problems related to Border Management and Migration Control. Some of these problems are of legal nature, others are of sensitive political nature. Apart from other issues of not less sensitivity, Iraqi politicians' fears are centred on changes to national identity and possible demographic changes.

## 1. Introduction

This report is the deliverable of the second Work Package (WP2) of the Horizon 2020 Project RESPOND -- Multilevel Governance of Mass Migration in Europe and beyond. WP2 focuses on Border and Migration Controls. Its overall aim is to explore the impact of policies on member states and migrants and their effectiveness within the wider context of EU asylum and migration policies explored in other Work Packages. It also examines border management policies and practices from the diverse perspectives of the many actors implementing them.

The report provides an overview of the legal and policy framework on border management and migration control in Iraq since 2011.

It also discusses the impact of orders promulgated by the Coalition Provisional Authority Administrator (CPA) in 2003 and 2004 on border management and migration control; the impact of the 2005 constitutional changes to the Iraqi governing system on shaping national border management and migration policies; and the impact of internal political disputes, instability and lack of security on the implementation of laws and regulations.

Additionally, the report provides an overview of Iraqi-EU relations, commitment and level of support to Iraq, with special focus on the Border Management and Migration Control Regime.

### Iraq Borders

Iraq covers a total land area of 438,317sq km, with 3,650km of land borders. It shares borders with the Islamic Republic of Iran (1,458km), Jordan (181km), Kuwait (240km), Saudi Arabia (814km), the Syrian Arab Republic (605km) and Turkey (352km). It also has 58km of strategically important coastline on the Shatt al Arab waterway at the head of the Arab Gulf. (IOM, 2014)

The Constitution of Iraq, ratified in 2005, defines the Kurdistan Region as a federal entity of Iraq. It occupies approximately 40,000sq km, encompassing three provinces: Erbil, Duhok, and Sulaimaniyah. It borders the Islamic Republic of Iran to the East, Turkey to the North, the Syrian Arab Republic to the West and the rest of Iraq to the South.

The shared border between Iraq and Jordan is the shortest international border in Iraq with only one official border crossing known as Karameh in Jordan and Turaibil in Iraq. In 2015, it was shut down by the so called Islamic State of Iraq and t Sham (also known as ISIS) on the Iraqi side and was reopened when Iraqi military troops regained control of the region. (Pariona, 2018)

The Iraqi border with Syria follows the course of the Tigris River in the Kurdistan Region, and passes through vast stretches of sparsely populated desert in Nineveh and Anbar provinces. Iraq has three official border crossings with Syria: Al-Qa'im and Al-Waleed, both in Al-Anbar province, and Ra-bia'a in Nineveh province; in addition to the Peshkhabour semi-official crossing point in Dohuk and the Sahela non-official crossing point just to its south (IOM, 2014). In 2014, ISIS took control of large sections of this border, including the Al Qa'im and Al-Waleed crossing points (Pariona, 2018).



Ibrahim al-Khalil, also known as the Habur Gate (Khabur Gate), is the official border crossing between Turkey and the Kurdistan Region of Iraq. Also, Iraq has one border crossing with Kuwait at Safwan Abdali, and one with Saudi Arabia at Ar'ar. (IOM, 2014)

The shared border between Iraq and Iran is the longest international border in Iraq with six border crossings. These are: Shalamja, Mundhiriya, al-Shib, Zarbatiya, Mandali, and Soomar. Additionally, the Kurdistan Region of Iraq has four border crossings with Iran at Haji Omaran (in Erbil Province), Parwezkhan and Bashmaq, in Sulaymaniyah Province (IOM, 2014).

After 2003, Iraq started its transition towards democracy. Iraq was initially administered by the Coalition Provisional Authority (CPA). The Administrator of the Coalition Provisional Authority (CPA), Paul Bremer, issued 100 orders between 2003 and 2004. The CPA orders are binding instructions or directives to the Iraqi people that have penal consequences or have a direct bearing on the way Iraqis are governed, including changes to Iraqi law. (CPA Official Documents)

The Coalition Provisional Authority Order Number 2 on the Dissolution of Entities, issued on 23 May 2003, is regarded as the most controversial order. It disbanded the Iraqi military, security, and intelligence infrastructure of the Ba'ath regime. Although the order did not disband the Ministry of Interior, it did disband the Bureau of National Security and the Directorate of General Security which fell within the structure of the ministry responsible for border security. (CPA, 2003)

The post-2003 situation in Iraq resulted in extreme fragmentation of the country's various agencies and ministries. Changing the governing system from totalitarian to a democratic and decentralized system created the need for restructuring state agencies and ministries as well as building their capacities. In terms of Border Management and Migration Control, the situation created a fertile working environment in accordance with the new transparent and more human principles in dealing with refugees and asylum seekers as well as in managing Iraq borders.

(IOM, 2011)The international community has provided financial and intellectual support for the Government of Iraq since 2004. The United States, for example, funded the construction of 258 border forts along Iraq's borders to be used by the Department of Border Enforcement. The Coalition troops trained (and continued to train) the Department of Border Enforcement troops in three different academies throughout Iraq, in addition to providing the necessary equipment.

On the other hand, the EU has provided funding to the International Organization for Migration (IOM) to deliver a series of capacity building activities in an attempt to install Integrated Border Management principles outside of the EU accession environment (IOM, 2011).

Iraq and IOM continue to work together to strengthen the capacities of key government agencies to facilitate regular migration while trying to reduce unsafe, irregular migration flows<sup>1</sup>. IOM is facilitating the delivery of humanitarian assistance to the people in Syria<sup>2</sup>. IOM is mandated with enhancing the capacities of the Border Points Commission to perform effective

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<sup>1</sup> <https://iraq.iom.int/immigration-and-border-management>

<sup>2</sup> <https://iraq.iom.int/immigration-and-border-management>

border operations through the provision of specialized equipment, repairing infrastructure, providing training for border officials and developing standard operating procedures (SOPs).

The political disputes over power between the Iraqi Federal Government and the Government of the Kurdistan Region of Iraq challenge Iraq's stability and unity. Article 110 of the constitution clearly identifies the exclusive powers of the federal government over: the formulation of foreign policy and diplomatic representation; formulation and execution of national security policy and the security of borders; formulating fiscal and customs policy; and regulating issues of citizenship, naturalization, residency, and the right to seek political asylum. However, reality shows that the regional government has adopted different measures and policies as related to migration and border control, also in the context of Syrian refugees to Iraq.

