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# The legal foundations of the Islamic State

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## Introduction

Media coverage of the Islamic State in Iraq and Syria (hereafter “Islamic State”<sup>1</sup>) frequently refers to the group’s violent and seemingly archaic justice system, which purports to be reinstating the seventh century institutions of the original caliphate. Such narratives tend to fixate on the grotesque form that the violence takes—including decapitations, stonings, and immolations—without considering the institutional structures that enable it, or the broader function that it serves in the Islamic State’s ambitious state-building project. This paper presents a comprehensive overview of the legal institutions that the Islamic State uses to justify its violence and to legitimize its claim to sovereignty over millions of people and tens of thousands of square miles of territory.

External observers of armed groups that engage in terrorism often assume that such organizations are entirely lawless. For example, the U.S. Department of Defense defines terrorism as “the *unlawful* use of violence or threat of violence ... to instill fear and coerce governments or societies in pursuit of goals

that are usually political.”<sup>2</sup> But even though the actions of groups such as the Islamic State are plainly unlawful from the perspective of the United States, these groups often claim to be following the rules of their own legal systems. In recent years, an emerging literature on “rebel governance”<sup>3</sup> has established that many non-state armed groups in a variety of regional contexts—including the FARC in Colombia,<sup>4</sup> the Mai Mai in the Democratic Republic of Congo,<sup>5</sup> and the Maoist insurgency in India,<sup>6</sup> to name just a few—are much more rule-abiding and rule-creating than was previously recognized. In the Middle East, Islamist insurgent<sup>7</sup> groups including al-Qaeda, the Taliban, and most recently the Islamic State have developed elaborate systems of governance and service provision that challenge the sovereignty of the states that they are attempting to replace.

Scholars have long noted that legal institutions have played a critical role in the formation of modern states by legitimizing violence,<sup>8</sup> protecting economic transactions and property rights,<sup>9</sup> and justifying taxation<sup>10</sup> and military conscription.<sup>11</sup>

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1. I use “Islamic State” to refer to the group previously known as the Islamic State of Iraq (ISI, October 2006–April 2013), the Islamic State of Iraq and Sham (April 2013–June 2014), and the Islamic State or Caliphate (June 2014–present). I have chosen to use this term rather than alternative acronyms (ISIL, ISIS, IS, or Daesh) to mirror the group’s own self-appellation as “the Islamic State” (or “al-Dawla al-Islamiyya” in Arabic), following Cole Bunzel’s earlier paper in this series. See Cole Bunzel, “The Ideology of the Islamic State,” The Brookings Project on U.S. Relations with the Islamic World, no. 19, March 2015.
  2. U.S. Department of Defense, “Department of Defense Dictionary of Military and Associated Terms,” Joint Publication 1-02, November 8, 2010 (as amended through February 15, 2016), [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf) (emphasis added).
  3. For a comprehensive overview of this field, see Ana Arjona, Nelson Kasfir, and Zachariah Mampilly (eds.), *Rebel Governance in Civil War* (New York: Cambridge University Press, 2015).
  4. Ana Arjona, “Wartime Institutions: A Research Agenda,” *Journal of Conflict Resolution*, vol. 58, no. 8 (2014): 1360–1389.
  5. Kasper Hoffman, “Myths Set in Motion: The Moral Economy of Mai Mai Governance,” in *Rebel Governance in Civil War*, eds. Ana Arjona, Nelson Kasfir, and Zachariah Mampilly (New York: Cambridge University Press, 2015): 158–179.
  6. Suykens, Bert. “Comparing Rebel Rule Through Revolution and Naturalization: Ideologies of Governance in Naxalite and Naga India,” in *Rebel Governance in Civil War*, eds. Ana Arjona, Nelson Kasfir and Zachariah Mampilly (Cambridge: Cambridge University Press, 2015): 138–157.
  7. Drawing upon Nelson Kasfir’s definition of rebel organizations, I use the term “insurgent groups” to refer to “consciously coordinated groups whose members engage in protracted violence with the intention of gaining undisputed political control over all or a portion of a pre-existing state’s territory.” Kasfir, Nelson. “Rebel governance: Constructing a Field of Inquiry: Definitions, Scope, Patterns, Order, Causes” in *Rebel Governance in Civil War*, eds. Ana Arjona, Nelson Kasfir and Zachariah Mampilly (Cambridge: Cambridge University Press, 2015), 24.
  8. Max Weber, “Politics as Vocation,” in *From Max Weber: Essays in Sociology*, eds. H.H. Gerth and C. Wright Mills (New York: Oxford University Press, [1919], 1958).
  9. Douglass North and Barry Weingast, “Constitutions and Commitment: The Evolution of Institutions Governing Public choice in seventeenth-century England,” *The Journal of Economic History*, vol. 49, no. 4 (1989): 803–832.
  10. Deborah Bräutigam, “Introduction: Taxation and State-building in Developing Countries,” in *Taxation and State Building in Developing Countries: Capacity and Consent*, eds. Deborah Bräutigam, Odd-Helge Fjeldstad, and Mick Moore (New York: Cambridge University Press, 2008).
  11. Charles Tilly, *The Formation of National States in Western Europe* (Princeton, NJ: Princeton University Press, 1975).

These functions are at the core of the social contract between a government and its people. More recent work in the field of rebel governance suggests that legal institutions are equally important for non-state actors that have state-like aspirations to govern people and territory. Observers of insurgencies in Afghanistan,<sup>12</sup> Yemen,<sup>13</sup> and Mali<sup>14</sup> have noted that one of the first things that armed groups do when they take over new territory is establish courts and other legal institutions that seem to facilitate their control over people and land. The Islamic State is the most recent in a long line of insurgent groups—not only in the Middle East but also in the Americas, Africa, and Asia—that have attempted to establish a legal basis for their actions. Although the Islamic State’s system of governance is to a large extent shaped and constrained by its commitment to enforcing the body of Islamic law known as *shari’a*,<sup>15</sup> its reliance on law to legitimize power and violence is hardly unique and is in fact consistent with patterns of state formation seen all over the world.

According to the Islamic State, violence is only legitimate when justified by law. For example, following its decision to immolate a captured Jordanian pilot in a cage—which many Muslim scholars, including an official of al-Qaeda in Yemen, condemned as “deviant”<sup>16</sup>—the Islamic State defended the judgment in a detailed fatwa that rationalized death by fire as a form of retributive punishment that is equal in magnitude to the harms inflicted on civilians by airstrikes.<sup>17</sup> Such statements demonstrate the Islamic State’s concern for justifying the legality of its actions. According to its official publications, members and leaders of the Islamic State are forbidden from harming other Muslims with-

out a legal basis for doing so. One article entitled “Advice for Leaders of the Islamic State,” stated, “Beware of shedding blood unjustly ... [U]nlawful bloodshed ... would be a short-term gain whose long-term consequences are weakness and helplessness. ... And by Allah, no case is reported to us involving the bloodshed of an innocent person from Ahlus-Sunnah [Sunni Muslims] that isn’t backed up by clear evidence of what he did to deserve his blood being shed.”<sup>18</sup>

Do leaders and members of the Islamic State genuinely believe in the principles of accountability and fairness that they talk about in their propaganda? Or are these statements nothing more than empty rhetoric designed to appeal to people in war-torn societies who are desperately looking for justice and dignity? This report, based on interviews with 82 Syrians and Iraqis from areas governed by the Islamic State, a collection of 279 punishments administered by Islamic State courts and police, and other primary source documents, describes the legal foundations of the self-proclaimed “caliphate.”

Part I provides a comprehensive overview of the Islamic State’s legal system, including its laws, police apparatus, courts, and prisons. Although this legal system is frequently characterized as medieval, the Islamic State’s courts routinely punish modern day offenses—for example, traffic violations—that were not present at the time of the original seventh century caliphate that the group claims to be emulating. Such examples illustrate how the Islamic State’s legal system has instrumentally supplemented the original text of the Quran with the modern rules and regulations that are needed to govern a twenty-first century state.

12. Antonio Giustozzi and Adam Bacsko, “The Politics of the Taliban’s Shadow Judiciary, 2003–2013,” *Central Asian Affairs*, vol. 1, no. 2 (2014): 199–224.

13. Robin Simcox, “Ansar al-Sharia Governance in Southern Yemen,” *Hudson Institute*, December 27, 2012, <http://www.hudson.org/research/9779-ansar-al-sharia-and-governance-in-southern-yemen>.

14. Lindsey Hilsum, “Inside Gao where Arab jihadis took bloody sharia retribution on Mali’s black Africans,” *The Guardian*, February 2, 2013, <http://www.theguardian.com/world/2013/feb/02/mali-jihadis-sharia-black-africans>.

15. *Shari’a* refers to the body of divine law that is expressed primarily in the texts of the Quran and Sunnah (the opinions and example of the Prophet Muhammad).

16. “Al-Qaeda in Yemen Condemns the Killing of the Jordanian Pilot and Considers it Deviant,” *Arab Times*, February 5, 2015, [http://www.arabtimes.com/portal/news\\_display.cfm?Action=&Preview=No&nid=18116&a=1](http://www.arabtimes.com/portal/news_display.cfm?Action=&Preview=No&nid=18116&a=1).

17. Islamic State Committee of Research and Fatwas, “Question: What is the ruling on burning an infidel with fire until he dies?,” February 2014, <https://web.archive.org/web/20160623170507/https://dotmsrstaging.s3-eu-west-1.amazonaws.com/uploads/uploads/b88geagiiief4so.jpg>.

18. Islamic State, “From Hypocrisy to Apostasy: The Extinction of the Grayzone,” *Dabiq*, vol. 7, February 2015, <http://media.clarionproject.org/files/islamic-state/islamic-state-dabiq-magazine-issue-7-from-hypocrisy-to-apostasy.pdf>, 14.



Part II explains how the Islamic State uses its legal system to advance three state-building objectives: (1) establishing a legal basis for territorial sovereignty and expansion; (2) enforcing internal discipline within Islamic State's own ranks; and (3) justifying taxation, which has become an increasingly important source of revenue for the group. The paper concludes with a discussion of two emerging vulnerabilities of the Islamic State's legal system—its susceptibility to corruption and propensity for extra-legal violence—which are increasingly undermining its ability to obtain the trust and cooperation of civilians.

## Scope and methodology

The scope of this paper is limited to the legal institutions created by the Islamic State in areas of Iraq and Syria. I exclude other areas in which the Islamic State is engaged in governance—notably Libya—because time and resource constraints did not allow me to conduct fieldwork there. Additionally, I have chosen to focus this paper on the Islamic State’s activities since April 2013, when the group’s leader, Abu Bakr al-Baghdadi, released an audio statement announcing its expansion into Syria and renamed the group the “Islamic State of Iraq and Syria.” Although the group has existed under different names and leaders since 2006, April 2013 is a logical starting point for this study because that was the point at which the Islamic State began to express unprecedented ambitions for territorial control and governance of Muslim lands beyond its original birthplace in Iraq. Importantly, one of the first moves that the Islamic State made after expanding into Syria was to establish courts that demanded exclusive jurisdiction—the authority to decide all legal disputes—in areas where rival armed groups were also operating judiciaries.<sup>19</sup> The Islamic State’s concern for establishing a monopoly on the interpretation and enforcement of law is a reflection of the importance of courts in its state-building strategy.

This paper draws on three main sources of data: (1) interviews with 82 Syrians and Iraqis<sup>20</sup> who have personally experienced Islamic State governance; (2) an original database of 279 punishments imposed on Iraqi and Syrian civilians by the Islamic State since April 2013; and (3) primary source documents produced by Islamic State institutions in the course of its governance activities.

Interviewees were identified through snowball sampling—a research method in which an initial group of contacts facilitates subsequent introductions to their acquaintances. Seventy-five individuals were interviewed in the Turkish cities of Antakya, Gaziantep, Reyhanlı, and Şanlıurfa over three research trips in July 2015, November 2015, and March 2016. Seven others were interviewed at an IDP camp in Iraqi Kurdistan’s Dohuk Governorate during a research trip in January 2016. These interviewees have had a variety of different experiences with the Islamic State: all of them have lived in or traveled through Islamic State-controlled areas; 24 have paid taxes to the Islamic State; 18 have used an Islamic State court; seven have been arrested or imprisoned by the Islamic State; 19 have a relative who joined the Islamic State; and 11 provided some kind of service to Islamic State members—examples include a doctor who provided medical care for injured fighters and a graphic designer who created a logo for the Islamic State. Nine of the interviewees fought against the Islamic State with either the Free Syrian Army (FSA) or another armed group. Seven are former Islamic State fighters who defected and fled to Turkey. Additionally, I conducted online or phone interviews (for security reasons) with six self-identified Islamic State supporters and combatants who are currently living or fighting in the Syrian provinces of Raqqa and al-Furat and the Iraqi province of Anbar.

The database of criminal punishments administered by the Islamic State is based on evidence from the group’s own propaganda as well as independent media reports, human rights organizations, and Twitter users on the ground in Iraq and Syria. I include only punishments that are administered by

19. “Announcement of Sheikh Ahmad concerning the killing of a leader of Ahrar al-Sham at the hands of Daesh,” *Islam Memo*, January 2, 2014, <http://islammemo.cc/akhbar/syria-althawra/2014/01/02/191184.html#1>.

20. Research for this article was conducted under Yale Institutional Review Board (IRB) protocol 1506016040. I conducted my own interviews primarily in Arabic over the course of four research trips to southeastern Turkey and Iraqi Kurdistan between July 2015 and March 2016. All interviewees are identified by pseudonyms to protect their safety. This paper relies heavily on Arabic primary sources. All translations (and any errors therein) are my own.

courts or police of the Islamic State. Acts of unofficial violence by individual Islamic State members are excluded. Additionally, the database is limited to punishments of civilians and it excludes punishments of combatants or prisoners of war. The unit of analysis is the number of punishments rather than the number of individuals, as a single individual may be punished for more than one crime at a time. At present, the database contains 279 instances of punishment in Islamic State-controlled areas of Iraq and Syria since April 2013. Although this is not a complete or representative sample, the data nonetheless suggests some noteworthy trends in the Islamic State's treatment of civilians.

The paper also draws on primary source documents including photographs of court decisions, *fatāwā* (legal opinions) issued by the Islamic State, official policy statements, and codes of conduct. These documents were obtained from Twitter and other social media platforms, numerous Islamic State-affiliated websites, document-sharing websites such as justpaste.it, and the Iraqis and Syrians who were interviewed for this paper. In cases where I was uncertain about the authenticity of a document, I consulted other analysts as well as my interviewees. All documents cited in this paper are authentic to the best of my knowledge.

PART I

# Structure and rules of the Islamic State's legal system

## Comparative advantage

In a region that has long been plagued by corruption, the Islamic State has attempted to ingratiate itself with civilians by claiming that its legal system is comparatively more legitimate and effective than the available alternatives. Syria and Iraq were both near the bottom of the Corruption Perceptions Index in 2015.<sup>21</sup> In Syria, the regime of Bashar al-Assad has long used the country's legal system—known for its unaccountable secret police and state security courts—as a tool to repress and punish political dissidents. Syrian interviewees who have been detained by both the al-Assad regime and the Islamic State say that the prisons of the former are just as inhumane—and sometimes even worse—than those of the latter.<sup>22</sup> In Iraq, despite numerous legal and constitutional reforms since 2003, corruption remains pervasive within the police<sup>23</sup> and judiciary.<sup>24</sup> The former mayor of Mosul, Atheel al-Nujaifi,<sup>25</sup> and Iraq's most influential Shi'ite cleric, Grand Ayatollah Ali Sistani,<sup>26</sup> have both publicly cited corruption as an important factor in the rise of the Islamic State.

