

# Iraq's Judiciary Weak Link

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## ABOUT THE AUTHORS



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Brief Analysis

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**Regardless of the executive branch's willingness to confront militia abuses, true rule of law cannot take hold unless judges are protected from intimidation and corruption.**

On June 9, the Iraqi judiciary released militia leader Qasim Muslih just two weeks after **he was arrested** (<https://www.washingtoninstitute.org/policy-analysis/iraqi-militias-try-and-fail-intimidate-government>) for the premeditated murder of a protest leader, rejecting government investigators' requests for more time to gather evidence. A formal indictment or even an investigative extension would have boosted hope that Iraq can turn a corner in controlling criminal militias. Instead, the so-called "resistance" factions have been celebrating Muslih's release, albeit in a muted fashion to spare the judges some embarrassment.

The case is a reminder that Iraq's judiciary is the weakest link in the state's ability to protect the Iraqi people and hold perpetrators accountable. There can be no rule of law—nor much of a state—if judges are unable or unwilling to evaluate evidence without fear of intimidation. As the executive branch and military leadership show improved capacity to chip away at the dominance of Iran-backed militias, the judiciary is the next item up for urgent repair, with focused help from Iraq's foreign partners. Otherwise, domestic and international confidence in the state may be undermined past the point of no return.

## How Iraq's Judiciary Works—or Fails to Work

Qasim Muslih is a leading figure in Iran's effort to control the Syrian border through its Iraqi proxies, working closely with top militia Kataib Hezbollah, a U.S.-designated terrorist organization. Despite this intimidating resume, the prime minister's office did not hesitate to order his arrest when intelligence services and special investigators found evidence of his alleged involvement in the May 9 assassination of protest leader Ehab al-Wazni.

Once an arrest warrant is generated by a judicial investigator and the suspect is detained, Iraqi law allows for fifteen days of pre-trial detention to allow evidence to be gathered. When this period ends, one of three outcomes is possible in a murder trial (with bail as another option in some circumstances):

1. **Formal indictment and referral to the appropriate court** if authorities meet the required standard of “sufficiency of evidence.” In Iraq, this equates to convincing a three-judge panel in an investigative court that the suspect is guilty “beyond a reasonable doubt.”
2. **Release and exoneration** if evidence from the investigating judges does not meet the sufficiency standard in the eyes of the panel.
3. **Extension of pre-trial detention** may be allowed by the investigative court in order to gather more evidence. This detention can be no longer than six months by law, and can be overturned by higher courts. Last year, for example, authorities arrested an accused Kataib Hezbollah rocketeer on June 25 and eventually extended his pre-trial detention through September, only to see the case fall apart later on.

Muslih’s fifteen-day clock started ticking on May 26, and the investigative court convened on June 7, two days before his pre-trial detention expired. The investigative judges sought additional time, but the Supreme Judicial Council—akin to the U.S. Supreme Court—steered authorities away from an extension. The council further recommended that Muslih be released and exonerated, with council president Faeq Zaidan leading the pressure. A similar process resulted in the collapse of the 2020 rocketeer investigation mentioned above, despite the collection of powerful evidence during the fourteen-week pre-trial detention period.

## Past Efforts to Protect the Judiciary

Iraq’s demonstrated trend of judicial intimidation is perhaps unsurprising in a country that has suffered a constant state of insurgency and intense terrorist penetration for nearly twenty years. In the past, the U.S.-led coalition invested significant resources in protecting Iraqi judges, courts, and witnesses so that prosecutions could be brought to conclusion against members of al-Qaeda in Iraq and the Islamic State. Today, the same kind of protection is needed so that judges can do their job when attempting to prosecute militia criminals.

One such mechanism is already in place: Committee 29 (aka the Detering Corruption Committee), the investigative body responsible for developing cases and issuing arrest warrants for suspects like Muslih. Formed on August 27, 2020, and led by retired general Ahmed Taha Hashim (aka Abu Ragheef), the committee has established a special protective system for its in-house judges and representatives from the Iraqi National Intelligence Service, National Security Service, and Counter Terrorism Service, enabling them to take action against even senior militia figures.

What is lacking is a broader protective system for investigative courts, courts of first instance (where trials are held), and appeals courts in provinces where cases are most likely to be brought (i.e., Anbar, Babil, Baghdad, Basra, Dhi Qar, Karbala, and Nineveh). Moreover, media outlets and international authorities rarely give adequate attention to the role that Iraq’s most senior judges play—or do not play—in supporting the impartiality and security of junior judges.

## Policy Recommendations

Rule of law underpins every major strategic objective pursued by Iraq’s foreign partners, from counterterrorism to fair elections, economic stabilization, human rights, and anti-corruption efforts. The judiciary is the weakest link in those processes, so the international community has a strong interest in supporting and protecting it. The urgency of this need was underlined most recently on June 7, when militia suspects assassinated a senior National Intelligence Service officer in Baghdad as he drove unprotected across the city.

In practical terms, this need could be met rather quickly with a few straightforward measures. Investigative courts

focused on politically connected figures are sporadic, and when they do occur, they only convene for one- or two-day sessions and involve small panels of judges. For the time being, then, all such cases could be handled by a single team of traveling judges, moving between jurisdictions as needed with their protective systems in tow. The draw on resources would be small, making this system relatively easy for international partners to back with training, technical support, and funding.

For trial courts and appeal courts, a different system is needed. Before 2011, the United States established “legal green zones” or “rule of law complexes” in several Iraqi cities, providing secure accommodations for small panels of judges, investigators, paralegals, detainees, witnesses, and close family members as justified by the level of threat. A similar set of small facilities should now be developed in Anbar, Babil, Baghdad, Basra, Dhi Qar, Karbala, and Nineveh to counter today’s threats. Existing resources should be retooled as much as possible—not just Iraqi facilities and institutions, but also international aid and technical support. Some of these improvements are already being made, from protecting the operations of Committee 29 to quietly **enhancing the prime minister’s facilities (https://www.washingtoninstitute.org/policy-analysis/muqawama-fake-news-surrounding-qasim-muslihs-arrest-part-1-international-zone)** and personal protection teams.

Yet more such progress is needed to ensure that militia figures do not have carte blanche to threaten and kill Iraqis who oppose their Iranian-backed agenda. Although the Supreme Judicial Council and senior judges like Zaidan are relatively well protected from attacks, they are nonetheless vulnerable to political intrigues against their positions and political inducements to issue rulings that favor militias. Preventing threats and corruption within the top judiciary echelons will require sensitive diplomatic spadework and institutional support, but successful efforts on this front would provide the highest payoff in terms of establishing rule of law. No major national anti-mafia or anti-corruption effort has ever succeeded unless supported from the top by senior judges who are relatively immune from intimidation. As such, the European Union or other multilateral organizations need to take Washington’s cue and support a much more intensive effort to protect Iraq’s judicial processes, particularly in ways that make the country’s senior judges feel the spotlight of international attention.

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