For nearly two decades since the transition in 2003, the country remains in the process of building democratic institutions and reforming its legal system despite the massive challenges facing the country.

## **The EU and Iraq**

The EU-Iraqi Partnership and Cooperation Agreement, signed in 2012, is the main tool for the EU's support to Iraq (EU, 2012). It provides a legal framework for improving ties and cooperation in a wide range of areas. These include policy matters, counter-terrorism, trade, human rights, health, education and the environment (EU, 2012).

The agreement covers a wide range of policy sectors including trade-related issues such as intellectual property rights, technical barriers to trade, sanitary and phytosanitary issues and a dispute settlement method (EU, 2012). Recognising that Iraq is not yet a party state to the Geneva Convention of 1951 related to the status of refugees and of the Protocol of 1967, the agreement sets the terms for Cooperation on Migration and Asylum.

Article 105 of the agreement reaffirms the importance of joint management to regulate migration between the territories of both parties and the need for cooperation to conduct needs assessments focusing particularly on root causes of migration; development and implementation of national legislation and practices; admission rules and fair treatment of lawfully residing non-nationals; the establishment of preventive policies to combat networks of smugglers and traffickers and how to protect the victims of such trafficking; the return and reintegration of persons; the field of visas in the framework of the existing Schengen acquis; and to provide trainings and best practices in the field of border management and control. Annex 1 shows the full text of the article.

Iraq took steps towards implementing the provisions of this agreement, in particular provisions of Article 105. Iraq, with the support of the international community, has enacted new laws and adopted policies and procedures to further develop its capacity in managing its borders. The reforming process is still in progress.

## The Federal- Regional Relations

Iraq is a federal country. The 2005 constitution clearly identifies the exclusive powers of the federal government<sup>3</sup> over the formulation of foreign policy and diplomatic representation; the formulation and the execution of the national security policy and the security of borders; the formulation of fiscal and customs policies; and regulation of citizenship, naturalization, residency, and the right to seek political asylum. The constitution gives supremacy to the region and governorates on all matters that do not constitute an exclusive power to the federal government.

The Kurdistan Regional Government exercised full responsibility over the management of borders within its territory since 1991. It expanded its control over the disputed areas in Nineveh, Salahudeen and Diyala provinces since 2003.

In spite of the political differences between the federal and regional governments and the fact that a clear policy statement on how internal displacement and mass movements are managed is not available in the public domain, the two governments maintained good cooperation between them, for the most part, has kept border crossings open and has provided humanitarian protection, shelter and material assistance. (IOM, 2014)

The Kurdish referendum for independence on 25 September 2017 came as a turning point for citizens of other countries intending to enter Iraq. In response to the yes vote for independence, the Iraqi Federal Government took a series of measures to exercise its constitutional authority in the region. (Iraq TradeLink News Agency, 2018)

Among other issues, the federal government demanded to take over management of all the border crossings previously managed by the Kurdistan Government in addition to the management of the two international airports in Erbil and Sulaimaniya (Chmaytelli, 2017). With the dispute escalating, the federal government took measures to close the borders in the Kurdistan Region of Iraq and banned international flights to and from the two airports in the region, with the exception of military, diplomatic, and humanitarian flights, as well as those of the United Nations, but subject to approval from Iraqi authorities. (RUDAW, 2017)

Solving the dispute took several months of high level political and official meetings and dialogues. Among other issues, the two governments reached an agreement on unifying border

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<sup>3</sup> Article 110: The federal government shall have exclusive authorities in the following matters: First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy. Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq. Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank. Fourth: Regulating standards, weights, and measures. Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum. Sixth: Regulating the policies of broadcast frequencies and mail. Seventh: Drawing up the general and investment budget bill. Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions. Ninth: General population statistics and census.

management and migration control procedures at airports and land crossing points, in addition to unifying decisions and instructions related to standardizing tariffs and customs procedures in order to eliminate bureaucracy, facilitate trade exchange, and to support the private sector. (NAS, 2018)

## 2. Methodology

To build the theoretical framework and to show the basis on which border management and migration control is being build on, the legal approach and the analytical descriptive approach have been adopted in presenting policy and setting the legal rules adopted by Iraq in dealing with migrants, refugees, and asylum seekers on or across borders, and in the same context with regards to EU border management and migration control report in terms of conceptualisation of key terms and thematic areas.

Also the methodology included an investigative approach consisting of a desk review of laws and other public documents and reports; information gathered through roundtable discussions with stakeholders from governmental entities and local and international organizations; information gathered through micro-level interviews with Syrian refugees in camps, and through meso-level interviews with relevant organizations; and information gathered through direct meetings with officials working in the field.

The team conducted 29 interviews with the Syrian refugees in camps in the Kurdistan Region of Iraq (14 in Erbil, 11 in Duhuk, and 4 in Sulaimaniah). The team also conducted interviews with two organizations working with refugees: the UNHCR and the United Iraqi Medical Society (UMIS).

### Challenges

Access to information was a challenge faced by the research team. Most of the information related to Iraq plans and policies related to border management and control are not available in the public domain because such information are considered as a matter of national security. Officials who supported the team with information asked not to use their names or refer to them as the source of information. They also refrained from providing details to answer some of the questions addressed in this report.

### 3. Legal Framework

After 2003, Iraq's legal framework relied on the 100 orders issued by Mr. Paul Bremer, the Administrator of the Coalition Provisional Authority (CPA) between 2003 and 2004. These orders played an important role in shaping Iraq's political, legal, security and economic aspects including those related to the security of Iraqi borders and border crossings. They have binding instructions on the way Iraqis are governed including changes to Iraqi law. Also, they have penal consequences. Some of these laws are still applicable, some have been cancelled by new legislations (CPA Official Documents). The following are the orders still applicable and relevant to the subject of this report:

- Coalition Provisional Authority Order Number 2 - the Dissolution of Entities<sup>4</sup>

The Institutions dissolved by the Order referenced (the “dissolved entities”) are: the Ministry of Defence; the Ministry of Information; the Ministry of State for Military Affairs; the Iraqi Intelligence Service; the National Security Bureau; the Directorate of National Security (Amn al-'Am); and the Special Security Organization.

- Coalition Provisional Authority Order Number 26- Creation Of The Department Of Border Enforcement.