In this context, it has been relatively easy for the Islamic State to make the case that its institutions are less corrupt than those of the Iraqi and Syrian governments or rival armed groups such as the FSA, which has also been accused of graft and mismanagement.<sup>27</sup> An Islamic State supporter from Anbar Province said of the Iraqi government, “They are the best thieves in

the world.”<sup>28</sup> According to an article in the Islamic State's official magazine, “Corruption, before an unavoidable fact of life in both Iraq and Syria, has been cut to virtually nil while crime rates have considerably tumbled.”<sup>29</sup> Not only supporters of the Islamic State but also its opponents have acknowledged that the Islamic State's legal system is generally more efficient and effective than the available alternatives. As one Syrian from Aleppo said, “Before the Islamic State, it was impossible to get through the day without paying five different bribes. The people were tired of corruption, and the Islamic State offered them a solution.”<sup>30</sup> Another Syrian from Deir Ezzor said that while he disagreed with the ideology of the Islamic State, he had to admit that “its courts are fairer than the regime courts, and the judges are not influenced by *wāstah* [favoritism] or bribery.”<sup>31</sup> A shop owner, also from Deir Ezzor, said that while he “hates” the Islamic State, he gave the group credit for being relatively more transparent than either the Syrian regime or rival armed groups in the area, such as the al-Qaeda affiliate Jabhat al-Nusra. “I hate Jabhat al-Nusra even more than I hate the Islamic State, because they do everything secretly. At least the Islamic State does everything in broad daylight,” he said. As these examples illustrate, some Syrians and Iraqis seem to prefer the legal system of the Islamic State to the available alternatives not because they agree with its ideology, but simply because they regard it as the lesser evil.

21. Syria was ranked 154th and Iraq was ranked 161st out of 168 countries in the Corruption Perceptions Index (CPI). Transparency International (2015), <http://www.transparency.org/research/cpi/overview>.

22. Interviews with Khaled, Reyhanli, March 2016, and Adel, Gaziantep, July 2015.

23. Michael Moss, “How Iraq Police Reform Became Causality of War,” *New York Times*, May 22, 2016, <http://www.nytimes.com/2006/05/22/world/middleeast/22security.html?pagewanted=print>.

24. Reuters, “Iraq's top Shi'ite cleric calls for reforms to start with judiciary,” *Reuters*, August 14, 2015, <http://www.reuters.com/article/us-mideast-crisis-iraq-reforms-idUSKCN0QJ1GC20150814>.

25. “Former Mosul mayor says corruption led to ISIS takeover,” *Al Monitor*, July 2, 2014, <http://www.al-monitor.com/pulse/security/2014/07/iraq-mosul-handing-over-isis-government.html>.

26. Raheem Salman, “Iraq's Top Cleric Says Graft in Army Helped Islamic State,” *Reuters*, November 7, 2014, <http://www.reuters.com/article/us-mideast-crisis-iraq-reforms-idUSKBN0IR13Z20141107>.

27. “Syrian Rebel Command Sacked Over Graft Claims,” *Al Arabiya*, June 27, 2014, <http://english.alarabiya.net/en/News/2014/06/27/Syrian-rebel-command-sacked-over-graft-allegations-.html>.

28. Interview with a self-identified Islamic State supporter from Anbar Province conducted online, February 17, 2016.

29. John Cantlie, “Paradigm Shift: Part II,” *Dabiq*, vol. 12, December 2015, <http://www.clarionproject.org/docs/islamic-state-isis-isil-dabiq-magazine-issue-12-just-terror.pdf>, 47.

30. Interview with Samer, Şanlıurfa, November 2015.

31. Interview with Ahmed, Gaziantep, March 2016.

## Basic principles

The Islamic State's legal system purports to strictly apply the divinely revealed body of Islamic law known as *shari'a*. Like al-Qaeda and other jihadist organizations, the Islamic State rejects the validity of positive law (*qawanin wad'iyya*), a term that legal scholars use to refer to the laws that are created by legislatures, courts, or other human institutions—as opposed to divine laws. The standard jihadist critique of positive law has been explained in great detail by the al-Qaeda-affiliated scholar Muhammad al-Maqdisi, who has argued that man-made laws are analogous to polytheistic idols and therefore violate *tawhid* (the Islamic requirement of a monotheistic belief in God). According to al-Maqdisi, the “plurality of sources of legislation” found in modern constitutional democracies implies “the plurality of lords and gods served besides God” and therefore constitutes polytheism.<sup>32</sup> Although the Islamic State disagrees with al-Qaeda on several ideological points—most notably the Islamic State's decision to declare itself a caliphate, which al-Qaeda condemned as premature and disrespectful of the requirement for consultation with other jihadist groups<sup>33</sup>—the two groups still agree on the fundamental invalidity of positive law.

The Islamic State regards *shari'a* as the only legitimate basis for governance. Official publications

state that subjects of the Islamic State have an obligation to adjudicate their disputes “only according to the law of God by resorting to Islamic courts in the Islamic State.”<sup>34</sup> When the Islamic State captured Raqqa<sup>35</sup> and Mosul,<sup>36</sup> it issued documents calling for “the release of the people from the rotten shackles of positive law,” among other prescriptions. Syrians and Iraqis interviewed for this paper reported that lawyers and judges are among the first people targeted by the Islamic State upon capturing a new area because they symbolize an illegitimate legal order. Numerous judges and lawyers have been executed by the Islamic State on charges of apostasy.<sup>37</sup> A Syrian from Aleppo reported that the Islamic State court in his city bears a sign that states, “No dogs or lawyers allowed.”<sup>38</sup>

In keeping with its rejection of positive law, the Islamic State has avoided codifying all but the most widely known Islamic legal rules.<sup>39</sup> Although the Islamic State has published written guidelines for the punishment of *hudud* crimes—those crimes for which the Quran explicitly defines a punishment—the group generally takes the position that there is no need to write down the rules of the *shari'a* because they have already been expressed in the primary texts of revelation. For this reason, the caliph is understood as a mere custodian of divine law, rather than a lawmaker himself.

32. Abu Muhammad al-Maqdisi, *Kashf Shubhāt al-Mujādīlīn 'an'Asākīr al-Shirk wa-Ansār al-Qawānīn* (1999), <https://archive.org/details/S6d2w>, 28.

33. Thomas Joscelyn, “AQIM rejects Islamic State's caliphate, reaffirms allegiance to Zawahiri,” *The Long War Journal*, July 14, 2014, [http://www.longwarjournal.org/archives/2014/07/aqim\\_rejects\\_islamic.php](http://www.longwarjournal.org/archives/2014/07/aqim_rejects_islamic.php).

34. See for example, al-Battār Media Foundation, Raqqa Province, “Arrest of a Cell of Extremists,” 2015, <https://web.archive.org/web/20160323201354/https://s04.justpaste.it/pdf/Btaar-tf-gholah-justpaste-it-953848.pdf>, 5.

35. The Islamic State, “Wathīqat al-Madīnah,” September 13, 2014, issued in Raqqa, Syria, <https://web.archive.org/web/20160530071604/http://1.bp.blogspot.com/-Tv8Nm1G1VxM/VBXdeYnHvpl/AAAAAAAAAJi0/TIt0hnxgVXE/s1600/proxy.jpg>.

36. The Islamic State, “Wathīqat al-Madīnah,” June 12, 2014, issued in Mosul, <https://web.archive.org/web/20160530071520/https://justpaste.it/Nenwa>.

37. See, for example, this Islamic State propaganda report on the execution of a Syrian lawyer who had worked in one of the state security courts of the Assad regime in Homs. Islamic State Media Office, “Photographic Report: Implementation of the *Hadd* Punishment on Three spies, One lawyer, and One Apostate Ismaili,” January 8, 2015, <https://web.archive.org/web/20160323192633/https://pbs.twimg.com/media/B62sDz2CAAAPpEC.jpg>.

38. Interview with Yayha, Gaziantep, November 2015.

39. Andrew March and Mara Revkin, “Caliphate of Law,” *Foreign Affairs*, April 15, 2015, <https://www.foreignaffairs.com/articles/syria/2015-04-15/caliphate-law>.

Despite the constraints of its ideology, the Islamic State's leaders recognize that the 21st century caliphate is faced with governance challenges that could not have been anticipated at the time of the Prophet. In order to address modern-day problems such as traffic safety<sup>40</sup> and automobile emissions,<sup>41</sup> the Islamic State has needed to develop an Islamic legal basis for policies and regulations that cannot be traced back to the Quran or other accepted sources of divine law. To this end, the Islamic State has embraced the doctrine of *siyāsa shar'īyya*, which translates loosely as "religiously legitimate governance."<sup>42</sup> The doctrine, which is often associated with the medieval Islamic scholar Ibn Taymiyyah,<sup>43</sup> implies a dualistic model of law and governance. First, it requires that *shari'a* courts and judges apply Islamic legal rules in situations where the case or controversy in question can be decisively resolved by the text of the Quran or other accepted sources. Second, the doctrine acknowledges that these texts do not contain rules for every conceivable matter, and therefore it allows for religiously legitimate authorities appointed by the state—including market inspectors, military commanders, police officers, and the caliph himself—to issue law-like decisions that meet two necessary conditions: (1) those decisions must be issued with the welfare (*maslaha*) of the Muslim community in mind and (2) they must not be inconsistent with the divine rules of *shari'a*. The resulting human interpretations of *shari'a* are known as *fiqh*.

The doctrine of *siyāsa shar'īyya* is not to be confused with the Western concept of "judicial independence," which the Islamic State condemns as one of "six tenets of disbelief" associated with democracy (the other five being popular rule, peaceful alterna-

tion of power, separation of powers, human rights, and rule of law).<sup>44</sup> The Islamic State allows judges to exercise independent judgment on questions and cases that are not explicitly addressed in the Quran and other sources of divine law *only* to the extent that their decisions are consistent with *shari'a*. This doctrine is what has enabled the Islamic State to issue rules and regulations governing virtually every aspect of life in the caliphate—including commerce, healthcare, education, and military operations—which might otherwise be subject to accusations of *bid'ah* (a forbidden "innovation").

40. The Islamic State issues tickets for violations including driving without a license, speeding, and parking in prohibited areas. See for example, @Syriakm, "Daesh issues drivers licenses for motorcycles ... and fines for drivers who do not carry a license." Tweet, January 18, 2015, <https://web.archive.org/web/20160323192744/https://twitter.com/Syriakm/status/556777973982822401>.

41. The Islamic State imposes fines on vehicles that fail to meet emissions standards. See, for example, @modwnatalraqqa, "Daesh imposes a monetary fine on the owners of cars carrying fuels that pollute the public roads unintentionally." Tweet, June 9, 2014, <https://web.archive.org/web/20160323192923/https://twitter.com/modwnatalraqqa/status/476128189065216000>.

42. Andrew March and Mara Revkin, "Caliphate of Law," *Foreign Affairs*, April 15, 2015, <https://www.foreignaffairs.com/articles/syria/2015-04-15/caliphate-law>.

43. Ibn Taymiyyah, *al-Siyāsa al-Shar'īyya* (Cairo, 1951).

44. Islamic State Committee of Research and Fatwas, "Clarifying Statement on the Ruling on the Educational System of the Nusayri [Alawite] Government [of Syria]," November 2014, <http://drsc-sy.org/wp-content/uploads/2015/06/ALRAQA1.pdf>.

## Rules and regulations

Relying on the *siyāsa sharʿiyya* doctrine described above, the Islamic State has created an array of rules and regulations to govern civilians, discipline its own officials and combatants, and control territory. Such regulations deal with matters that were not directly addressed by the Quran and other sources of *shariʿa*, such as fines for traffic violations.<sup>45</sup> The Islamic State claims that the rules are the same in all of the areas that it governs. An Iraqi civilian supporter of the Islamic State said that in all three of the provinces that he has visited—Anbar, al-Furat, and Salah ad-Din—“The rules are exactly the same.”<sup>46</sup> However, critics of the Islamic State disagree. A Syrian civilian from Deir Ezzor said that the severity of the rules and the degree of enforcement may vary considerably between different provinces. Additionally, the rules often evolve over time—becoming harsher as the Islamic State consolidates control—and when there is a change in the leadership of a particular city or province.<sup>47</sup> In this section, I describe five main areas of regulation: rights and duties, behavior, property, trade, and warfare.

### Rights and duties

The Islamic State has issued numerous documents specifying the rights and duties of its subjects, whom it usually refers to as *an-Nās* (“the people”) and less frequently as *riʿāya* (literally, “the flock”).<sup>48</sup> The group describes the act of *bayʿah* (pledging allegiance to the caliph) as a contract (*ʿaqd*) based on reciprocal duties between the people and their leader.<sup>49</sup> The terms of this contract are spelled out explicitly in so-called “documents of the city” (*wathāʾiq al-madīnah*), which appear to be inspired<sup>50</sup> by a constitution-like text allegedly drafted by the Prophet himself to govern the city of Medina in the year 622.<sup>51</sup> Documents bearing this title have been issued by the Islamic State in the Syrian city of Raqqa,<sup>52</sup> the Iraqi cities of Mosul,<sup>53</sup> Tikrit,<sup>54</sup> and Hit,<sup>55</sup> and the Libyan city of Sirte.<sup>56</sup> Ranging in length from 13 to 16 articles, these texts enumerate the obligations of the Islamic State to its subjects and vice versa.

In January 2016, the Islamic State issued a digital *wathāʾiqat al-madīnah* addressed to all residents of the caliphate.<sup>57</sup> The preamble describes the docu-

45. Photograph of a ticket issued by the Islamic State for a traffic violation in Raqqa in September 2014, [https://web.archive.org/web/20160323155408/https://twitter.com/nawaf\\_boshehry/status/507969365325524992](https://web.archive.org/web/20160323155408/https://twitter.com/nawaf_boshehry/status/507969365325524992).

46. Interview with Ibrahim, Online, February 2016.

47. Interviews with Bassel, Reyhanlı, November 2015 and March 2016.

48. Andrew March and Mara Revkin, “Caliphate of Law,” *Foreign Affairs*, April 15, 2015, <https://www.foreignaffairs.com/articles/syria/2015-04-15/caliphate-law>.

49. See, for example, the official Islamic State textbook, *al-Siyāsa al-Sharʿiyya* (2015), <https://azelin.files.wordpress.com/2015/10/the-islamic-state-sharc4abah-politics.pdf>, 27.

50. Historians have reconstructed the “document of Medina,” sometimes translated as “constitution of Medina,” from secondary accounts, one of which has disaggregated the text into 47 articles. The Islamic State’s version bears little resemblance to the original, despite sharing the same title. Anver Emon, “Reflections on the Constitution of Medina,” *UCLA Journal, of Islamic and Near Eastern Law*, Vol. 1 (2001–02), 103–133.

51. Anver Emon, “Reflections on the Constitution of Medina,” *UCLA Journal, of Islamic and Near Eastern Law* 1 (2001–02): 103–133.

52. The Islamic State, “Wathāʾiqat al-Madīnah,” September 13, 2014, issued in Raqqa, Syria, <http://1.bp.blogspot.com/-Tv8Nm1G1VxM/VBXdeYnHvpl/AAAAAAAAAJiO/TltOhnxgVXE/s1600/proxy.jpg>.

53. The Islamic State, “Wathāʾiqat al-Madīnah,” June 12, 2014, issued in Mosul, <https://s04.justpaste.it/pdf/Nenwa-justpaste-it-260470.pdf>.