Section 1 calls for the establishment of the Department of Border Enforcement for Iraq as a department within the Ministry of the Interior to monitor and control the movement of persons and goods to, from, and across the borders of Iraq. The Department conducts its activities consistent with all applicable CPA regulations, orders, and memoranda, including CPA Order 16 regarding the temporary control of the Iraqi borders, ports and airports, and all Iraqi laws regarding immigration, emigration, customs and quarantine, including the Customs Law of 1984, unless specifically suspended by the CPA. (CPA, 2003)

Section 2 grants full authority, direction and control over all border-related functions to the Department of Border Enforcement, including border police, customs police, customs inspections, immigration inspections, border port of entry facilities protection, detention and deportation, coastal patrol, airport immigrations and customs processing, passport issuance and inspections, and nationality and civil affairs functions. The Ministry of Foreign Affairs retains the limited authority to issue diplomatic and official passports necessary for official travel. (CPA, 2003)

- Coalition Provisional Authority Order Number 16 (Revised) (Amended)- Temporary Control Of Iraqi Borders, Ports And Airports.

The order includes 19 sections focusing on the regulation of powers and functions related to border management. It includes detailed definitions, preservation of laws, right to exit, examination for entry, permits to enter Iraq, powers of an authorised officer,

<sup>4</sup>[https://govinfo.library.unt.edu/cpairaq/regulations/20030823\\_CPAORD\\_2\\_Dissolution\\_of\\_Entities\\_wi th\\_Annex\\_A.pdf](https://govinfo.library.unt.edu/cpairaq/regulations/20030823_CPAORD_2_Dissolution_of_Entities_wi th_Annex_A.pdf)

persons who may be denied entry to Iraq, notice to depart, revocation of a permit, identifications and seizure of documents, search of a person, search and seizure of goods, offenses, penalties, liability for removal costs, review, and collection of fees. (CPA, 2004)

- Coalition Provisional Authority Order Number 100- Transition Of Laws, Regulations, Orders, And Directives Issued By The Coalition Provisional Authority

The order reaffirms that the laws, regulations, orders, memoranda, instructions and directives of the CPA remain in force unless and until rescinded or amended by legislation duly enacted and having the force of law, as set forth in Article 26(C) of the Law of Administration for the State of Iraq for the Transitional Period (“TAL”).

The order states that the Government of Iraq will be responsible for interpreting and implementing these laws, regulations, orders, memoranda, instructions and directives following the transfer of full governing authority on 30 June 2004.

### **The Political Refugee Law No. 51 of 1971**

Prior to 2003, the government only recognized asylum applications for political or military reasons in accordance with The Political Refugee Law No. 51 of 1971. The law is still applicable and constitutes the only legal instrument regulating the status of refugees in Iraq<sup>5</sup>.

The law addresses political refugees in Iraq. Article 1- Third of the law defines the Refugee as any person who resorts to the Republic of Iraq for political or military reasons.

Article 2 allows for Arab citizens or citizens of other countries residing outside Iraq, residing in Iraq, or displaced who crossed the Iraqi border and are actually in Iraq territory to apply for asylum in Iraq<sup>6</sup>.

Article 3 lists the conditions for approving an application for asylum. The applicant should prove that he is a refugee; proves his good intention in resorting to the Republic of Iraq; proves that his purpose is not to gain money; and proves credibility in his request<sup>7</sup>.

Article 4 prohibits the extradition of a refugee to his country under any circumstances. An applicant may be deported to another country in case the application is rejected.

Article 5 of the law provides for the formation of a Permanent Committee for Political Refugees’ Affairs in Baghdad. It is responsible for examining refugee cases in accordance with the instructions issued by the Minister. The Committee is headed by the Deputy Minister of Interior or his designee. Its membership is composed of representatives from: the Revolutionary Command Council; the Ministry of Interior; the Directorate of Military Intelligence; the Directorate of Public Security; and the General Directorate of Nationality. The Committee is administratively

<sup>5</sup> Iraq applied these provisions only to political or military oppositions from neighboring countries which Iraq has a tensed relation with, like the Iranian Mujahedeen-e-Khalq.

<sup>6</sup> This is to remove any doubts as to whom is included by the provisions of this law, since nationalists regard all Arabs as members of one nation.

<sup>7</sup> Political Refugees in Iraq used to enjoy exceptional living conditions.

and financially linked to the Ministry of Interior, including salaries, allowances and expenses for the refugees. The Committee may assign Iraqi diplomatic missions the task of investigating persons residing outside Iraq.

Article 6 sets the responsibility of the committee to submit recommendations with justifications on each case to the Minister of Interior for final decision. The decision of the minister can be appealed before the President of the Republic within 15 days of the date of notification. Decisions of the President of the Republic are final.

Article 16 of the law grants the Minister of Interior the power to revoke the decision of asylum if the refugee breaches the security or political interest of the state. He may order the deportation thereof, in addition to referral to the court if his act is punishable by law. The Minister may issue an order to detain a refugee in the event of a breach of security or the order for a period not exceeding two months pending the decision to deport him.

### 3.1. Key Developments Since 2011

Iraq has enacted several laws aiming at improving its capacity to protect borders and to better manage the movement of people and the flow of goods to and from of the country, such as:

- Ministry of Interior Law No. 20 of 2016 comes as part of the Government of Iraq's ongoing security sector reform efforts.
- Border Crossings Commission Law No. 30 of 2016

The Border Crossing Commission is an independent commission responsible for improving the quality of services provided at border crossings through coordination among all ministries and entities. It is also responsible for identifying offences and developing the capacity of the staff working there. In addition, the Commission is responsible for providing adequate premises for better provision of services.

The Border Crossing Commission Law identifies the need for coordination among representatives of<sup>8</sup>: the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Interior, the Ministry of Health, the Ministry of Transport, the Ministry of Commerce, the Ministry of Agriculture, the Ministry of Planning, the Ministry of Tourism and Antiquities, and the Intelligence Service.

- The Foreigners' Residency Law No. 76 of 2017

The Foreigners' Residency Law No. 76 of 2017 aims at regulating entry and exit of nationals of other countries to the Republic of Iraq; identifying types of entry and exit visas for foreigners to the Republic of Iraq; and regulating the residency of nationals of other countries inside Iraq.

For regulating international protection for refugees, The Council of Ministers approved in 2017 the Asylum Bill. The bill came as a joint effort from the Ministry of Interior, the Ministry of

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<sup>8</sup> Border Crossings Commission Law No. 30 of 2016; Article 4- First- D



Migration and Displacement, and UN agencies in Iraq. The government then referred the bill to the Council of Representatives and was never enacted.

Dr Hunain Al-Qaddo, Member of the Standing Committee on Migration and Displacement at the Council of Representatives, said in an interview with the Baghdad Post on August 8, 2018 “Passing the law without thorough research may trigger security concerns in the first place. It needs more discussions since the general situation in the country is unstable and the fear that unwelcomed figures may enter the country.” Al-Qaddo recognizes the presence of many refugees from Sudan and Syria in Iraq but there is no law to regulate their affairs, and that Iraq needs a law to regulate the affairs of refugees in order to maintain the security of the country. “One of the impediments to enacting the law is the fact that many Iraqis are currently applying for asylum in many countries around the world, so how will Europe receive them while Iraq is enacting a law for asylum and receiving citizens from the world” he added.

As such, The Foreigners’ Residency Law No 76 of 2017 and the Political Refugees Law No. 51 of 1971 as amended are the only applicable laws to regulate the status of Refugees and Asylum seekers in Iraq. In the absence of an enabling legal environment, the response to the refugee crises and mass displacement revealed the need to maintain good level of coordination and communication between the Iraqi authorities, both on federal and regional levels, and with the international organizations. The Joint Coordination Center (JCC) was established to respond to the crisis of Syrian refugees and Internally Displaced Iraqis, most of whom sought refuge in Kurdistan Region of Iraq.

The Joint Crisis Coordination Centre (JCC) of the Kurdistan Regional Government was established on September 11, 2014 pursuant to the Council of Ministers Executive Order No. 5719, in reference to the Cabinet decision during a regular meeting on 1 September 2014.

The JCC acts as a lead institution for coordination and management of all phases of crisis and disaster, such as risk assessment and mitigation, early warning and preparedness, response and management, and recovery from the current humanitarian crisis and all future man-made and natural disasters and crisis as well as new emergencies. The JCC holds a long-term mandate and function as a “one-stop-shop” communication hub between Governorates Crisis Response Offices and the Ministries, Departments and the International Community as well as with the federal government in Baghdad.

## 3.2 Pre-Entry Measures

### Visas

The Foreigners’ Residency Law No. 76 of 2017 is the applicable law regulating the entry and exit of nationals of other countries to and from the Republic of Iraq; identifying types of entry and exit visas; and regulating the residency of nationals of other countries inside Iraq.

The law provides for the nationals of other countries to have a passport or travel document with not less than six months validity; having an entry visa stamped in a passport or travel

document upon arrival, and a stamped exit visa upon departure; proof that the national of other countries is free of communicable diseases, infectious diseases and HIV; and to enter and exit the country through the official border crossing points<sup>9</sup>.

Also, the law provides for the applicant to submit proof of: his financial ability to cover the costs during his stay in the country; the fact that there is no impediment to his entry into Iraqi territory related to public health, public morals, or public security; not having been accused of or convicted with a crime outside Iraq; not having been deported or expelled from the country unless the causes are removed, provided that two years have passed since deportation or expulsion; and being free of communicable diseases, infectious diseases and HIV<sup>10</sup>.

Prior to the Kurdish referendum for independency on 25 September 2017, Iraq used to have a dual system for granting visas to nationals of other countries. At the time the federal government provides for citizens from other countries to get a visa prior to their travel to Iraq, the Kurdistan Regional Government continued to implement the orders of the Coalition Provisional Authority dealing with holders of European, American, Australian passports and others with great tolerance. They granted visas directly upon arrival to the airports or ports of entry of the Kurdistan region of Iraq. In 2018, both the federal and regional governments agreed to follow a unified process.

The Ministry of Foreign Affairs published in details the requirements for obtaining Iraqi visas for nationals of other countries intending to visit Iraq; Iraqi nationals holding foreign passports; and for nationals of other countries married to Iraqi citizens.

Iraq may deny entry to some people for security reasons. The process of granting Iraqi visa to nationals of other countries must be approved by the security services after being checked against a “white and black list” if the person is engaged in terrorist activities or constitutes a threat to national security.

### Carrier sanction legislation

Section 15 of the Coalition Provisional Authority Order Number 16 (Revised) (Amended) - Temporary Control of Iraqi Borders, Ports and Airports on Liability of Removal Costs regulates the responsibility of carriers to ensure that the persons it transports to Iraq are in possession of all travel documents required by applicable law. It presents each person to an authorized officer for examination upon arrival of each vehicle to Iraq, and that no person leaves the vehicle at any place other than that which is designated by an authorized officer, or until permission has been granted by an authorized officer.

If a person arrives at Iraqi border points, the authorized officer may ask the transporting company to transport the person back to the country he came from, or to a third country as the authorized officer may approve at the request of the company<sup>11</sup>.

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<sup>9</sup> Article 3 of The Foreigners’ Residency Law No. 76 of 2017

<sup>10</sup> Article 8 of The Foreigners’ Residency Law No. 76 of 2017

<sup>11</sup> CPA Order Number 16 of 2004

If a person fails to present valid travel document required by applicable law upon arrival to Iraq, the transportation company that has transported the person to Iraq shall be responsible for covering all costs of returning that person to the country from which he came, or a third country as an authorized officer may approve at the request of the company<sup>12</sup>.

A transportation company that has transported the person to Iraq and that is required to transport him from Iraq is entitled to reimbursement by the Ministry of the Interior for the costs of transportation if the person has been granted entry to Iraq and was in possession of valid travel documents excluding a person who enters Iraq as, or to become, a member of the company's crew<sup>13</sup>.

If Iraq decides to deport a person who enters Iraq as, or to become, a member of a transportation company's crew, the transportation company that operates that vehicle may be required to remove that person from the country and return him to the country from which he came, or to such other country as the Ministry of the Interior may approve at the request of the company. The transportation company shall be liable to pay all costs of transporting that person from Iraq<sup>14</sup>.

The Iraq team held a meeting in April 2019 with Mr. Ahmad al-Naqash, an expert at the Iraqi Air Lines where he confirmed that the Residency Directorate at the Ministry of Interior keeps a detailed list of passenger identification information, similar to that which Iraq is asking the carriers to submit in advance.

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<sup>12</sup> CPA Order Number 16 of 2004

<sup>13</sup> CPA Order Number 16 of 2004

<sup>14</sup> CPA Order Number 16 of 2004

### 3.3 ‘At the Border’ Controls

Border management and migration control are generally the responsibility of the Iraqi government through its security agencies.

The Ministry of Interior is responsible for securing and protecting Iraq’s international borders from unlawful entry of both people and material. Its key tasks include: fixed-point surveillance from border forts and annexes; security patrolling between fixed sites and ports of entry; interdiction of people, goods, and equipment in the international border regions and the coastal area; and detention, processing, and expulsion of foreign fighters and contraband. In the Kurdistan Region of Iraq, the Asayish is responsible for performing the above mentioned tasks.