54. The Islamic State, “Wathāʾiqat al-Madīnah,” July 27, 2014, issued in Salah ad-Din governorate, cached webpage on file with author. The source for this document, a jihadist website called “Manbar,” referred to a 10-article document issued in the province of Salah ad-Din in June 2014, although the complete text could not be found online. The document was most likely issued in the city of Tikrit, which was captured by Islamic State forces at that time.

55. The Islamic State, “Wathāʾiqat al-Madīnah,” October 17, 2014, issued in Hit, Iraq, <https://web.archive.org/web/20160322234824/https://twitter.com/HamidHadeed/status/523020667566825472>.

56. The Islamic State, “Wathāʾiqat al-Madīnah,” December 2, 2015, issued in Sirte, Libya, <https://web.archive.org/web/20160322234933/https://twitter.com/kalsghyr/status/672090395560529920>.

57. The Islamic State, Maktab al-Himma, “Wathāʾiqat al-Madīnah,” January 25, 2016, <https://web.archive.org/web/20160323000003/https://twitter.com/jihaj46/status/626001160642674688>.



ment as a “contract” that “defines the *sharī’a* principles and Islamic regulations by which the shepherd and the flock are bound.” The 13 articles of the document, excerpted below in Table 1, define a few very basic rights to which all subjects of the caliphate are entitled: (1) the right to justice and due process of law; (2) the right to security of persons and property; and (3) the right to public goods and services provided by the Islamic State. It also defines their duties: (1) a duty to fulfill obligations required by Islam, including abstention from al-

cohol and drugs, and (2) a duty of allegiance to the Islamic State. Although not mentioned in this document, other Islamic State publications imply that the caliph may be removed from power if he fails to fulfill his end of the bargain.<sup>58</sup> Al-Baghdadi himself suggested in his first official speech as caliph that a leader’s failure to govern according to *sharī’a* is grounds for impeachment: “If [the caliph] orders the people to fear Allah and he is just, then he is rewarded. And if he orders anything else, then he will be held accountable for that.”<sup>59</sup>

<b>“Document of the City” (<i>Wathīqat al-Madīnah</i>)</b>	
<b>Art. 1</b>	“We [the Islamic State] bear responsibility for restoring the glories of the caliphate and obtaining retribution for the oppression and injustice suffered by ... our Muslim brothers.”
<b>Art. 2</b>	“... We do not make accusations without evidence and proof ... We show mercy to a Muslim, unless he has apostasized or given aid to criminals.”
<b>Art. 3</b>	“The people in the shadow of our rule are secure and safe ... Islamic governance guarantees to the ri’aya their rights. The wronged will be given justice against a violator of his right ...”
<b>Art. 4</b>	“We order that the funds that were under the control of the apostate government (public funds) must be returned to the public treasury under the authority of the caliph of the Muslims who bears responsibility for spending these funds in the <i>maslaha</i> [interest] of the Muslims. No one is permitted to reach out his hand to loot or steal ... or else be brought before the sharia judiciary ... Whoever steals private property in the form of money, furniture and [other] goods from a private place without doubt will have his hand cut off, and anyone who collaborates with armed gangs who engage in brigandage will be subject to ... deterrent punishments.”
<b>Art. 5</b>	“Trafficking and dealing alcohol or drugs, or smoking, or other taboos, are prohibited.”
<b>Art. 6</b>	“Mosques are the houses of God ... We urge all Muslims to build them and pray ...”
<b>Art. 7</b>	“Beware of employment with the apostate government and the <i>tawāghit</i> <sup>60</sup> ... He who repents of sin is not guilty of sin. To the apostates of the army and police and the rest of the unbelieving apparatus we say that the door of repentance is open to anyone who wants it, and we have designated specific places to receive those wishing to repent subject to conditions ... For those who insist on remaining apostate, there is no alternative but death ...”
<b>Art. 8</b>	“Councils and associations and banners [bearing the names of other groups] are unacceptable.”
<b>Art. 9</b>	“God commands that you join the society [the Islamic State] and renounce factions and strife ... Division is one of the traps of the devil ...”
<b>Art. 10</b>	“Our opinion regarding ... polytheistic and pagan shrines is that of the Prophet [who prohibited them].”
<b>Art. 11</b>	“To the virtuous and dignified women: ... Dress decently and in loose tunics and robes ... Do not leave the house except out of necessity ...”
<b>Art. 12</b>	“[God commands that we] establish Islamic governance and ... release the people from the shackles of rotten positive laws ...”
<b>Art. 13</b>	“We listen to the council of the small and the great and the free and the slave, and there is no difference among us between red and black, and we judge ourselves before others.”

TABLE 1: Excerpts of the Islamic State’s “Document of the City”

58. An official textbook of the Islamic State entitled, *al-Siyāsa al-Shar’iyya*, states that it is forbidden to rebel against an unjust ruler *unless* there is consensus that the ruler has violated his obligations according to Islam (2015, 31–32).

59. Al-Baghdadi, Abu Bakr. “This is the Promise of Allah,” June 28, 2014. [https://ia902505.us.archive.org/28/items/poa\\_25984/EN.pdf](https://ia902505.us.archive.org/28/items/poa_25984/EN.pdf).

60. *Tawāghit* (plural of *tāghūt*) is a derogatory term used by the Islamic State and other Salafi-jihadist groups to denote idolatrous groups and usually refers to governments that rely on positive law (as opposed to divine law).

The right to justice is mentioned repeatedly in official statements and propaganda produced by the Islamic State. As one document from Raqqa states, “The Islamic State is just and there is no distinction between a soldier and a Muslim [civilian]. In the *shari‘a* courts, all are held accountable and no one has immunity, just as the Prophet said he would cut off Fatima’s hand [the Prophet’s daughter] if she stole.”<sup>61</sup> The Islamic State also claims that its Muslim (male) subjects have the right to equal treatment before the law of God: “The people are as equal as the teeth of a comb. There is no difference between the rich and the poor and the strong and the weak. The holder of a right has redress, and the grievance of an injured party will be answered.”<sup>62</sup> Although the rights of women are severely restricted in the caliphate—for example, women cannot travel outside of their homes unless accompanied by a male guardian known as a *mahram*<sup>63</sup>—they still have the right to appear before a *shari‘a* court. According to a report issued by the Islamic State’s female police force, “A woman can go to the court and present her grievance with complete freedom, and she will find that [the judge] listens to her and guarantees her right without bargaining or bribes.”<sup>64</sup>

It must be noted that the rights listed above apply only to Muslims. Non-Muslim “People of the Book”<sup>65</sup> (*ahl al-kitāb* or *dhimmi*) are entitled to a more limited set of rights conditional on their acceptance of a *jizyah* contract, which is the security guarantee that Islamic states have historically offered to religious minorities in exchange for their payment of a special tax. Reports from Islamic State-controlled areas of Iraq indicate that the *jizyah* tax there is set at a rate of four gold dinars for the wealthy, two di-

nars for middle-income people, and one dinar for the poor.<sup>66</sup> Christians are entitled to the protection of the Islamic State and limited freedom of worship in exchange for their payment of this tax and their compliance with various other rules stipulated by the *jizyah* contract. These rules include bans on the construction or repair of houses of worship, possession of weapons, trading or publicly consuming pork and wine, and engaging in religious rituals outside of their churches.<sup>67</sup> Syrians from Raqqa confirmed that although many Christians fled when the Islamic State took control, those who chose to stay behind and accept the terms of the *jizyah* contract were not harmed—although the main church in Raqqa has been converted into an office for Islamic outreach and proselytism (known as *da‘wah*).<sup>68</sup>

Although the Islamic State claims to tolerate Christians as minority subjects of the caliphate, adherents of non-Abrahamic faiths enjoy no such privileges. The Islamic State has developed legal justifications for the extermination of certain classes of non-Muslim minorities considered too deviant to be allowed to live in the absence of conversion. The Islamic State claims that, prior to the capture of Mount Sinjar in Iraq, its scholars conducted research on the Yazidis to determine whether they should legally be considered an unbelieving group “by origin” (*asli*) or one that was originally Muslim and only later apostatized.<sup>69</sup> Ultimately, the Islamic State determined that the Yazidis were apostates by origin and therefore concluded, “Unlike the Jews and Christians, there was no room for *jizyah* payment ... and [the Yazidis] can only be given an ultimatum to repent or face the sword.”<sup>70</sup>

61. Islamic State, “What a Visitor to the City of Raqqa Sees,” February 1, 2015, <https://web.archive.org/web/20151127043218/http://justpaste.it/f7pt>.

62. Islamic State Media Office, “Photographic Report About the Work of the Police Apparatus in the City of Raqqa in the Islamic State,” December 18, 2014, <https://dawaalhaq.com/post/21440>. <http://www.dawaalhaq.com/?p=21440>.

63. Interview with Amal, Gaziantep, November 23, 2015.

64. Al-Khansa Brigade of the Islamic State, “Women in the Islamic State,” January 2015, <https://azelin.files.wordpress.com/2015/01/al-khansc481-media-battalion-22women-in-the-islamic-state22.pdf>, 21.

65. In theory, the Islamic State guarantees protection to Christians and Jews who accept the terms of the *jizyah* contract, but there are virtually no Jews living in areas controlled by the group.

66. <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10666257/Militant-Islamist-group-in-Syria-orders-Christians-to-pay-protection-tax.html>.

67. Islamic State, Raqqa Province, “Document of Security,” February 22, 2014, <http://www.ankawa.com/forum/index.php?topic=729037.0>.

68. Interviews with Faisal, Gaziantep, July 2015, and Karam, Şanlıurfa, March 2016.

69. Islamic State, “The Failed Crusade,” *Dabiq*, vol. 4, October 2014, <http://media.clarionproject.org/files/islamic-state/islamic-state-isis-magazine-Issue-4-the-failed-crusade.pdf>, 14.

70. Id.

As these examples illustrate, the Islamic State uses its legal system to articulate the duties and rights of the population that it seeks to govern. Although these rights are very limited (and nonexistent for certain classes of people such as the Yazidis), the Islamic State nonetheless sees itself as creating a kind of social contract<sup>71</sup> based on reciprocal obligations between Muslims and the government of the caliphate.

## Behavior

The Islamic State uses its legal system to regulate and control the behavior of the population in ways that support the group's ideological and military objectives. As mentioned above, the Islamic State

has codified the few crimes that are specifically defined in the Quran (known as *hadd* crimes). An example of these guidelines, issued in the Syrian province of Aleppo in December 2014, is translated in Table 2.<sup>72</sup> In addition to these fixed punishments for *hadd* crimes, the Islamic State also administers discretionary punishments known in Islamic legal terminology as *ta'zīr* for misconduct that is not expressly prohibited by God. These lesser punishments may also be implemented in cases where a person has been accused of a *hadd* crime, but the evidence is insufficient for a conviction. For example, in the Iraqi city of Anah, a suspected thief was publicly whipped as a *ta'zīr* punishment because the case did not meet the evidentiary requirements for the *hadd* punishment (cutting off a hand).<sup>73</sup>

Crime	Punishment
Blasphemy of God	Death
Blasphemy of the Prophet	Death, even if the accused repents
Blasphemy of Islam	Death
Adultery	Stoning until death if the adulterer was married and 100 lashes and exile if he or she were unmarried
Sodomy (homosexuality)	Death for the person committing the act, as well as for the one receiving it
Theft	Cutting off the hand
Drinking alcohol	80 lashes
Spying for the unbelievers	Death
Apostasy	Death
<i>Hirābah</i> (armed robbery <sup>74</sup> )	1. Murder and theft: Death and crucifixion 2. Murder only: Death 3. Armed robbery: Cutting off the right hand and the left leg 4. Terrorizing the people: Exile

TABLE 2: *Hadd* punishments

71. Mara Revkin, "ISIS' Social Contract," *Foreign Affairs*, January 10, 2016, <https://www.foreignaffairs.com/articles/syria/2016-01-10/isis-social-contract>.

72. Islamic State, Aleppo Province, "Announcement of the *Hudūd*," December 2014, <https://web.archive.org/web/20160323231702/http://www.vetogate.com/upload/photo/gallery/79/7/560x1000/921.jpg>.

73. Islamic State, Furat Province, "Ta'zīr of a Thief Who Did Not Meet the Conditions for Cutting Off the Hand in the City of Anah," February 28, 2016, <https://web.archive.org/web/20160615182022/https://1.bp.blogspot.com/-6KdLS7jFE4I/Vt-MeopbBPSI/AAAAAABZ0o/mTuGa5IAOCw/s1600/3.jpg>.

74. The Quran defines *hirābah* as a *hadd* offense perpetrated by "those who wage war against Allah and His Prophet and strive to spread disorder in the land" (Quran 5:33). However, the Quran leaves undefined the specific elements of the crime. As a result, *hirābah* is open to a range of interpretations. In practice, the term is often used to describe particularly egregious robberies involving violence. See M. Cherif Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (Cambridge: Cambridge University Press, 2014), 138.

Based on an original database of 279 unique punishments imposed on Iraqi and Syrian civilians by the Islamic State since April 2013, I identify three general types of punishable offenses. These categories are illustrated with references to specific cases in footnotes below. First, the Islamic State punishes behavior that is perceived as threatening the state. This category includes espionage,<sup>75</sup> treason,<sup>76</sup> collaboration with enemies,<sup>77</sup> corruption or embezzlement of public funds,<sup>78</sup> and spreading disorder (*hirābah*).<sup>79</sup> Many of these offenses are construed as acts of apostasy and are therefore punishable by death. Second, the Islamic State punishes crimes against religion or public morality. These include adultery,<sup>80</sup> homosexuality,<sup>81</sup> blasphemy,<sup>82</sup> apostasy,<sup>83</sup> pornography,<sup>84</sup> witchcraft,<sup>85</sup> and selling or consuming drugs,<sup>86</sup> alcohol,<sup>87</sup> or cigarettes.<sup>88</sup>

Third, the Islamic State punishes crimes or torts against particular individuals or society as a whole. These include theft,<sup>89</sup> burglary,<sup>90</sup> rape,<sup>91</sup> highway robbery,<sup>92</sup> battery,<sup>93</sup> and murder.<sup>94</sup> Table 3 illustrates the distribution of a sample of 279 punishments that the Islamic State has imposed on Iraqi and Syrian civilians for different types of offenses since April 2013. Theft was the most common offense (51 instances) followed by apostasy (43 instances) and adultery (33 instances).