The entry of nationals of other countries to Iraq is regulated by the provisions of the Foreigners’ Residency Law No. 76 of 2017. Officers of the Residency Directorate at the Ministry of Interior are the authorized officials present at the borders, airports and other ports to ensure the compliance with all requirements in order to grant the person entry to Iraq. The person is required to be in possession of a valid passport or any travel document permitted by Iraqi law. The authorized officer feeds the Database of the Ministry of Interior with all traveller’s information and based on that the person may or may not be allowed to enter Iraq.

Pursuant to the Refugee Law No. 51 of 1971, the General Secretariat of the Iraqi Council of Ministers formed the Permanent Committee for Refugee Affairs at the Ministry of Interior (PCMOI) in March 2009 as the entity responsible for the registration of refugees in Iraq, provide them with refugee identification cards, and deciding on their status. The committee works in close coordination with the UNHCR to follow up on the legal status of those seeking resettlement in third countries. The committee is headed by the Senior Deputy to the Minister of Interior. (cabinet.iq, 2009)

The PCMOI works in coordination with the authorities of the Kurdistan region of Iraq. All refugee related matters are referred to the committee for consultation and recommendation. Recommendations of the committee are referred to the Minister of Interior for final decision. (al-Shawi, 2019)

#### Border surveillance at sea and sea rescue

The Iraq Navy is part of Iraq armed forces. It is responsible for protecting Iraq costal line and Iraq assets offshore (pipe lines, oil platform, oil vessels...etc.). The Iraqi Council of Representatives passed a new law in March 2019 on the Supreme Iraqi Maritime Commission. The commission is linked to the Ministry of Transportation. Among other issues, the commission is responsible for searching and rescue efforts within the Iraqi water and beyond.

Iraq has ratified many treaties and conventions, including:

- Convention on the International Maritime Organization
- Protocol Of 1988 Relating To The International Convention For The Safety Of Life At Sea, 1974, As Amended, Law No. 44 of 2015<sup>15</sup>.
- Convention on the International Regulations for Preventing Collisions at Sea, 1972

<sup>15</sup> <http://arb.parliament.iq/archive/2015/10/13/20377/>

### 3.4 Internal controls (within Iraq, and within Kurdistan Region)

The critical security situation in Iraq provides for taking extra security measures inside towns and cities as well as along main roads connecting Iraq various governorates. Fixed or temporary check points may be established along main roads or the entrances of neighborhoods inside the cities. Regular verification of identities is performed at check points, and public place.

On the local level, security forces collect information about families living within the area under their control on regular basis. When renting a house for a citizen of other countries or for an Iraqi, a support letter must be obtained from the local council in the neighborhood.

Hotels must provide detailed lists of their guests to the security authorities. Hotels have clear instructions not to allow citizens of other countries to stay unless they have a valid visa.

#### Internal control and apprehension measures

The internal control of movement of citizens is performed through multiple procedures. There are check points controlling the entrance and exit to and from all Iraqi cities. A passenger may be subject to inquiry at any time and may be asked to show identification, passport, proof of residency, or a valid visa. Failing to do so will subject the person to legal measures. Undocumented (unauthorized) migrants are subject to the provisions of the Foreigners' Residency Law No. 76 of 2017.

One of the requirements for processing a visa request for non-Iraqis is to provide an invitation letter with the contact information and address of the applicant's sponsor. A person with a multiple entry visa is required to check-in with the Residency Directorate at the Ministry of Interior within ten days of entrance for a health check and verification of address and place of residency.

The Minister of Interior, or his designee, has the power to restrict the place of residence of a foreigner, or a stateless person who presents a threat to public security. The restriction period is specified in the decision of expulsion or deportation<sup>16</sup>. A person with an expired visa faces a penalty of 100,000 Iraqi Dinars, adding to that a fine of 10,000 Iraqi Dinars for every day spent after the expiration of the visa provided that the total penalty does not exceed 5,000,000 Iraqi Dinars<sup>17</sup>.

Although Articles 11, 12 and 13 of the law grant the political refugee many benefits; Articles 14, 15, 17 and 18 oblige the Ministry of Interior and other security agencies to follow up on all matters related to the political refugee. Change in place of residence or movement inside and outside Iraq require the approval of the Minister of Interior, and the approval of the President of the Republic for a vacation outside Iraq exceeding one month.

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<sup>16</sup> Article 28 and 29 of the Foreigners' Residency Law No. 76 of 2017

<sup>17</sup> Article 44 of the Foreigners' Residency Law No. 76 of 2017

### **3.5 Return, detention for return and readmission**

Article 16 of the Foreigners' Residency Law No. 76 of 2017 grants the Minister of Interior the power to revoke the decision of asylum if the refugee breaches the security or political interest of the state. He may order the deportation thereof, in addition to referral to the court if the refugee act is punishable by law. The Minister may issue an order to detain a refugee in the event of his breaching security for a period not exceeding two months pending the decision to deport him.

Article 32 of the law states that a deported national of other countries cannot enter Iraq without a prior decision from the Minister of Interior.

Chapter Five of the law (Articles 24-35) regulate the process of deportation and expulsion of citizens of other countries from Iraqi territories. Article 26 grants the right to the officer in charge at the border to directly expel a citizen of other country who has illegally entered the country. Article 27 gives the right to the Minister of Interior, or his designee, to deport a citizen of other countries who has legally entered Iraq but who is non-compliant with visa requirements; or a foreign resident who lost one of the conditions for his residency in Iraq. Article 28 and 29 give the right to the Minister, or his designee, to restrict the place of residence of a citizens of other countries, a stateless person, or a person who presents a threat to public security for a period specified in the decision of expulsion or deportation. Article 31 states that a decision to deport a citizen of other countries may include the deportation of his dependents. Article 32 states that a deported citizen of other countries cannot enter Iraq without a prior decision from the Minister of Interior. Article 34 gives the right to the citizen of other countries to ask for a period not exceeding 60 days in order to settle his affairs in the country before deportation provided that he has an Iraqi grantor.

The law does not include provisions for appealing decisions of deportation or expulsion. Chapter Seven of the law (Articles 38-48) sets penalties in case of violations to its provisions. Penalties vary from imposing fines to imprisonment, or both; as well as deportation.