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75. Islamic State, Media Office of Salah ad-Din Province, "Photographic Report 3: Arrest of a Cell of Spies and the Implementation of the Judgment of God Upon Them," February 26, 2015, <https://web.archive.org/web/20160323134615/http://lh3.ggpht.com/-hSgcWj4BSwg/VO-08XPq8GI/AAAAAAAAAGuc/DSAlFo9Fzcs/s0/01.jpg>.
  76. Islamic State, Media Office of Dijla Province, "God Does Not Love Traitors," December 7, 2015, <https://web.archive.org/web/20160323135152/https://issdarat.wordpress.com/2015/12/07/5a2nen/>.
  77. "Daesh Executes the First *Shari'a* Judge Hamam al-Lafi," *Jordan News*, January 23, 2015, <http://www.jordanews.com/jordan/32153.html>.
  78. "The Islamic State Executes One of Its Own Leaders on Charges of Embezzling Money from Its Treasury," *The New Khalij*, November 16, 2014, <https://web.archive.org/web/20150418071122/http://www.thenewkhalij.com/ar/node/5450>.
  79. Islamic State, al-Barakah Province, "For the First Time, the *Hadd* Punishment for *Hirābah* is Implemented in al-Barakah Province," January 12, 2015, <https://web.archive.org/web/20160323150323/http://192.158.13.4/wp-content/uploads/2015/01/252.jpg>.
  80. Islamic State, Raqqa Province, "Photographic Report 7: Implementation of the *Hadd* Punishment for Zinna [adultery] on 6 Unmarried Men, January 29, 2015, [https://web.archive.org/web/20160323135445/http://lh5.ggpht.com/-OKDu\\_KFJR-ro/VMwiuW0f50I/AAAAAAAAAB2U/7fQ-URbdFMc/s0/01.jpg](https://web.archive.org/web/20160323135445/http://lh5.ggpht.com/-OKDu_KFJR-ro/VMwiuW0f50I/AAAAAAAAAB2U/7fQ-URbdFMc/s0/01.jpg).
  81. Islamic State, al-Jazirah Province, "Implementation of the *Hadd* Punishment on a Perpetrator of Sodomy," August 2015, <https://web.archive.org/web/20160323141605/http://blog.amin.org/sky2018/files/2015/08/613.jpg>.
  82. Islamic State, Media Office of Ninewa Province, "Implementation of the Ruling of God on a Man who Blasphemed God," November 2015, <https://web.archive.org/web/20160324005200/https://justpaste.it/ojwi>.
  83. Islamic State, Media Office of Homs Province, "Implementation of the *Hadd* Punishment on a Spy and an Apostate," December 12, 2014, [https://web.archive.org/web/20160324012206/https://justpaste.it/had-1\\_en](https://web.archive.org/web/20160324012206/https://justpaste.it/had-1_en).
  84. Islamic State, Deir Ezzor Province, "*Tā'zīr* Punishment by Lashing of a Muslim for Downloading Pornographic Videos," December 31, 2014, <https://web.archive.org/web/20160323151632/http://www4.ozzo.com/2014/12/31/00/945088747.jpg>.
  85. Islamic State, Raqqa Province, "Photographic Report 13: Implementation of the *Hadd* Punishment on a Sorcerer in the al-Debsi Region in the Western District," February 6, 2015, <https://web.archive.org/web/20160323150715/http://blog.amin.org/sky2018/files/2015/02/749.jpg>.
  86. Islamic State, Raqqa Province, "Implementation of a *Tā'zīr* Punishment on Drug Abusers in Raqqa Province," June 14, 2014, <https://web.archive.org/web/20160323152157/https://justpaste.it/fumb>.
  87. Islamic State, al-Furat Province, "Photographic Report No. 4: Implementation of the *Hadd* Punishment for Alcohol Consumption," February 5, 2015, <https://web.archive.org/web/20160323153224/http://i.imgur.com/D1GhNoK.jpg>.
  88. Islamic State, Salah ad-Din Province, "Punishment of a Smuggler of Cigarettes," December 8, 2015, <https://web.archive.org/web/20151213044621/http://justpaste.it/pj9y>.
  89. Islamic State, Media Office of Raqqa Province, "Photographic Report No. 2: *Tā'zīr* Punishment of a Cheater and a Motorcycle Thief," June 1, 2015, <https://web.archive.org/web/20160323210837/https://justpaste.it/lhmi>.
  90. Islamic State, al-Furat Province, "Implementation of the *Hadd* Punishment for *Hirābah* on Three People for Burglarizing a House and Raping the Homeowner and Trying to Murder her Son," December 9, 2014, <https://web.archive.org/web/20160323154850/http://blog.amin.org/sky2018/files/2014/12/0211.jpg>.
  91. *Id.*
  92. Islamic State, al-Barakah Province, "For the First Time, the *Hadd* Punishment for *Hirābah* is Implemented in al-Barakah Province," January 12, 2015, <https://web.archive.org/web/20160323150323/http://192.158.13.4/wp-content/uploads/2015/01/252.jpg>.
  93. Islamic State, "Photo of the Lashing of Two Members of the Islamic State in Punishment for Their Beating of a Muslim without Just Cause," December 14, 2014, <https://web.archive.org/web/20160530080048/https://dawaalhaq.com/post/21258>.
  94. Islamic State, Fallujah, "The Islamic State Implements the *Hadd* Punishment on a Murderer in Fallujah," November 25, 2015, <https://web.archive.org/web/20160530080201/https://dawaalhaq.com/post/32912>.

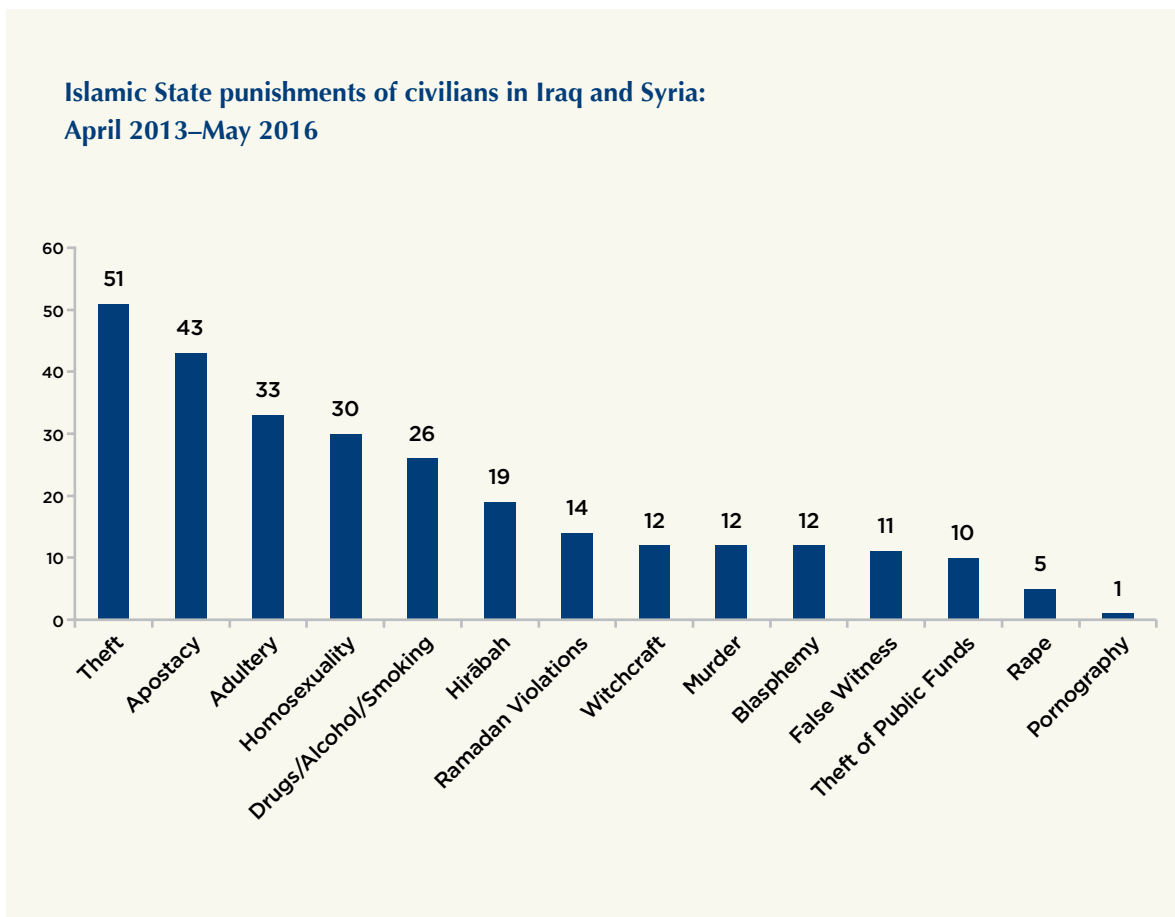


TABLE 3.

In addition to rules regulating the behavior of its subjects, the Islamic State also issues rules designed to expand the population and socialize children with Islamic values. Such regulations include mandatory Islamic education<sup>95</sup> through the ninth grade (girls and boys are educated in different schools) and prohibitions on the use of birth control.<sup>96</sup> These rules are generally oriented toward increasing the population of the caliphate and producing obedient subjects who can be easily governed, taxed, and conscripted as fighters. The Islamic State's legal system serves not only to control the behavior of its current citizens, but also to ensure the health and ideological conformity of its next generation.

## Property

The Islamic State has issued a variety of rules governing the ownership and use of property and land. In an apparent attempt to restrain looting by its own members, the Islamic State enforces rules for the seizure of war booty, known in Islamic legal terminology as *ghanīma* or *fay'*, stating that fighters should take only what is necessary to advance the objectives of jihad.<sup>97</sup> *Ghanīma* refers to moveable property that has been forcibly taken from non-Muslims in the course of a military campaign, such as slaves and weapons. The Islamic State frequently refers to seized munitions as *ghanīma*. For example, the term is used in the title of a propaganda document cataloging a stockpile of

95. Islamic State, Deir Ezzor Province, "Announcement About the Opening of Schools," September 2, 2015, <https://web.archive.org/web/20160323143147/https://justpaste.it/dezededucation1>.

96. Jawad Hattab, "ISIS Bans Birth Control in Mosul," *Al Arabiya*, December 1, 2014, <http://english.alarabiya.net/en/variety/2014/12/01/Baby-boom-ISIS-bans-contraceptive-pills-in-Mosul-.html>.

97. Islamic State, "The Failed Crusade," *Dabiq*, vol. 4, October 2014, <http://media.clarionproject.org/files/islamic-state/islamic-state-isis-magazine-issue-4-the-failed-crusade.pdf>, 11.

weapons seized north of Baghdad.<sup>98</sup> The Quran implies that one-fifth (a quantity defined as “*khums*”) of *ghanīma* must be allocated to the state treasury (*bayt al-māl*).<sup>99</sup> The remaining 80 percent of spoils may be distributed among the military commanders and fighters responsible for the victory. The Islamic State appears to have implemented the doctrine of *khums*. In Mosul, the group issued a document stating that it is entitled to collect one fifth of the *ghanīma* for its treasury.<sup>100</sup> An Islamic State defector who previously fought for the group in Deir Ezzor confirmed that fighters pay taxes on any property that they acquire through battle.<sup>101</sup>

The related concept of *fay’* refers to land or tribute acquired peacefully from unbelievers without a fight. Although there is an explicit Quranic basis for the *khums* tax on war booty (*ghanīma*), the Quran says much less about the taxes that have been developed to allocate the nonviolently acquired *fay’* spoils, meaning that this is an area in which the Islamic State has relatively greater discretion to expropriate property and goods. For example, Islamic State jurists have interpreted scripture to allow for a 20 percent tax on *fay’*<sup>102</sup>—much higher than the 2.5 percent tax imposed on income (*zakāt*)—since the Quran is silent on the rate of *fay’* taxation.

Perhaps in an attempt to legitimize its expropriation of land and other property, the Islamic State frequently claims to use its war booty to finance redistributive welfare policies. For example, the Islamic State has issued several propaganda reports and announcements

claiming that the Islamic State is allocating *ghanīma* and *fay’* to support orphans.<sup>103</sup>

Along with regulations on the seizure and ownership of land, the Islamic State also attempts to regulate the usage of land. One announcement from Deir Ezzor province in Syria prohibits fishermen from using electrical current, poison, or dynamite to kill fish, out of concern that such methods cause congenital defects in minnows and are also detrimental to the health of human consumers.<sup>104</sup> These rules indicate the Islamic State’s concern for managing property and natural resources.

## Trade

The Islamic State issues a variety of policies and rules to regulate trade and other economic activities in the territories it controls. Official publications make clear that the preferred vocation for subjects of the caliphate is jihad. Propaganda advises Muslims to earn a living “by performing *jihād* and then taking from the agriculture of his *kāfir* enemies, not by dedicating his life to agriculture like his enemies do.”<sup>105</sup> Peaceful professions such as farming are looked down upon. However, in recognition of the reality that the caliphate’s economy cannot be sustained by jihad alone, the Islamic State has developed rules to justify and regulate labor and commerce. It requires fighters who “abandon jihad and work to improve their wealth and land” to pay *zakāt* taxes on their income and assets.<sup>106</sup> Taxation is thus a justification for otherwise impermissible livelihoods.

98. Islamic State, Media Office of North Baghdad Province, “Photographic Report: Aspect of the Spoils of the Islamic State in the Battle of Nazem with the Safavid Army Near the Nibai Region,” April 30, 2015, [https://web.archive.org/web/20160530085534/https://justpaste.it/we\\_sh\\_bag01](https://web.archive.org/web/20160530085534/https://justpaste.it/we_sh_bag01).

99. Quran [8:41]: “And know that anything you obtain of war booty – then indeed, for Allah is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveler ...”

100. “Truth of Daesh’s Decision Regarding *Khums* of its Adherents’ *Ghana’im* for the Treasury,” *Mufakira al-Islam*, June 20, 2015, <http://islammemo.cc/akhbar/arab/2015/06/20/251320.html>.

101. Interview with Abu Ammar, Şanlıurfa, March 2016.

102. Islamic State, “Does hard currency come upon in the course of jihad become *fay’*, or should it be distributed *zakāt*?” Fatwa no. 35, December 11, 2014, <http://www.jihadica.com/wp-content/uploads/2015/02/IS-fat-was-35-38-40-53-55-57-59-62-65-71.pdf>.

103. Raqqa Province, “Recording the Muslims for Contribution to Orphans of Fay’ in the Eastern District of the Province,” 3 September 2015, <http://web.archive.org/web/20160530094815/http://justpaste.it/nhcr>; and Raqqa Province, General Shari’a Committee, “Announcement on Contributing *Ghanīma* and *Fay’* to Orphans,” May 2014, <https://web.archive.org/web/20160323013442/https://twitter.com/baqiah1407/status/462371102405431296>.

104. Islamic State, Deir Ezzor Province, “Decision,” January 27, 2015, <https://web.archive.org/web/20160206090043/http://justpaste.it/isfishingdez>.

105. Islamic State, “The Failed Crusade,” *Dabiq*, vol. 4, October 2014, <http://media.clarionproject.org/files/islamic-state/islamic-state-isis-magazine-issue-4-the-failed-crusade.pdf>, 12.

106. Id.

*Zakāt* refers to a compulsory charitable contribution based on a percentage (traditionally 2.5 percent) of a Muslim's total income and savings. In a video explaining the institution of *zakāt*, the Islamic State cites the Quran<sup>107</sup> in describing eight areas of public spending for which *zakāt* funds may be allocated, which include: welfare for the poor who live in "absolute poverty"; proselytizing and outreach to potential converts; freeing Muslim slaves or liberating Muslim prisoners captured by enemies; and financing jihad.<sup>108</sup> In addition to capital assets, *zakāt* can also be levied on other material possessions such as agricultural holdings and livestock. For example, a document from Aleppo refers to a *zakāt* tax on barley and wheat.<sup>109</sup>

In addition to taxes on income, the Islamic State also intervenes in markets to set prices for housing rents,<sup>110</sup> medications sold at pharmacies,<sup>111</sup> and childbirth operations performed in its hospitals.<sup>112</sup> It has even issued a fatwa requiring that the price of counterfeit goods be lower than the price of the authentic product.<sup>113</sup> Merchants are punished when they tamper with scales in order to charge customers more than the purchased goods are actually worth.<sup>114</sup>

Along with the taxes it imposes on commerce within the territory of the caliphate, the Islamic State also collects *'ushr*, an import-export tariff on cross-border trade that was first introduced by the Caliph Umar in the seventh century to counter similar taxes imposed on Muslims by neighboring states. Historically, a 10 percent *'ushr* tax was imposed on non-Muslim foreign traders, while Muslims and local non-Muslims were taxed at lower rates of 2.5 percent and 5 percent respectively.<sup>115</sup> Photographs of tax receipts for imported goods suggest that the Islamic State is collecting *'ushr* taxes in a similar manner.<sup>116</sup> As these examples illustrate, the Islamic State has developed numerous rules aimed at regulating the economy of the caliphate.

## Warfare

The Islamic State has developed elaborate rules governing its military operations. The organization claims to follow Islamic laws of armed conflict, although al-Qaeda,<sup>117</sup> Jabhat al-Nusra,<sup>118</sup> and other jihadist groups have disputed its compliance with these rules. Although the United Nations has deemed the Islamic State to be in violation of bind-

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107. Quran [9:60]: "*Zakāt* expenditures are only for the poor and for the needy and for those employed to collect [*zakāt*] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveler - an obligation [imposed] by Allah ..."
108. The Islamic State "And they Gave *Zakāt*," June 17, 2015, <http://jihadology.net/2015/06/17/al-furqan-media-presents-a-new-video-message-from-the-islamic-state-and-they-gave-zakah/>.
109. Islamic State, Aleppo Province, "Announcement," June 2, 2014, <https://web.archive.org/web/20160323133815/https://twitter.com/shahedahsham/status/473409082976911360>.
110. Islamic State, Diwan of the Judiciary and Complaints, Anbar Province, "To the Owners of Property and Owners of Real Estate Offices," December 2, 2015, <https://web.archive.org/web/20150714223255/http://justpaste.it/hitrentratesis>.
111. Islamic State, Diwan of Health, Ninewa Province, October 20, 2014, <https://web.archive.org/web/20150527234953/http://justpaste.it/Ninwei>.
112. Islamic State, Deir Ezzor Province, "Decision," General Medical Official, November 2014, <https://web.archive.org/web/20160530092734/https://pbs.twimg.com/media/B1iNqvKCMAAPdEh.jpg>.
113. Islamic State, Committee on Research and Fatwas, "Question: What is the Ruling on the Imitation of Trademarked Brands and Selling Them in the Market Under the Same Name?" Fatwa no. 51, January 14, 2015, <https://web.archive.org/web/20160206084607/http://justpaste.it/imitationbrandsfatwa>.
114. Islamic State, Media Office of Raqqa Province, "Photographic Report No. 2: *Ta'zir* Punishment of a Cheater and a Motorcycle Thief," June 2015, <https://web.archive.org/web/20160323210837/https://justpaste.it/ihmi>.
115. Volker Niehaus, "Zakat, Taxes, and Public Finance in Islam," in *Islam and the Everyday World: Public Policy Dilemmas*, eds. Sohrab Behdad and Farhad Nomani (New York: Routledge, 2006) 178.
116. Photograph of a tax receipt issued to merchant driving from Jordan to Anbar province, [https://pbs.twimg.com/media/BvMXsgYCcAEbp\\_R.jpg](https://pbs.twimg.com/media/BvMXsgYCcAEbp_R.jpg).
117. See, for example, the al-Qaeda-affiliated cleric Abu Muhammad Maqdisi's statement proclaiming that the Islamic State has "deviated from the right path" by shedding the blood of innocents, confiscating their possessions, and targeting other Muslim and jihadist groups. Mohamed al-Najjar, "al-Maqdisi confirms the deviance of the organization of the 'Islamic State,'" *Al Jazeera*, June 4, 2014, <http://tinyurl.com/zejcbob>.
118. In an interview in May 2015, the leader of Jabhat al-Nusra, Abu Mohammad al-Julani, condemned the Islamic State as "*khawarij*" (referring to a heretical sect that appeared during the first century of Islam and became known for justifying the killing of other Muslims on grounds of *takfir*). Ahmed Mansour, "al-Julani: The Brotherhood of Egypt has deviated ... and the organization of the Islamic State is 'khawarij,'" *Al Jazeera*, May 30, 2015, <http://tinyurl.com/j3fouf3>.

ing international humanitarian law,<sup>119</sup> the Islamic State nonetheless claims that its combatants are acting lawfully according to the group's own rules. As one of its publications claims, the caliph is personally obligated to ensure combatants' adherence to rules that supposedly regulate their actions in combat: "The leader is required to ensure that he and his soldiers are held responsible for the rights that Allah has made obligatory and the limits that He has set."<sup>120</sup>

The Islamic State has published guidelines, either as official fatwas or independent legal opinions authored by Islamic State-affiliated clerics, specifying the conditions under which enemy combatants may be targeted, tortured, mutilated,<sup>121</sup> or killed, as well as rules governing the ransom<sup>122</sup> of non-Muslim hostages. A 136-page manual containing guidelines on the treatment of prisoners of war explains that torture is permissible as a retributive punishment for enemies of the Islamic State that have engaged in equivalent acts of torture. However, there are limits to this doctrine of retributive justice. Even if enemies of the Islamic State have raped Muslim women or men in the course of war, it is not permissible for fighters of the Islamic State to rape their Muslim prisoners of war in retaliation because God has absolutely prohibited this "sin" which so violates morality that "there is no excuse that can justify its commission."<sup>123</sup>

Among the measures that the Islamic State takes to control the behavior of combatants in warfare is the

regulation and censorship of their communications. All subjects of the Islamic State, whether civilians or combatants, are officially prohibited from engaging in "independent efforts to publish written, audio, or visual releases in the name of the Islamic State on the Internet," although in practice this rule is routinely ignored.<sup>124</sup> Additionally, they are forbidden from communicating with journalists or media outlets except through the central media office of the Islamic State.<sup>125</sup> The Islamic State imposes more specific restrictions on the communications of its fighters through, for example, a decree<sup>126</sup> that prohibits combatants from publishing photographs of enemies killed in battle and a ban<sup>127</sup> on using Apple products and other GPS-enabled devices over concerns that their electronic signals could be used to facilitate the targeting of airstrikes. The Islamic State also warns its fighters against disclosing sensitive information about military operations on the Internet.<sup>128</sup> These regulations reflect the Islamic State's concern for managing its public image not only in the eyes of its subjects but also of its international audience.

In addition to rules concerning the treatment of other combatants, the Islamic State also issues rules regulating the treatment of civilians traveling through conflict areas or captured in the course of military operations. The Islamic State has issued *amān* documents that purport to guarantee the safe passage of journalists and humanitarian workers seeking access to the areas it controls.<sup>129</sup> In the early days of the Islamic State's expansion, these documents were given out relatively

119. United Nations Human Rights Council, "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic," February 5, 2015, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A.HRC.28.69\\_E.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A.HRC.28.69_E.doc).

120. The Islamic State, "From Hypocrisy to Apostasy: The Extinction of the Grayzone," *Dabiq*, vol. 7, February 2015, <http://media.clarionproject.org/files/islamic-state/islamic-state-dabiq-magazine-issue-7-from-hypocrisy-to-apostasy.pdf>, 11-12.

121. Abu Bakr al-Madri, "The Legitimacy of Slaughter and Mutilation of the Bodies of Unbelievers," September 5, 2014, <http://web.archive.org/web/20160530095020/https://justpaste.it/gz3j>.

122. Islamic State, Committee of Research and Fatwas, "Ruling on the Ransom of an Apostate Prisoner," Fatwa no. 52, December 14, 2014, <https://justpaste.it/fatwaapostateprisoners>.

123. al-Battār Media Foundation, "Ruling on the Killing of Muslims and Unbelievers in Conditions of Captivity," December 2014, [https://archive.org/details/hokm\\_qtl](https://archive.org/details/hokm_qtl), 110-112.

124. Islamic State, General Supervisory Committee, "Statement for Distribution," No. 94, September 26, 2015, <http://www.aymennjawad.org/jawad/pics/large/328.jpg>.

125. Id.

126. "Al-Baghdadi orders the slaughter and decapitation of victims and prohibits recording them," *Al-Alam*, August 28, 2014, <http://www.alalam.ir/news/1627231>.

127. Islamic State, General Supervisory Committee, "Announcement," February 21, 2015, <https://justpaste.it/banongpsandapple>.

128. Islamic State, General Administration of Aleppo Province, "Announcement," (February/March 2015), <https://justpaste.it/aleppogeneralnote>.

129. Photograph of a security guarantee given to a German journalist, October 19, 2014, <https://pbs.twimg.com/media/B6AAV-wEIQA6Z0r.jpg>.



freely by its courts. However, as Islamic State officials became increasingly paranoid, they began to expel all humanitarian groups with ties to foreign governments over concerns of espionage. The Islamic State has also kidnapped an employee of at least one group to whom it had previously guaranteed protection.<sup>130</sup>

The Islamic State applies different standards to civilian prisoners of war depending on their religious affiliation and claims that certain classes of *kuffār* (unbelievers)—meaning those who do not believe in Islam and refuse to convert—can lawfully be enslaved for the purposes of sexual exploitation or forced labor. Unlike Christians, who are tolerated as minority subjects of the caliphate, Yazidis and other groups designated as “original” (*asli*) unbelievers may be enslaved or killed unless they convert to Islam. This was how the Islamic State justified its execution of 5,000 Yazidi men and enslavement of up to 7,000 Yazidi women during its attack on Mount Sinjar in August 2014.<sup>131</sup> Yazidis interviewed in northern Iraq reported that the Islamic State spared the lives of young boys, but only in order to send them to training camps where they were indoctrinated and eventually conscripted as fighters.<sup>132</sup> The Islamic State has not published, to my knowledge, any detailed statements of the rules that govern the treatment of civilians who are coerced into performing military service or other types of forced labor. However, its rules governing sexual slavery are extensive and well-documented.

The Islamic State operates several official slave markets in Iraq and Syria, where slaves are sometimes sold for fixed prices and in other cases are

auctioned off to the highest bidder. An official “price list” that surfaced in 2014 and has since been confirmed by the UN<sup>133</sup> as authentic states that children under 9 years old cost \$165, adolescent girls sell for \$124, and women older than 20 cost even less. The Islamic State has repeatedly defended the legality of its slave trade and claims that the rules governing the treatment of slaves include certain limitations and safeguards to protect them from mistreatment, such as a prohibition on separating a mother from her young children.<sup>134</sup> Another rule prohibiting sexual intercourse with pregnant slaves has apparently resulted in widespread forced abortions and dangerous forms of birth control.<sup>135</sup> As with many of the Islamic State’s internal rules, high-ranking members appear to comply with these guidelines while lower-ranking members are more likely to disregard them, either due to ignorance of the rules or a belief that they are unlikely to be caught or punished for transgressions.<sup>136</sup>

The vast majority of women enslaved by the Islamic State are Yazidis from northern Iraq, but the rules also permit the enslavement of Jews and Christians. The Islamic State notes that scholars disagree over the permissibility of enslaving Muslim women who have apostasized. However, “consensus leans towards forbidding [the enslavement of apostates and] we lean towards accepting the consensus.”<sup>137</sup>

Technically, slave owners can legally free their slaves by obtaining an “emancipation certificate” from an Islamic court. One example from Iraq

130. According to humanitarian professionals working in Syria, the Islamic State initially granted humanitarian groups access to areas under its control, but has since expelled virtually all groups with ties to foreign governments over concerns of espionage. Rare exceptions have been made for NGOs providing vaccines for the Leishmania parasite. Interviews with Fathi, Gaziantep (March 2016) and James, Gaziantep (March 2016).

131. Richard Spencer, “Isil carried out massacres and mass sexual enslavement of Yazidis, UN confirms,” *The Telegraph*, October 14, 2014, <http://www.telegraph.co.uk/news/worldnews/islamic-state/11160906/Isil-carried-out-massacres-and-mass-sexual-enslavement-of-Yazidis-UN-confirms.html>.

132. Interviews with Sara and Rozin, Dohuk, January 2016.

133. Vice News, “UN Verifies Islamic State Slave Price List: ‘The Girls Get Peddled Like Barrels of Petrol,’” *Vice*, August 4, 2015, <https://news.vice.com/article/un-verifies-islamic-state-slave-price-list-the-girls-get-peddled-like-barrels-of-petrol>.

134. Islamic State, “Questions and Answers on Taking Captives and Slaves,” October/November 2014, <https://web.archive.org/web/20160530100043/https://justpaste.it/saby>.

135. Rukmini Callimachi, “To Maintain Supply of Sex Slaves, ISIS Pushes Birth Control,” *New York Times*, March 13, 2016, <http://www.nytimes.com/2016/03/13/world/middleeast/to-maintain-supply-of-sex-slaves-isis-pushes-birth-control.html>.

136. *Id.*

137. Islamic State, “Questions and Answers on Taking Captives and Slaves,” October/November 2014, <https://web.archive.org/web/20160530100043/https://justpaste.it/saby>.

states, “A slave belonging to a *muhajir* [foreign fighter] from Libya is free; she has the same rights and duties as any Muslim.”<sup>138</sup> Court-sanctioned emancipation appears to be the only legal pathway to freedom for slaves, as the Islamic State has punished members who attempt to sell back Yazidi slaves to their families.<sup>139</sup> Although the Islamic State has become notorious for its harsh treatment of enemy combatants as well as prisoners of war, the group claims that these rules impose some limits on its violence.

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138. Rukmini Callimachi, “ISIS Enshrines a Theology of Rape,” *New York Times*, August 13, 2015, <http://www.nytimes.com/2015/08/14/world/middleeast/isis-enshrines-a-theology-of-rape.html>.

139. @ajilinesalassd, “The organization Daesh has detained one of its officials in the intelligence apparatus in the city of al-Tabqa in the suburbs of Raqqa on charges of selling a Yazidi slave to her family,” Tweet, August 17, 2015, <https://web.archive.org/web/20160323003824/https://twitter.com/ajilinesalassd/status/633295352766984192>.

## Law enforcement

The following sections describe the institutions that the Islamic State has developed to enforce the rules and regulations described above. The Islamic State possesses the same three features that are present in any modern legal system: (1) police, (2) courts, and (3) prisons.

### Police

The Islamic State enforces its rules and regulations through two separate police units and a covert “security apparatus” (*al-jihaz al-ʿamni*). One of the police forces, called the “Islamic police” (*al-shurta al-Islamiyya*), is responsible for ordinary law enforcement and public safety. Its responsibilities include conducting inspections at checkpoints<sup>140</sup> and issuing tickets for traffic violations.<sup>141</sup> According to official propaganda, this force contains legal specialists who report to a senior jurist (known as a *shariʿi*), who in turn serves as a direct link to judges in the courts. When dealing with interpersonal disputes, such jurists will first attempt to resolve the conflict through informal mediation, according to Syrians from areas controlled by the Islamic State.<sup>142</sup> If mediation fails, the jurist can refer the dispute to a court.

The second police force is known as the *hisba* and it is a religious police force whose mandate is to “promote virtue and prevent vice to dry up sources of evil, prevent the manifestation of disobedience, and

urge Muslims toward well-being.”<sup>143</sup> Its activities include enforcing the prohibition on commercial activity during prayer time, responding to reports of drug or alcohol use, and destroying banned materials (including musical instruments, cigarettes, or polytheistic idols). The religious police are also responsible for investigating alleged violations of *shariʿa* and may refer more serious crimes to courts.

### Courts

The Islamic State has established official courts in Syria, Iraq, and Libya, and proto-courts are reportedly operating in its North Sinai province<sup>144</sup> as well as border areas of Lebanon.<sup>145</sup> Although the Islamic State claims to control territory in parts of Algeria, Nigeria, and Yemen through its annexation of other jihadist groups (Jund al-Khilafah, Boko Haram, and Ansar al-Sharia) that have pledged allegiance, courts have not yet been established in these areas. But as the Islamic State begins to communicate instructions and guidance to its distant franchises,<sup>146</sup> these groups may come under pressure to establish the kinds of legal and judicial institutions that characterize its governance in Syria and Iraq.