It is worth mentioning that Iraq supports the principle of voluntary return of refugees or internally displaced persons to their countries or original place of residency. This is affirmed in the literature of the government, in the Law of the Ministry of Migration and Displaced, and reflected in the statements of Iraq politicians.

## 4. Key narratives: conceptualisation of border/migration control, problems, solutions

The perception of migration in Iraq is mostly focused on threats to security driven by the fact that Iraq has been a target for insurgencies and extremists since 2003, on one hand; and on possible changes to the social texture of the Iraq society, on the other hand.

In a statement issued shortly after assuming office, the Iraq Prime Minister stressed in a statement on the importance of taking all measures to secure and control Iraq border with Syria to prevent terrorists and criminal groups from crossing the border. (Annabaa News Agency, 2018)

The PM media office announced that the PM issued a set of orders and directives contributing to securing the borders and preventing breaches through promoting land and air surveillance, as well as providing the Border Forces with all their needs. (RT ONLINE, 2018)

In September 2017, The Iraq Council of Ministers approved a Bill on Refugee in Iraq pursuant to Article 61-First and Article 80-Second of the constitution. A statement published on the website of the General Secretariat of the Council of Ministers says the law intends to regulate the rules of asylum and measures for asylum in the Republic of Iraq to include all cases of humanitarian or political reasons, or threat and persecution because of race, religion, nationality or social affiliation. The bill was referred to the Council of Representative for enactment. The council failed to pass the law due to severe political differences.

Politicians are divided around the draft. Some see the importance of enacting a law that responds to the provisions of the constitutions and to the international standards at a time when there are thousands of refugees inside Iraq, in addition to thousands of applications for asylum pending final decisions.

MP Ali al-Ghanmi, member of the Standing Committee on Security and Defence at the Iraqi Council of Representatives, said in a statement "the Iraqi state needs to legislate the refugee law under the current conditions in the region," adding that "the legislation of this law at this particular time is a positive indicator of Iraq security, and political and economic stability". (Sabah, 2019)

Other politicians are sceptical about the impact of refugees on the future of the Iraqi society, refusing to legislate a law equating Iraqis with refugees.

MP Hussein Hassan Narmo, Member of the Standing Committee on Labor, Social Affairs and the Displaced, said "multiple problems were raised when the draft was discussed in the committee. Some members are thinking of rejecting this legislation". He added "they fear that acceptance of applications for asylum and gaining the Iraqi nationality would be reflected on the reality of Iraqi society". (Sabah, 2019)

MP Alia Nusaif, member of the State of Law Parliamentary Bloc, clarified in a statement that Article 14 of the draft law provides that the Minister may calculate the period of asylum exceeding ten years spent by a refugee in the Republic of Iraq as continuous residence for the purposes of naturalization to gain the Iraqi nationality. Also, the acceptance of asylum legitimates the entry for Iraq. (Baghdad Post, 2019)

In her statement, MP Nusaif said ""With all our respect for all people and all refugees, taking into account all the humanitarian aspects that led them to seek asylum, we see this article would have dangerous future consequences that will make Iraq a country full of naturalized foreigners, like the bad experiences of some Gulf states like Bahrain, one can see Pakistani police officers stopping the cars of indigenous Bahrainis forcing them to step down from their cars and impose penalties and fines on them". (Baghdad Post, 2019)

One of the realities in Iraq is the influence of political parties on the management of border crossings. High level corruption and the influential non-state armed actors remain the main challenges facing the efforts to secure state borders without undermining human rights.

According to the Iraq Corruption Report published by GAN, a business anti-corruption portal, the Iraqi customs administration suffers from widespread corruption. Trading across borders is reportedly difficult, and the process is plagued by corruption and bribery.

Iraq has taken important steps related to border protection, control and management. One example is the enactment of a new law restructuring the Ministry of Interior and clearly setting its goal and the scope of work of each of its formations, including border management and control. Also, Iraq enacted a law for the creation of the Border Crossings Commission as an independent commission directly linked to the Prime Minister and responsible for the management of infrastructure at border cross points. Yet, both laws do not include provisions reflecting humanitarian response when managing borders.



## 5. Implementation

The control of Iraqi borders is a matter of sovereignty and it is the responsibility of the Iraqi authorities.

The dissolution of state security forces after 2003 highly affected Iraq ability to protect its borders. The process of re-establishing Iraq armed and security forces started in 2005. Iraq witnessed a setback in 2014 after ISIS invasion to large swaths of Iraq. Iraq lost control over its borders with Syria and Jordan to ISIS.

The presence of ISIS on both sides of the Iraq-Syria border created a fertile space for terrorists, smugglers, and human traffickers to move. It was until 2017, when Iraq defeated ISIS, Iraq started to re-establish control over its borders again.

Border security remains critical, as the Iraqi Security Forces has limited capability to prevent smuggling across the Iraq-Syria border. Iraq conducted biographic and biometric screening at multiple land and air ports of entry and began issuing biometric passports in early 2018. It shared biometric information on known and suspected terrorists and exemplars of its identity documents with the United States, INTERPOL, and other international partners.

Also concerning the influx of Syrian refugees after 2011, there was not a comprehensive political practice, rather Iraqi authorities at some border points dealt exceptionally with it. Both the Asayish in the Kurdistan Region of Iraq (KRI) and border police in Anbar Governorate turned a blind eye on the applicable legal provisions in order to facilitate the entrance of Syrian refugees to Iraq.

Based on information collected through interviews with Syrian Refugees, the Asayish provided unprecedented support for Syrian refugees of Kurdish or Christian Assyrians origins, from the provinces of Hasakah, Qamishli and Aleppo. But, it denied entrance to Syrian citizens of Arab origin.

Additionally, the lack of clear legal and regulatory framework in the public domain is a serious problem, not just for researchers, but for those enforcing them. Laws are enacted with limited clarity leaving nearly all the details related to day-to-day implementation to the discretion of the official in charge. A lack of standard operating procedures may cause discriminatory treatment and may open the door for corruption and favouritism. For example, refugees in the Kurdistan region of Iraq get a residency card that grants them the right to work and move freely in the region; while refugees in other parts of Iraq can only get the protection letter from the UNHCR. They are not entitled to residency or a work permit.

Once the Council of Representatives passes the controversial draft Asylum Bill, submitted by the government at the end of 2017, many of the problems associated with rights of refugees and asylum seekers will be tackled.