The Islamic State uses its courts as platforms to educate the public about the rules of its system. Judges announce verdicts in public squares, often through megaphones in front of a crowd of spectators.<sup>147</sup>

140. Islamic State, Media Office of Raqqa Province, “Photographic media coverage of the Islamic police,” December 18, 2014, <https://justpaste.it/ihqf>.

141. Islamic State, Raqqa Province, “Issuing a Ticket to a Driver,” February 2015, <https://web.archive.org/web/20160530101509/http://blog.amin.org/sky2018/files/2015/02/murur4.jpg>.

142. Interviews with Adnan, Şanlıurfa, March 2016, and Abu Ammar, Şanlıurfa, March 2016.

143. Islamic State, Aleppo Province, “Aleppo Province: History, Location, Borders, Area, and Fronts,” June 26, 2014, <https://justpaste.it/HalabReport>.

144. Yahya Aqeel, “Sinai Province ... Courts and Qisas and Application of *Hudūd* in the Absence of Security,” *Rassd*, March 14, 2016, <https://rassd.com/180142.htm>.

145. Samya Kullab, “ISIS running Shariah court in Aرسال in bid to win hearts and minds,” February 7, 2015, <http://www.dailystar.com.lb/news/lebanon-news/2015/feb-07/286716-isis-running-shariah-court-in-arsal-in-bid-to-win-hearts-and-minds.ashx>.

146. See, for example, this Islamic State video addressed to its affiliate Boko Haram. “Advice to the Soldiers of the Caliphate in Nigeria,” March 15, 2015, <http://jihadology.net/2015/03/15/new-video-message-from-the-islamic-state-advice-to-the-soldiers-of-the-caliphate-in-nigeria-wilayat-al-raqqah/>.

147. Islamic State, Raqqa Province, “Announcement of the Ruling for Drinking Wine,” February 7, 2015, [https://web.archive.org/web/20150207083631im\\_/http://i.imgur.com/sJFZhy6.jpg](https://web.archive.org/web/20150207083631im_/http://i.imgur.com/sJFZhy6.jpg).

The Islamic State often involves civilians directly in the administration of punishments. For example, bystanders are invited to participate in the stoning of convicted adulterers.<sup>148</sup> In *qisās* cases—a category of crimes for which *shari'a* permits the victim or victim's family to exact a retributive punishment on the perpetrator—the Islamic State allows the *walī al-damm*<sup>149</sup> to read the verdict, which is then implemented by the police.<sup>150</sup> Another type of punishment in which civilians play a role is *tash'hīr*, a shaming sanction in which the perpetrator is forced to stand in a public area wearing a sign describing his offense.<sup>151</sup> As these examples illustrate, the Islamic State uses civilians as tools to communicate its rules—as well as the costs of violating them.

Information about the organization of the Islamic State's judiciary is scarce, but Syrians familiar with the court system say that it contains at least three main branches: a division for complaints (*dīwān al-mazālim*), including grievances against the Islamic State's own public officials and combatants; Islamic courts, including a high court located in Mosul, which deals with violations of public laws and important matters of national security; and the Diwan al-Hisba,<sup>152</sup> which adjudicates crimes or misconduct referred by the *hisba* police. There is some evidence of an appeals process. A Syrian from Raqqa described one property dispute that had been referred to the high court in Mosul after the local court in Raqqa was unable to compel a Libyan Islamic State fighter to vacate a house that he had

unlawfully expropriated from a civilian.<sup>153</sup> Another Syrian from Deir Ezzor said that when low-ranking judges encounter cases that are particularly complex or lack sufficient evidence to convict the defendant, they sometimes refer the case to a more experienced judge in order to reach a final decision.<sup>154</sup>

The Islamic States regulates its judiciary through a top-down bureaucratic chain that starts with the *shari'a* council, a body that is headed by al-Baghdadi himself. Under the authority of the *shari'a* council, each *walī* (the governor of a regional administrative division called a *wilāyat*) oversees a *shari'a* deputy who in turn supervises the *wilāyat*-level *shari'a* commission. The *shari'a* commissions (*bay'at al-shari'a*) are responsible for overseeing local courts and judges.<sup>155</sup> The Islamic State punishes and even executes its own judges when they deviate from its official position on legal questions. For example, one judge was removed from his post and put on trial for voicing opposition to the legal ruling justifying the immolation of a Jordanian pilot.<sup>156</sup> Another judge “disappeared” in Deir Ezzor after he objected to the torture of prisoners.<sup>157</sup> Still others have been executed on charges of treason<sup>158</sup> and even witchcraft.<sup>159</sup>

In addition to punishing its own judges, the Islamic State has executed independent jurists who are not part of the official judiciary of the Islamic State when they issue unauthorized fatwas that are deemed too radical. For example, the Islamic State executed one such jurist after convicting him of

148. Islamic State, Aleppo Province, “Implementation of the Hadd Punishment of Stoning Until Death on a Married Adulterer in the Abu Qalqal Region,” January 12, 2015, <https://web.archive.org/web/20160323224247/https://justpaste.it/Rjm2death>.

149. *Walī al-damm* is literally translated as “guardian of blood” and refers to the victim's next of kin.

150. Islamic State, Ninewa Province, “Photographic Report 3: Implementation of the *Hadd* Punishment of *Hirābah* for Spreading Corruption on Earth,” April 2015, [https://web.archive.org/web/20160323213040/http://www.ctsnn.tk/2015/04/blog-post\\_659.html](https://web.archive.org/web/20160323213040/http://www.ctsnn.tk/2015/04/blog-post_659.html).

151. Islamic State, Raqqa Province, “*Ta'zīr* Punishment by *Tash'hīr* in Front of the People,” April 19, 2015, [https://web.archive.org/web/20160323223638/https://twitter.com/Raqqa\\_SI/status/589561235731046400](https://web.archive.org/web/20160323223638/https://twitter.com/Raqqa_SI/status/589561235731046400).

152. Aymenn al-Tamimi, “Aspects of Islamic State (IS) Administration in Ninawa Province: Part III,” January 23, 2015, <http://www.aymennjawad.org/15961/aspects-of-islamic-state-is-administration-in>.

153. Interview with Majd, Gaziantep, November 2015.

154. Interview with Yusuf, Reyhanli, March 2016.

155. Andrew March and Mara Revkin, “Caliphate of Law,” *Foreign Affairs*, April 15, 2015, <https://www.foreignaffairs.com/articles/syria/2015-04-15/caliphate-law>.

156. “Facing Internal Criticism for Pilot's Death, ISIS Executes 7,” *Al-Akhbar*, February 6, 2015, <http://english.al-akhbar.com/node/23647>.

157. Sayyid al-Hadidi, “Disappearance of a Daesh judge after his opposition to the torture of prisoners,” *Dot Masr*, January 18, 2015, <http://bit.ly/1P2zfWq>.

158. “Daesh Executes the First Shari'a Judge Hamam al-Lafi,” *Jordan News*, January 23, 2015, <http://www.jordannews.com/jordan/32153.html>.

159. Muhamed al-Muhaymid, “The Islamic State Executes a Sheikh in Error,” *al-Hal al-Suri*, October 16, 2014, <https://7al.me/?p=6572>.

spreading *fitna* (strife or discord) by advocating excessive *takfir*<sup>160</sup> of other Muslim jihadists.<sup>161</sup>

## Prisons

The Islamic State operates numerous prisons in connection with its court system. Although precise statistics are not available, Amnesty International reported in December 2013 that the Islamic State was operating at least seven detention facilities in Raqqa and Aleppo provinces alone.<sup>162</sup> One of the functions of these prisons, in addition to their obvious role in punishing deviants and dissidents, is to “rehabilitate” wrongdoers in anticipation of their eventual reintegration into society. The Islamic State employs clerics in prisons to visit with and educate the inmates.<sup>163</sup> Syrians detained by the Islamic State reported that they were given lessons in correct prayer posture and denied release until they had memorized lengthy passages of Islamic scripture. Some of their illiterate cellmates were detained for months after the official completion of their sentences as they struggled to learn the required passages.<sup>164</sup>

Although the Islamic State claims to guarantee certain rights for detainees, including a pre-trial detention limit of seven days before the accused person is entitled to a court hearing,<sup>165</sup> reports of arbitrary arrests and torture in prisons are widespread. In some areas, civilians have staged protests to demand the release of detainees.<sup>166</sup>

Syrians who have been detained by the Islamic State describe a bifurcated system with separate jails for

political detainees and ordinary criminals. Conditions in ordinary prisons are reportedly much better. Inmates receive adequate rations, are permitted to receive visitors, and in some cases are allowed to watch television.<sup>167</sup> Clerics regularly visit the inmates to provide religious education.

Conditions in some of the “political” prisons are reportedly much worse than in the ordinary prisons. Some former political prisoners interviewed for this study were subjected to solitary confinement in underground cells where they experienced electroshock torture.<sup>168</sup> One former official from a city in Aleppo was subjected to particularly cruel and humiliating forms of abuse.<sup>169</sup> These included hours of confinement in a chicken cage and suspension from the ceiling with his arms twisted behind his back in a technique known as *shabeh* (the Arabic word for “ghost”), which the Islamic State appears to have learned from the Syrian regime.<sup>170</sup> Some political prisoners reported that they had received better treatment, however. A former high-ranking FSA officer who was detained in a political prison in Deir Ezzor offered a different assessment. Although he was not allowed to communicate with his family or anyone else outside of the prison, he described the food as “excellent” and reported that he was able to place an order each morning for dinner, and whatever he requested was prepared for him.<sup>171</sup> These conflicting accounts suggest that conditions vary depending on the province, the personalities of different prison administrators, and the status of the detainees. The Islamic State appears to give preferential treatment to prisoners with significant military experience, possibly in the hope of recruiting them.

160. Takfir is the practice of declaring someone to be an apostate and therefore a legitimate target for killing.

161. Abdulwahid al-Ansari, “Daesh kills one of its scholars by *ta'zir* on charges of excessive *takfir*,” *Al-Hayat*, September 10, 2014, <http://bit.ly/1Md9T1B>.

162. Amnesty International, “Syria: Harrowing torture, summary killings in secret ISIS detention centres,” December 19, 2013, <https://www.amnesty.org/en/articles/news/2013/12/syria-harrowing-torture-summary-killings-secret-isis-detention-centres/>.

163. Islamic State, Media Office of Raqqa Province, “Photographic media coverage of the Islamic police,” December 18, 2014, <https://justpaste.it/ihqf>.

164. Interviews with Ghaith, Gaziantep (July 2015, November 2015).

165. Id.

166. Syrian Observatory for Human Rights, “Raqqa residents protest against the ISIS,” August 12, 2013, <https://www.facebook.com/syriahroe/posts/405862906188720>.

167. Interviews with Ghaith, Gaziantep (July 2015, November 2015).

168. Interviews with Sayf, Gaziantep (July 2015); Ghaith, Gaziantep (July 2015); and Alaa, Gaziantep (November 2015).

169. Interview with Alaa, Gaziantep (November 2015).

170. Richard Spencer, “Islamic State Adopts Assad’s Methods of Torture,” *The Telegraph*, December 13, 2014, <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/11291469/Islamic-State-adopts-Assads-methods-of-torture.html>.

171. Interview with Yusuf, Reyhanli (March 2016).

PART II

# Three state-building functions of the Islamic State's legal system

In this section, I describe how the Islamic State uses its legal system to advance three state-building objectives: (1) establishing a legal basis for territorial sovereignty and expansion; (2) enforcing internal discipline within Islamic State's own ranks; and (3) justifying taxation, which has become an increasingly important source of revenue for the group.

## 1. Territorial sovereignty and expansion

Legal institutions make it easier for insurgent groups with state-building aspirations to capture and retain territory by legitimizing their claims to sovereignty, justifying the expropriation of the property and land of enemies, and building goodwill with civilians. First, the Islamic State purports to be reclaiming lands that were unlawfully expropriated from Muslims by Crusaders and colonial powers. The group has generated a vast amount of propaganda announcing “the end” of the Sykes-Picot order,<sup>172</sup> including a video in which bulldozers literally demolish the border between Iraq and Syria.<sup>173</sup> In order to destroy an existing world order based on man-made laws and institutions, the Islamic State must logically assert an alternative legal framework to fill the vacuum. It has done this by claiming that the caliphate is the only legitimate government on earth. According to the Islamic State, all Muslims have a divine obligation to live within its borders.

Second, the creation of a new legal framework for land ownership enables the Islamic State to claim that it has the authority to expropriate the property of anyone who subscribes to the laws of its enemies.

The Islamic State claims that it is legally entitled to the assets of anyone who supports the current governments of Iraq and Syria on grounds of apostasy, or who leaves the lands of the caliphate to live among unbelievers. For example, one fatwa issued in 2014 states, “If [an] apostate has fled to the abode of disbelief [anywhere outside of the caliphate] and the Muslims seize his property in the abode of Islam [lands governed by the Islamic State], it becomes war booty for the Muslims.”<sup>174</sup> One agricultural engineer from Raqqa province had two of his properties confiscated for the crime of unauthorized travel to Turkey for more than 30 days.<sup>175</sup> Seized buildings are often spray-painted with the words, “property of the Islamic State.”<sup>176</sup> These confiscated properties are then used as incentives for recruitment. As one propaganda article advertised to potential recruits, “Do not worry about money or accommodations for yourself and your family. There are plenty of homes and resources to cover you and your family.”<sup>177</sup> As these examples illustrate, the Islamic State uses its legal system to justify the seizure and redistribution of property in ways that facilitate its territorial expansion.

Third, the Islamic State uses its legal system to build goodwill with communities that are desperate for order and security. Like any insurgent group, the Islamic State depends on the cooperation of civilians to capture and control new territory. One way to earn the trust (and fear) of civilians is by solving local problems and punishing troublemakers. As scholars of civil war have noted, conflict creates opportunities for looting, land grabs, and crime.<sup>178</sup> The Islamic State's aggressive prosecution of criminals<sup>179</sup> and rapid resolution of disputes in previous-

172. This secret agreement, made during World War I between the governments of the United Kingdom and France with Russian consent, defined their respective spheres of influence in the Middle East.

173. Islamic State, “Bulldozing the Border Between Iraq and Syria: The Islamic State (Part 5),” August 13, 2014, [https://www.youtube.com/watch?v=TxX\\_THjtXOW](https://www.youtube.com/watch?v=TxX_THjtXOW).

174. Islamic State, Committee of Research and Fatwas, “Question: Are Agricultural Enterprises That Previously Belonged to Apostates Subject to Zakat?” Fatwa no. 36, December 11, 2014, <https://justpaste.it/fatwa36>.

175. Interview with Bassel, Reyhanlı, March 2016.

176. See, for example, this photograph of the wall of a house expropriated by the Islamic State in Tikrit, Iraq. *Al-Rased 24*, March 12, 2015, <http://alrased24.com/wp-content/uploads/2015/03/32.jpg>.

177. Islamic State, “A Call to Hijrah,” *Dabiq*, vol. 3, September 2014, <http://media.clarionproject.org/files/09-2014/isis-isis-islamic-state-magazine-Issue-3-the-call-to-hijrah.pdf>, 33.

178. Stathis Kalyvas, *The Logic of Violence in Civil War* (Cambridge: Cambridge University Press, 2006), 184; Jacob Grajales, “The Rifle and the Title: Paramilitary Violence, Land Grab and Land Control in Colombia.” *Journal of Peasant Studies*, vol 38, no. 4 (2011): 771-792.

179. Syrians estimated that crime rates had dropped between 70-90 percent in areas captured by the Islamic State. Interviews with Fares, Gaziantep (July 2015) and Faisal, Gaziantep (July 2015).

ly lawless areas is often welcomed by civilians, at least initially.<sup>180</sup> One Syrian from Aleppo said that the crime rate in his city had fallen to “near zero” since the arrival of the Islamic State. “You can leave a cell phone on a table in a café, and it will still be there in a week, because everyone is afraid of the consequences of stealing.”<sup>181</sup>

When the Islamic State captures a new city, one of its first moves is to open a court to enforce law and order. Judges play an almost ambassadorial role by communicating the Islamic State’s policies to the population and listening to local concerns and grievances. In some areas, the Islamic State has offered to dispatch judges to resolve disputes in rural areas where civilians cannot easily access its courts, which are primarily located in cities.<sup>182</sup> The Islamic State uses its judges to project influence into areas that it does not yet control but hopes to eventually capture, such as the Lebanese border town of Aarsal, where it operates a rudimentary court.<sup>183</sup> In such areas, where the Islamic State has not yet established a monopoly on violence and lacks the law enforcement apparatus that is necessary to punish serious crimes, the role of the courts is generally limited to non-binding arbitration between parties who voluntarily submit their disputes for adjudication. At this stage, most of the cases involve land, business transactions, and other civil matters. Only later, once the Islamic State has established a strong police force and a surveillance apparatus that is capable of identifying and arresting criminals, do the courts begin to prosecute more serious offenses such as armed robbery and murder.

Many Syrians and Iraqis interviewed for this paper reported that the Islamic State earned the trust of residents of their towns and cities by rapidly resolving local disputes that would have taken years to

litigate in Syrian or Iraqi courts. One Syrian from the city of al-Bab in Aleppo reported that his cousin joined the Islamic State after he was impressed by its speedy resolution of a land dispute for his aunt.<sup>184</sup> Even though the court ultimately ruled against his aunt, the efficiency and professionalism of the process was more important to him than the outcome. Such examples suggest that courts facilitate the Islamic State’s territorial expansion both directly, by establishing its legal authority over previously contested lands, as well as indirectly by winning hearts and minds.

## 2. Internal control and discipline

A second state-building function of the Islamic State’s legal system is its role in enforcing the compliance and accountability of its own members. No government can establish itself as legitimate and sovereign without policing the behavior of the people who are responsible for implementing its policies. Failure to punish corruption is among the primary causes of public dissatisfaction with the current governments of Iraq and Syria. By punishing wrongdoers within its own ranks, the Islamic State is attempting to promote itself as a fairer and more accountable alternative to the status quo.

Toward this end, the Islamic State uses its legal system to discipline its own members—both civilian officials as well as combatants—for two types of violations: crimes against civilians (such as theft) as well as crimes against the state (such as embezzlement of public funds, abuse of power, or espionage). Political scientists have argued that courts often function as “fire alarms” by helping the ruling authorities to monitor the performance of their own bureaucracies and identify corrupt and incompetent officials.<sup>185</sup> The legal system of the Islamic

180. Mara Revkin, “Experts Weigh In: Is ISIS Any Good at Governing?,” *Brookings Institution*, November 20, 2015, <http://www.brookings.edu/blogs/markaz/posts/2015/11/20-experts-weigh-in-isis-governance-revkin-mccants>.

181. Interview with Omar, Gaziantep, November 2015.

182. “Source from Anbar operations: Daesh opens a shari’a court in Fallujah and begins to receive complaints,” *Al-Mada Press*, March 25, 2014, <http://www.almadapress.com/ar/NewsDetails.aspx?NewsID=28173>.

183. “Daesh Holds Court in Aarsal, Lebanon,” *The Daily Star*, February 8, 2015, <http://www.albawaba.com/news/daesh-holds-court-aarsal-lebanon-653838>.

184. Interview with Bassam, Gaziantep, March 2016.

185. Mathew McCubbins and Thomas Schwartz, “Congressional oversight overlooked: Police patrols versus fire alarms,” *American Journal of Political Science*, Vol. 28, No. 1, February 1984, 165–179.



State appears to be playing such a role. In some areas, the Islamic State has issued public statements urging civilians to report misconduct by its members.<sup>186</sup> According to one report, the Islamic State placed a “complaints box” at a mosque in Mosul.<sup>187</sup>

The Islamic State has punished its own members for a variety of crimes including embezzlement of public funds, espionage, battery, murder, and trafficking contraband products such as cigarettes. Anecdotal reports from Syria and Iraq indicate that the Islamic State punishes its own members at least as often as it punishes civilians. For example, one Syrian who recently visited the Syrian city of al-Bukamal reported that “most of the people that ISIS has imprisoned are ISIS members themselves. The ISIS regime does not hesitate to punish its own members when they break the law. Even an ISIS emir was prosecuted and thrown in prison by the local governor when it was found that he had abused his power and assaulted innocent people.”<sup>188</sup>

Some of the violations for which Islamic State members are punished are *hadd* crimes with fixed punishments, as discussed in Part I, while others are *ta'zir* offenses for which judges or *hisba* police have the discretion to independently decide an appropriate punishment. The Islamic State often uses *ta'zir* punishments to discipline misconduct that is not expressly prohibited by *shari'a* but nonetheless poses a threat to organizational cohesion or damages its public image in the eyes of civilians. In one such case, two Islamic State members were sentenced to a *ta'zir* punishment of lashing for beating a Muslim civilian without just cause.<sup>189</sup> In the Iraqi city of Tikrit, an Islamic State military commander was reportedly sentenced to 99 lashes for raping a

young girl.<sup>190</sup> And in another case, an Islamic State emir in Aleppo was censured and dismissed from his position for mocking a mentally handicapped elderly man for insufficient knowledge of Islam.<sup>191</sup> Islamic State members have been required to pay monetary compensation (known as *diyyah*) after causing property damage or physical injury to civilians. A Syrian from Deir Ezzor reported that the Islamic State provided monetary *diyyah* to the family of a man who was executed on charges of espionage and later exonerated—posthumously—after exculpatory evidence was brought to light.<sup>192</sup>

One interpretation of these cases is that the Islamic State is genuinely committed to protecting civilians from harm by its own members. But another equally plausible interpretation is that the Islamic State selectively punishes its own members only when necessary to appease public demands for accountability. Interviews with Syrians from Islamic State-controlled areas provide more support for the latter. A Free Syrian Army fighter from Deir Ezzor said that the Islamic State generally only punishes its own members for misconduct against civilians when the incident has provoked sufficient outcry to become a reputational liability.<sup>193</sup> In many cases, the Islamic State simply transfers misbehaving fighters or civilian officials to other provinces in lieu of punishment. A shopkeeper from Deir Ezzor echoed the same sentiment.<sup>194</sup> He cited a particular case in which an Islamic State fighter repeatedly stole from civilians with seeming impunity. Only later, when the Islamic State began to suspect the man of spying for the regime, did they finally crack down by executing him. Evidence suggests that the Islamic State tends to tolerate low-level indiscipline and misconduct until it rises to the level of a public

186. See, for example, Islamic State, Aleppo Province, “General call to the people of the Islamic State,” (October 10, 2014). On file with the author.

187. @adh22236, “...Complaints box in one of the mosques in Mosul in the province of Ninewa.” Tweet, August 9, 2014, <https://web.archive.org/web/20160530045804/https://twitter.com/adh22236/status/498210364576649216>.

188. Omar al-Wardi, “A Trip to the Caliphate: Oppressive Justice Under ISIS,” *Syria Comment*, November 21, 2015, <http://www.joshualandis.com/blog/a-trip-to-the-caliphate-oppressive-justice-under-isis-by-omar-al-wardi/>.

189. Independent Islamic News Organization, “Photo of the lashing of two members of the Islamic State as a *ta'zir* punishment because of their beating of a Muslim without just cause,” December 14, 2014, <http://www.dawaalhaq.com/?p=21258>.

190. Islamic State, Salah ad-Din Province, Special Security Battalion, March 2015, <https://web.archive.org/web/20160322193846/https://twitter.com/A27660278/status/578830149065420800>.

191. Official Statement of the Islamic State, Aleppo Province, June 17, 2014, [justpaste.it/fvw0](http://justpaste.it/fvw0).

192. Interview with Tarek, Gaziantep, July 2015.

193. Interview with Adnan, Şanlıurfa, March 2016.

194. Interview with Hamoud, Şanlıurfa, March 2016.

scandal and therefore necessitates punishment in order to satisfy demands for accountability.

### 3. Taxation

Oil was initially assumed to be one of the Islamic State's primary sources of revenue along with bank robberies—although the veracity of a reported \$400 million heist in Mosul has since been challenged.<sup>195</sup> But over time, the estimated proportion of revenue that it derives from taxation has increased steadily and now dwarfs oil extraction by an estimated ratio of 6:1.<sup>196</sup> Even in Deir Ezzor, which is the most oil-rich province in Syria, the Islamic State still obtains more than twice as much revenue from taxation as it does from oil.<sup>197</sup>

As the Islamic State's territory has grown, so has its tax base. But taxation is a risky strategy, particularly in war zones like Syria, where the local unemployment rate is estimated to be as high as 75 percent in some areas,<sup>198</sup> and residents cannot even afford to buy food, much less pay taxes.<sup>199</sup> A potential problem for the Islamic State is that taxation is indistinguishable from extortion in the absence of a legal framework that justifies its imposition. The fine line between taxation and theft has been noted by the sociologist Charles Tilly, who famously analogized the process of state formation to “organized crime.”<sup>200</sup> In an attempt to immunize itself against accusations of banditry, the Islamic State has used its legal system to legitimize and justify economic activities that might otherwise resemble theft.

Courts and other legal institutions play an important role in enforcing the Islamic State's tax policies. Photographs of tax receipts indicate that taxes are often paid at court buildings.<sup>201</sup> Islamic State courts have also issued ultimatums requiring that Christians either convert to Islam or pay the *jizyah* tax.<sup>202</sup> Courts in Iraq have issued orders requiring Islamic State combatants to pay a 20 percent tax on war booty (*khums*) to the treasury, as required by *shari'a*.<sup>203</sup> Additionally, the *shari'a* council in Raqqa (which is responsible for the supervision of the judiciary) has issued guidelines requiring farmers to donate a portion of their harvest as *zakāt*.<sup>204</sup> These examples indicate that courts and judges are directly involved in administering and legitimizing the tax policies that are critical to financing the Islamic State's governance and military operations.

195. Borzou Daragahi, “Biggest bank robbery that ‘never happened’ – \$400m Isis heist,” *Financial Times*, July 17, 2014, <http://www.ft.com/intl/cms/s/0/0378d4f4-0c28-11e4-9080-00144feabdc0.html>.

196. Sarah Almukhtar, “ISIS Finances are Strong,” *New York Times*, May 19, 2015, [http://www.nytimes.com/interactive/2015/05/19/world/middleeast/isis-finances.html?\\_r=0](http://www.nytimes.com/interactive/2015/05/19/world/middleeast/isis-finances.html?_r=0).

197. Aymenn al-Tamimi, “The Archivist: Unseen Islamic State Financial Accounts for Deir az-Zor Province,” *Jihadology*, October 5, 2015, <http://jihadology.net/2015/10/05/the-archivist-unseen-islamic-state-financial-accounts-for-deir-az-zor-province/>.

198. Ahmad Mhidi, a Syrian journalist from Deir Ezzor, estimated that the unemployment rate in IS-controlled areas of Deir Ezzor is around 75 percent. Interview with Ahmad Mhidi, May 2016.

199. Sheikho, Kamal. “After Madaya, Deir ez-Zor Now Faces Humanitarian Catastrophe,” *al-Monitor*, May 6, 2016, <http://www.al-monitor.com/pulse/originals/2016/05/deir-ez-zor-humanitarian-catastrophe-aid-food-assistance.html#ixzz48FwzE6KJ>.

200. Charles Tilly, “War Making and State Making as Organized Crime” in *Bringing the State Back In*, eds. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (New York: Cambridge University Press, 1985): 169–191.

201. Photo of a tax receipt issued by the Islamic Court in Raqqa, March 2015, <http://tinyurl.com/z2ghw7h>.

202. Islamic State Diwan of the Judiciary, “Announcement,” July 17, 2014, [https://web.archive.org/web/20160322193418/http://www.farfesh.com/pic\\_server/articles\\_images/2014/07/26/560da3esh743.jpg](https://web.archive.org/web/20160322193418/http://www.farfesh.com/pic_server/articles_images/2014/07/26/560da3esh743.jpg).

203. @khalddwn, “The Islamic Court in Ninewa province issues an announcement calling for all who have acquired war booty to surrender one fifth to the treasury.” Tweet, June 17 2015, <https://web.archive.org/web/20160322192506/https://twitter.com/khalddwn/status/611152468815118337>.

204. Islamic State, *Shari'a* Committee of Raqqa Province, “*Zakāt* on Wheat and Barley,” May 4, 2014, [https://web.archive.org/web/20160322192338/https://twitter.com/ALhak\\_Media/status/463402798231879680](https://web.archive.org/web/20160322192338/https://twitter.com/ALhak_Media/status/463402798231879680).



CONCLUSION

# **Vulnerabilities of the Islamic State's legal system**

The Islamic State's claim to legitimacy rests heavily on two features of its legal system. First, the Islamic State claims that its own members and officials are bound by the rules of this system, and that none are above the law. Second, the Islamic State claims that all of its acts of violence are justified by law. Both of these assertions have become increasingly difficult to sustain in light of growing evidence that the Islamic State is not as rule-abiding as it purports to be. In conclusion, I highlight two emerging vulnerabilities of the Islamic State's legal system that appear to be threatening the organization's long-term sustainability and undermining its ability to win the trust and cooperation of civilians: (1) corruption and (2) extra-legal violence. I end with a discussion of the implications for counter-insurgency and recommendations for the eventual reintegration of populations currently governed by the Islamic State.

## Corruption

Amid reports of a decline in foreign recruitment,<sup>205</sup> an increase in defections and casualties,<sup>206</sup> and falling oil revenues,<sup>207</sup> the Islamic State is increasingly desperate for money and fighters. In order to shore up its dwindling ranks, the Islamic State appears to be lowering its standards for the quality and professionalism of new recruits in ways that may make the organization more vulnerable to corruption and other symptoms of indiscipline. For example, Islamic State recruiters appear to be targeting convicted criminals or fugitives seeking a fresh start in the caliphate.<sup>208</sup> This trend is true of both foreign recruiting and domestic recruiting inside Iraq and

Syria. Syrians from Aleppo and Deir Ezzor reported that Islamic State courts in their areas had granted amnesty and protection to criminals convicted by courts of the regime or other armed groups in exchange for their pledge of allegiance.<sup>209</sup> One man from Deir Ezzor who had been detained for several months in an Islamic State prison there for his ties to the Free Syrian Army said that "any prisoners who were convicted of crimes under the former regime—even serious crimes such as murder—can be released immediately if they repent and pledge allegiance to the Islamic State."<sup>210</sup>

In addition to welcoming criminals into its ranks, the Islamic State has significantly abbreviated the training—both physical and ideological—that its fighters must undergo. The Islamic State initially required that all new recruits first enroll in Islamic educational courses known as *dawrāt sharia*,<sup>211</sup> which last from 30 to 45 days, followed by military boot camp for another 30 days. But after losing Sinjar to Kurdish forces backed by U.S. airstrikes in November 2015, the Islamic State drastically accelerated its recruitment process by eliminating military training altogether and requiring only a few days of Islamic education before sending new recruits into battle, according to defectors and deserters interviewed in Turkey.<sup>212</sup> These courses play an important role in promoting ideological conformity and internal discipline. Fighters who lack such training are more prone to engage in corruption, looting, and other forms of misconduct. At the same time, the Islamic State's rapid territorial expansion—due in large part to the annexation of even less disciplined groups such as Boko Haram—

205. Mona Alami, "ISIS is Running Short of Recruits," *Newsweek*, March 4, 2015, <http://www.newsweek.com/isis-running-short-recruits-311375>.