## 5.1 Key actors

There are multiple governmental actors involved in the implementation of border management and control policies. As part of the research, the Hammurabi Human Rights Organization conducted a roundtable discussion on December 15, 2018, bringing together representatives from the Ministry of Migration and Displacement, UN Agencies and local NGOs to get insight into their experiences relevant to border management and control.

- The newly formed Border Crossing Commission is responsible for improving the quality of services provided at Border Crossing Points through coordination among all ministries and entities. It is also responsible for identifying offences and developing the capacity of the staff working there. In addition, the Commission is responsible for providing adequate premises for better provision of services.

The Border Crossing Commission Law identifies the need for coordination among representatives from<sup>18</sup>:the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Interior, the Ministry of Health, the Ministry of Transport, the Ministry of Commerce, the Ministry of Agriculture, the Ministry of Planning, the Ministry of Tourism and Antiquities, and the Intelligence Service.

Although the Ministry of Migration and Displacement is mandated with providing assistance to refugees, the law did not provide for a representative from the ministry to be part of the Border Crossing Commission.

- There are multiple actors responsible for various issues within the Ministry of Interior. Issuing passports is the responsibility of the General Directorate for Passports. Issuing visas is the responsibility of the Residency Directorate. Approval for entry or deportation is the responsibility of the Deportation and Removal Division within the Residency Directorate.

Security apparatus represented by the police and the elements of national security are responsible for tracking persons with expired visa through the internal inspection points. Once a person is identified, the Deportation and Removal Division within the Residency Directorate starts the deportation process. The person is kept in temporary detention facilities until being deported.

Similarly, in Kurdistan Region of Iraq, the Residency Directorate is responsible for approving entry through the border crossings in the region in compliance with Foreigners' Residency Law No. 76 of 2017. The Asayish, is the apparatus responsible for internal security in the region.

The Permanent Committee for Refugee Affairs at the Ministry of Interior is the exclusive entity responsible for all refugee related matters and asylum seekers' cases. The committee includes in its membership a representative from the government of the Kurdistan Region of Iraq.

- Meetings with Syrian refugees reveal the fact that the Syrian government lost control over its North-eastern border with Iraq.

After 2011, control of the Syrian side of the border fell to non-state actors such as the PKK, YPG, and fighters from the Kurdish People's Protection Force. According to statements from Syrian refugees, the non-state actors are controlling the road to the border crossings, forcing Syrian refugees to walk their way at night through long, muddy

<sup>18</sup> Border Crossings Commission Law No. 30 of 2016; Article 4- First- D

and unpaved roads or cross the river. Some were subject to extortion, others had to rely on smugglers (interviews with Syrian refugees, 2018).

## 5.2. Key issues implementing border and migration controls

Based on information from the meso and micro level meetings, the practice differs from the legal framework. Interviews with Syrian refugees revealed that they did not face problems when crossing the border points in Kurdistan region of Iraq. The Asayish facilitated entrance especially for Syrians from Kurdish origins and Assyrian Christians, but did not provide the same treatment for other ethnic groups. One interviewee reported that the Asayish denied entrance to his friend who was with him on the ground of being non-Kurdish

Unlike with the Kurdish authorities, Syrian refugees who tried to cross the border at al-Anbar in 2011 and 2012 faced strong resistance from the security forces and local authorities there. It was the pressure of the Arab tribes that forced the authorities to allow Syrians from Dair Al-Zur, Al-Raqa and surrounding areas to enter Iraq.

In Anbar, the Arab tribes had a positive influence on the authorities, persuading them to grant entrance to Syrian refugees, specifically the Syrians from Deir al-Zour, al-Raqa and the areas bordering Iraq, due to the deep relations between the two sides<sup>19</sup>.

The local authorities in Anbar Governorate provides special treatment to Syrian refugees in the province as related to their legal status. This reflects the realization of local authorities to their difficult human and living situation. In addition, The authorities realizes the threat to their lives they face in their countries If Iraq denys them entry. They are registered at UNHCR as asylum seekers.

### 5.2.1 Pre-Entry

Iraq has rules and regulations for persons of other nationalities to follow before visiting Iraq. This includes visa requirements where a person must apply for an Iraqi visa through the diplomatic missions in their countries.

The pre-entry requirements and the requirements for obtaining a visa for Iraq is now equivalent to the Schengen requirements. It is published on the official website of the Ministry of Foreign Affairs as well as the websites of Iraq diplomatic missions abroad.

Granting an Iraqi visa requires security check and a sponsorship from an Iraqi citizen or entity registered in Iraq, local or international.

Before entering Iraq, refugees and asylum seekers, must submit an application through the Iraqi diplomatic missions abroad or at the border points. The Permanent Committee for Refugees Affairs at the Ministry of Interior has the exclusive power to review applications and issue recommendations to the Minister of Interior to decide on.

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<sup>19</sup> Some of the Arab tribes on both sides of the border between the two countries has an intertwined relations. Tribes on the Iraq-Syria border have had a role in exerting pressure on the Iraqi authorities to take exceptional measures and approve the entry of Syrian refugees to Iraq in 2011. This is driven by kinship relations between them from one side, and in response to the sympathy shown by Syrians in hosting Iraqis during the two Gulf wars in 1991 and 2003 on the other side. In addition, tribes play an influential role in the security and stability of border areas since they can support the authorities with intelligence information and can assist in the protection of borders.

### 5.2.2 'At the Border'

Approving an application for refugee or asylum at the border points depends exclusively on the recommendation of the Permanent Committee for Refugees Affairs, and the approval of the Minister of Interior. The application must be submitted and approved before the applicant enters the country. In the event of submitting the application at the borders, the applicant must stay at the police station until the Minister of Interior decides on the application. This would take 60 days according to the law.

A refugee or an asylum seeker must turn himself to the security forces at Iraq border points. The key actors at the border points are officials from the Residency Directorate at the Ministry of Interior. The application will be referred to the Permanent Committee for Refugees Affairs as the only entity with the right to review the application, assess his status, and submit a report to the Minister of Interior who has the legal right to approve or reject the request.

### 5.2.3 Internal controls

Iraq has legal procedures for internal control as related to refugees and persons from other countries staying inside Iraq.

A person may be subject to identification check at permanent and temporary check points established at the entrances and exit points of towns and cities, or by police patrols inside the cities. They are entitled to ask for identity verification documents. Legally, hospitals, schools and other public service providers has no right to provide their services in the absence of identity verification documents. The same procedures applies to hotels and other accommodation vendors.

Failing to provide such a document would deny the person the ability to enjoy services or put him in danger of facing legal consequences.

### 5.2.4 Return and deportation

The Iraqi legal system supports voluntary return of refugees and displaced persons to their places of origin. Unlawful residence inside Iraq are subject to financial penalties and deportation. The Residency Directorate has a temporary detention center (Tasfeerat in Arabic) in each governorate used for deportation.

A person applying for refugee or asylum at the border points in Iraq will be detained in the police stations at the border point until the Minister of Interior decides to approve or reject his application.

Readmission to Iraq requires an approval from the Minister of Interior after submitting a request through Iraqi diplomatic missions abroad.

## 5.3. Cooperation among national and supranational actors

The lack of enabling legal system and standard operational procedures reflect a poor level of preparedness and responsiveness during crises.

Iraq and the international organizations working inside Iraq faced huge challenges in responding to the massive displacement across the borders with Syria and the massive internal displacement after ISIS control over one third of Iraq land.

Nevertheless, given the volume of the crisis, Iraq took some measures to respond to the crisis relying on the applicable legal provisions of the Political Refugee Law No. 51 of 1971 and of the law of the Ministry of Migration and Displacement No. 21 of 2009.

Iraq Federal Government and the Government of the Kurdistan Region of Iraq worked together and with the international community to establish an effective response system. The multifaceted contribution of international organizations came in the form of financial, logistical, and intellectual support; capacity building and trainings to relevant Iraqi institutions and officials; support to reform Iraq legal system...etc.

Iraqi national and regional governments are currently working together and with the donor community to develop a holistic border management system and standard operational procedures.

## 6. Conclusion

Migration has become a primary concern for all countries including Iraq. Migration and borders are directly linked. Iraq's legal system regulates the entry and exit of people across its borders. The political events that stormed the region, especially the situation in Syria, forced Iraq to deal with an unprecedented influx of refugees. Iraq was not fully prepared, legally or logistically, to respond to such an influx Iraq's previous experience in receiving refugees is limited to receiving political opponents from neighboring countries such as opponents of the Iranian regime or Turks of Kurdish origin with a total of no more than a few thousand while the numbers of Syrian refugees exceeded 250,000 refugees between 2011- 2015.

Iraq should take serious steps towards reviewing its legal system as it relates to asylum and the management of borders to be able to respond effectively to the volume of migration and its impact, and to manage it in a civilized and humane manner.

Although the Iraqi laws on borders and immigration do not rise to the level of the European Union, Iraq did take significant measures to respond positively to the crisis in terms of managing its borders and the influx of refugees at a time the country was facing massive security crisis.

Iraq has taken steps to join bilateral and multilateral agreements focusing on facilitating trade and the movement of people and goods, but it has not incorporated the human aspects in its legal system yet. Iraq does not have special detention centers or waiting facilities for the asylum seekers or passengers facing problems at the border crossings to use apart from police stations. This means that the human side is not yet being recognized.

## 7. Recommendations

Iraq can build upon its practical experience and the field work conducted by many of its entities to enact laws and regulations derived from its best practices in response to the influx of refugees and their humanitarian needs, and to respond to the international human rights standards.

Unifying governmental efforts on the federal, regional and provincial levels, and complying with the laws and with the powers and authorities stated in the constitution would enhance security and improve management and control of Iraq borders.

Iraq needs to make all regulations, instructions, and directives public. Officials need to understand that building awareness of the public on legal issues will positively contribute to the security of the state.

## Appendices

### ANNEX I: The EU- Iraq Partnership and Cooperation Agreement

Article 105 of the agreement sets the terms for Cooperation on Migration and Asylum as follow:

1. The Parties reaffirm the importance, which they attach to a joint management of migration flows between their territories. With a view of strengthening cooperation between them, they shall establish a comprehensive dialogue on all migration-related issues, including illegal migration, smuggling of migrants and trafficking of human beings, as well as the inclusion of the migration concerns in the national strategies for economic and social development of the areas from which migrants originate.
2. Cooperation shall be based on a specific needs assessment conducted in mutual consultation between the Parties and be implemented in accordance with the relevant Union and national legislation in force. It will, in particular, focus on:
  - (a) The root causes of migration;
  - (b) the development and implementation of national legislation and practices regarding international protection, with a view of satisfying the provisions of the Geneva Convention of 1951 related to the status of refugees and of the Protocol of 1967 and other relevant international instruments, and of ensuring the respect of the principle of 'non-refoulement', while recognising that Iraq is not yet a party state to the Geneva Convention of 1951 related to the status of refugees and of the Protocol of 1967, but that it is considering the possibility of acceding to them in the future;
  - (c) The admission rules, rights and status of persons admitted, fair treatment and integration of lawfully residing non-nationals, education and training and measures against racism and xenophobia;
  - (d) The establishment of an effective and preventive policy against illegal migration, smuggling of migrants and trafficking of human beings including the issue of how to combat networks of smugglers and traffickers and how to protect the victims of such trafficking;
  - (e) The return, under humane and dignified conditions, of persons residing illegally including the promotion of their voluntary return, and the readmission of such persons, in accordance with paragraph 3;
  - (f) The field of visas, on issues identified as being of mutual interest, in the framework of existing Schengen acquis;
  - (g) The field of border management and control, on issues related to organisation, training, best practices and other operational measures on the ground and where relevant, equipment, while being aware of the potential dual use of such equipment.
3. In the framework of the cooperation to prevent and control illegal immigration, the Parties also agree to readmit their illegal migrants. To this end:
  - (a) Iraq shall readmit any of its nationals who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence in the territory of a Member State of the Union, upon request by the latter and without further formalities;



(b) and each Member State of the Union shall readmit any of its nationals who do not, or who no longer, fulfill the conditions in force for entry to, presence in, or residence on the territory of Iraq, upon request by the latter and without further formalities;

4. The Member States of the Union and Iraq will provide their nationals with appropriate documents confirming identity in order to permit travel for such purposes. Where the person to be readmitted does not possess any documents or other proof of his or her nationality, the competent diplomatic and consular representations of the Member State concerned shall, upon request of Iraq or the Member State concerned, make arrangements to interview the person in order to establish his or her nationality.

5. In this context, the Parties agree to conclude, upon request by either Party as defined in the Article 122 and as soon as possible, an agreement on preventing and controlling illegal migration and regulating the specific procedures and obligations for readmission, covering also, if deemed appropriate by both Parties, the readmission of nationals of other countries and stateless persons.

6. Cooperation in this area will take place in full respect of the rights, obligations and responsibilities of the Parties arising from relevant International Law and International Humanitarian Law.

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