206. Kimiko De Freytas-Tamura, "ISIS Defectors Reveal Disillusionment," *New York Times*, September 20, 2015, <http://www.nytimes.com/2015/09/21/world/europe/isis-defectors-reveal-disillusionment.html>.

207. Patrick Wintour, "Isis has been financially weakened, claim UK and US military figures," *The Guardian*, April 28, 2016, <http://www.theguardian.com/world/2016/apr/28/isis-financially-weakened-coalition-airstrikes-us-uk-military>.

208. Anthony Faiola and Souad Mekhennet, "The Islamic State creates a new type of jihadist: Part terrorist, part gangster," *The Washington Post*, December 20, 2015, [https://www.washingtonpost.com/world/europe/the-islamic-state-creates-a-new-type-of-jihadist-part-terrorist-part-gangster/2015/12/20/1a3d65da-9bae-11e5-aca6-1ae3be6f06d2\\_story.html](https://www.washingtonpost.com/world/europe/the-islamic-state-creates-a-new-type-of-jihadist-part-terrorist-part-gangster/2015/12/20/1a3d65da-9bae-11e5-aca6-1ae3be6f06d2_story.html).

209. Interviews with Samer, Şanlıurfa, November 2015, and Faris, Gaziantep, July 2015.

210. Interview with Yusuf, Reyhanlı, March 2016.

211. The curriculum of the *dawrāt shari'a* covers the Islamic State's version of humanitarian law, which does set some limits on violence against civilians, enemy combatants, and prisoners of war. Andrew March and Mara Revkin, "Caliphate of Law," *Foreign Affairs*, April 15, 2015, <https://www.foreignaffairs.com/articles/syria/2015-04-15/caliphate-law>.

212. Mara Revkin and Ahmid Mhidi, "Quitting ISIS," *Foreign Affairs*, May 1, 2016, <https://www.foreignaffairs.com/articles/syria/2016-05-01/quitting-isis>.

has hindered the organization's ability to monitor and control the behavior of lower-ranking members and fighters.

The Islamic State has staked its claim to legitimacy on its purported commitment to fairness and accountability, but as the organization begins to spin out of control, it is struggling to maintain its own high moral standards. Reports of corruption and misconduct by Islamic State members are becoming more common, particularly among lower-ranking fighters and officials who are taking advantage of the opportunity to steal from civilians with impunity. Even higher-ranking officials, who are supposedly responsible for enforcing internal discipline and accountability, are increasingly being accused of corruption. One Syrian from the province of Deir Ezzor said that an Islamic State military commander there was overseeing an illicit trade in cigarettes, which the group officially bans.<sup>213</sup> Also in Deir Ezzor, an official in the local *zakāt* office reportedly embezzled an estimated one million Syrian pounds that had been earmarked for charity and fled to Turkey with the money.<sup>214</sup> In another case in Raqqa, an Islamic State court sentenced a man and woman to death by stoning for committing the crime of adultery. The man's sentence was later "canceled" after his tribe paid a sum of 10 million Syrian pounds in what appeared to be a case of bribery.<sup>215</sup> Such reports undermine the Islamic State's purported commitment to accountability and justice.

### Extra-legal violence

The Islamic State has always claimed that there is an Islamic legal basis for every act of violence that it perpetrates. This claim, however, has become increasingly difficult to sustain amid growing awareness of the extent of extra-legal violence administered by the Islamic State's covert security apparatus

(*al-jihaz al-amni*). The role of the security apparatus is to identify, torture, and eliminate any suspected dissidents, spies, and defectors. Unlike the Islamic State's ordinary justice system, which prides itself on the transparency and publicity of the legal justification for punishments, the security apparatus is a highly secretive institution without any of the due process guarantees that are available to the accused in the ordinary justice system—such as a seven-day limit on pre-trial detention and the right to appeal certain court decisions. Syrians and Iraqis—who have had decades of experience with unaccountable secret police under the al-Assad and Hussein regimes—are increasingly questioning the Islamic State's supposed commitment to rule of law.

A growing number of the Islamic State's own members—feeling discomfort with some of the group's more extreme practices, including slavery and *takfir*—are voting with their feet. A former fighter who recently defected from the Islamic State and fled to southern Turkey, where I interviewed him, said that he had decided to leave the group for several reasons.<sup>216</sup> First, as a Syrian, he was paid less than his foreign counterparts who are considered more valuable to the organization because of their ideological zeal (foreign fighters are more likely to be assigned to suicide missions than Syrians) and because many are veteran jihadists with experience in Central Asia. Second, aside from the pay gap between Syrian and foreign fighters, salaries were declining across the board, consistent with a recent report that the Islamic State has cut the salaries of its fighters by as much as half.<sup>217</sup> Third, he objected to a commander's decision to send him to fight in Iraq. The defector felt that his grievances were with the Syrian regime and he wanted to continue fighting on his home turf. Fourth, and most importantly, the defector was alarmed by the Islamic State's merciless execution of Syrian civilians, including friends from his hometown of Deir Ezzor. Other

213. Interview with Samer, Gaziantep, March 2016.

214. "Egyptian ISIS Official Steals Zakat Money ... And Flees with One Million Syrian Pounds," *Al-Mogaz*, February 2, 2015, <http://almogaz.com/news/politics/2015/02/02/1850327>.

215. "Daesh Sentences a Man and a Woman to Death by Stoning for Adultery ... and Cancels the Sentence in Exchange for a Settlement," *Al-Khabar Press*, February 4, 2014, <http://tinyurl.com/j7n5ov>.

216. Interview with Abu Ammar, Şanlıurfa, March 2016.

217. Elizabeth Palmer, "Official: ISIS' money running short because of U.S. bombing campaign," CBS News, March 17, 2016, <http://www.cbsnews.com/news/official-isis-money-running-short-because-of-us-bombing-campaign/>.

defectors and deserters interviewed in Turkey expressed similar grievances.<sup>218</sup> As a growing number of disillusioned former members condemn the Islamic State's violence as unlawful and un-Islamic, it will become increasingly difficult for the group to claim that it is a rule-abiding organization.

## Policy implications

This paper has argued that legal institutions play an important role in the state-building project of the Islamic State. As such, they can play an equally important role in its unraveling. Counter-insurgency efforts in Iraq, Syria, and other areas controlled by the Islamic State should be designed to undermine the legitimacy of its institutions. Efforts should be made to publicize reports of corruption, misconduct, and arbitrary violence by members of the Islamic State in order to expose the organization's internal contradictions and hypocrisies.

The eventual demise of the Islamic State is inevitable, but what happens next? As Iraqi and Kurdish forces recapture territory from the Islamic State, they face populations that are deeply skeptical of the ability of government institutions to provide justice, security, and basic services. The Iraqi government, and whatever government eventually emerges in post-war Syria, will need to overcome the widespread presumption that public officials are corrupt, predatory, and opportunistic. The Islamic State came to power largely by exploiting the weakness and illegitimacy of existing state institutions. It is only the most recent incarnation of a long tradition of extremism in Iraq and the Levant that flourishes in the shadow of states that have not earned the trust and respect of their citizens. In a survey of Iraqis conducted in 2012, only 4.8 percent of respondents said that they trusted the government "to a great extent," whereas 30.2 percent said that they "absolutely do not trust it."<sup>219</sup> Although comparable statistics for Syria are not available, anecdotal evidence suggests that Syrians trust

their government even less. As long as the structural conditions that enable violent extremism are still present, the remnants of the Islamic State—once it is inevitably defeated—will most likely reconstitute themselves in new forms or inspire successor groups with equally radical ambitions. Any long-term solution must involve a fundamental reorganization of political and legal institutions in Iraq and Syria in ways that promote legitimacy and rule of law.

218. Mara Revkin and Ahmid Mhidi, "Quitting ISIS," *Foreign Affairs*, May 1, 2016, <https://www.foreignaffairs.com/articles/syria/2016-05-01/quitting-isis>.

219. Michael Hoffman, "Arab Barometer Report: Iraq," 2012, <http://www.arabbarometer.org/sites/default/files/englishiraqi-reportII.pdf>.

# Glossary

**al-jihaz al-'amni** – The “security apparatus” of the Islamic State, analogous to secret police.

**'aqd** – A contract or other legal transaction.

**bay'ah** – An oath of allegiance to a leader or “caliph,” in the case of the Islamic State. In historical caliphates, the *bay'ah* was understood as a governance contract in which the people’s loyalty is conditional on a leader’s performance of certain obligations.

**bayt al-māl** – A treasury or other financial institution responsible for managing taxes and government expenditures (literally “house of money”).

**bid'ah** – Any innovation or modification of accepted religious belief or practice. The Islamic State forbids *bid'ah*.

**da'wah** – The word *da'wah* (literally “making an invitation” or “calling”) refers the proselytizing or preaching of Islam.

**dawra shari'a** – A religious course, typically 30 days long, that the Islamic State requires new recruits to take. Civilians who violate the Islamic State’s rules may also be required to take such classes.

**Dīwān al-Mazālim** – An office, often associated with a court, that receives complaints against government or military officials.

**diyyah** – Financial compensation or “blood money” given to the victim of a crime or to the victim’s heirs.

**fay'** – A type of war booty consisting of land or tribute acquired peacefully from unbelievers without a fight.

**fatwā (pl. fatāwā)** – An Islamic legal opinion given by a jurist or scholar in response to a question.

**fiqh** – The human interpretation of *shari'a* through jurisprudence to resolve questions not explicitly addressed in the Quran or other accepted sources of divine law.

**ghanīma** – A type of war booty consisting of moveable property that has been forcibly taken from non-Muslims in the course of a military campaign, such as slaves and weapons.

**hirābah** – The Quran defines *hirābah* as a *hadd* offense perpetrated by “those who wage war against Allah and His Prophet and strive to spread disorder in the land” (Quran 5:33). However, the Quran leaves undefined the specific elements of the crime. As a result, *hirābah* is open to a range of interpretations. In practice, the term is often used to describe particularly egregious robberies involving violence.

**hisba** – The religious police force of the Islamic State.

**hadd (pl. hudūd)** – Punishments that are mandated and fixed by God.

**Islamic police** – The ordinary police force (in Arabic, “al-shurta al-Islamiyyah”) of the Islamic State.

**jihad** – An Arabic word meaning “struggle” or “striving.” Jihad is often discussed as taking one of two forms. “Inner jihad” refers to a person’s individual struggle to avoid sinful behavior and live according to Islamic principles. “Outer jihad” refers to the defense of the Muslim community against aggression or attack by its enemies. The Islamic State and other extremist groups promote an offensive form of outer jihad.

**jihadist** – A person who advocates or participates in jihad.

**jizyah** – A per capita yearly tax historically levied by Islamic states on non-Muslim subjects, notably Christians.



**kāfir (pl. kuffār)** – An unbeliever who rejects Islam.

**khums** – The word *khums* (literally, “one fifth”) refers to a 20 percent tax on war booty that is described in Surah 8:41 of the Quran.

**qawanīn wad‘iyya** – Refers to positive law (man-made laws), as opposed to divine law.

**qisās** – A retributive punishment prescribed for crimes that cause death or physical injury, whether intentional or unintentional.

**Quran** – The central religious text of Islam, which Muslims believe to be a revelation from God. Muslims believe that the Quran was verbally revealed by God to the Prophet Muhammad over a period of 23 years beginning in 609 CE.

**sharī‘a** – the body of divine law that is expressed primarily in the texts of the Quran and Sunnah.

**siyāsa shar‘iyya** – A doctrine of Islamic statecraft that translates loosely as “religiously legitimate governance.”

**Sunnah** – The verbally transmitted record of the teachings, deeds and sayings of the Prophet Muhammad.

**takfir** – The practice of declaring someone to be an apostate.

**tawhīd** – The Islamic requirement of a monotheistic belief in God.

**tawba** – An Arabic word meaning “a retreat” or “a return” that refers to the act of repenting after committing an act that is prohibited by God.

**ta‘zīr** – Discretionary punishments for misconduct that is not expressly prohibited by God, or in cases that do not meet the strict evidentiary requirements for *hudūd* punishments.

**walī** – The administrative official who oversees a *wilāyat* (province), analogous to a governor.

**wāṣṭah** – An Arabic word that refers to favoritism, nepotism, or the use of one’s social or familial network for personal benefit.

**wathīqat al-madīnah** – A constitution-like document (literally, a “document of the city”) issued by the Islamic State laying out the rights and duties of its subjects, apparently inspired by the original Constitution of Medina drafted by the Muhammad shortly after his arrival in Medina in 622 CE.

**wilāyat** – An administrative division of the Islamic State that is analogous to a province.

**zakāt** – A compulsory charitable contribution based on a percentage (traditionally 2.5 percent) of a Muslim’s total income and savings.

# About the Project on U.S. Relations with the Islamic World

The Brookings Project on U.S. Relations with the Islamic World is a research initiative housed in the Center for Middle East Policy at the Brookings Institution. The Project's mission is to engage and inform policymakers, practitioners, and the broader public on the changing dynamics in Muslim-majority countries and to advance relations between Americans and Muslim societies around the world.

To fulfill this mission, the Project sponsors a range of activities, research projects, and publications designed to educate, encourage frank dialogue, and build positive partnerships between the United States and Muslim communities all over the world. The broader goals of the Project include:

- Exploring the multi-faceted nature of the United States' relationship with Muslim-majority states, including issues related to mutual misperceptions;
- Analyzing the social, economic, and political dynamics underway in Muslim societies;
- Identifying areas for shared endeavors between the United States and Muslim communities around the world on issues of common concern.

To achieve these goals, the Project has several interlocking components:

- The U.S.-Islamic World Forum, which brings together leaders in politics, business, media, academia, and civil society from the United States and from Muslim societies in Africa, Asia, Europe, and the Middle East. The Forum also serves as a focal point for the Project's ongoing research and initiatives, providing the foundation for a range of complementary activities designed to enhance dialogue and impact;
- An Analysis Paper Series that provides high-quality research and publications on key questions facing Muslim states and communities;
- Workshops, symposia, and public and private discussions with key stakeholders focused on critical issues affecting the relationship;
- Special initiatives in targeted areas of demand. In the past these have included Arts and Culture, Science and Technology, and Religion and Diplomacy.

The Project's Steering Committee consists of Martin Indyk, Executive Vice President; Bruce Jones, Vice President and Director of Foreign Policy Studies; Tamara Cofman Wittes, Senior Fellow and Director of the Center for Middle East Policy; William McCants, Senior Fellow and Director of the Project on U.S. Relations with the Islamic World; Kenneth Pollack, Senior Fellow in the Center; Bruce Riedel, Senior Fellow in the Center; and Shibley Telhami, Nonresident Senior Fellow of the Project and Anwar Sadat Chair for Peace and Development at the University of Maryland.

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Today's dramatic, dynamic and often violent Middle East presents unprecedented challenges for global security and United States foreign policy. Understanding and addressing these challenges is the work of the Center for Middle East Policy at Brookings. Founded in 2002, the Center for Middle East Policy brings together the most experienced policy minds working on the region, and provides policymakers and the public with objective, in-depth and timely research and analysis. Our mission is to chart the path—political, economic and social—to a Middle East at peace with itself and the world.

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