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Submission to the Universal Periodic Review of Iraq

Human Rights Watch

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Introduction

Since Iraq's last UPR review in 2019, the country has largely stabilized. Nevertheless, impunity and a lack of justice and accountability for serious crimes, shrinking civic space, flaws in the justice system that deny defendants due process and a fair trial, discriminatory legal norms disproportionately impacting LGBT people, women, children, and minorities, and inadequate provision of government services remain key areas of concern.

Right to Life, Liberty, and Security of Person

Iraq has long had one of the highest rates of executions in the world. About 8,000 prisoners, most charged with terrorism offenses, are on death row in Iraq. Authorities continue to resort to the death penalty despite well-documented flaws in Iraq's judicial system that deny defendants' right to due process and a fair trial, and reliance on confessions obtained through torture. On December 25, 2023, Iraqi authorities executed thirteen men in Nasiriyah prison, the first mass execution since 21 men were executed on November 16, 2020. Multiple executions have occurred since then, including the execution of 13 people on April 22, 2024. The Iraqi government does not provide public figures on executions.

Authorities have undertaken executions without regard for the basic rights of those facing the death penalty, including executions carried out without prior notice and not allowing prisoners to call their families or lawyers before their executions.

The Kurdistan Regional Government (KRG) has maintained a de facto moratorium on the death penalty since 2008, banning it "except in very few cases which were considered essential," according to a KRG spokesperson.

The UN Assistance Mission for Iraq (UNAMI) released a report in August 2021 based on interviews with more than 200 detainees, over half of whom shared credible allegations of torture. The report found that Iraqi senior officials and judicial authorities acquiesce in and tolerate the use of torture to extract confessions, a finding consistent with Human Rights Watch reporting on the systemic use of torture in Iraq. Judges in Iraq rarely respond to allegations of torture in the courtroom appropriately. Most ignore the allegations, or, in some cases, they order a retrial without investigating the security personnel implicated in the abuse.

An estimated 250,000 to one million people are estimated to be missing in Iraq, including those forcibly disappeared. The mission report of the UN Committee on Enforced Disappearance's visit to Iraq, presented in April 2023, referred to the abductions and arbitrary detentions of protesters by security forces and the Popular Mobilization Forces between 2018 and 2020, many of whom remain forcibly disappeared. Enforced disappearance is currently not a crime under Iraqi law.

Recommendations:

- Immediately establish a moratorium on executions and commute all death sentences with a view to abolishing the death penalty.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Publicly disclose information on death sentences issued and executions carried out in Iraq.

- Take further steps to ensure that persons deprived of their liberty are held in supervised places of detention and have access to their families and lawyers, and inform the latter of their fate, whereabouts, and legal status.
- Intensify efforts to investigate cases of enforced disappearances and create a public and centralized registry of missing persons to which families, relatives, and community members could contribute.
- Investigate all credible allegations of torture and the security forces responsible, transfer detainees to different facilities immediately after they allege torture or ill-treatment to protect them from retaliation, and reiterate to judges that they are obligated to dismiss any evidence obtained under torture.
- Urgently review the cases of all individuals currently facing the death penalty to ensure that their convictions were not solely based on confessions allegedly obtained through torture or ill-treatment. Order retrials of all such cases.

Justice and accountability

During protests that began in October 2019 and continued into late 2020, clashes with security forces left at least 560 protesters dead, 20,000 or more injured, and hundreds more missing or forcibly disappeared. In May 2020, when Prime Minister Mustafa al-Kadhimi took office, he formed a committee to investigate the killings of protesters. The Iraqi government has yet to publicize the committee's findings, provide any information on the steps taken to search for the disappeared persons or to investigate their disappearance, or provide meaningful accountability for state security personnel and state-backed armed groups responsible for killing, maiming, and disappearing hundreds of demonstrators and activists.

Despite recommendations made during the last three UPR cycles to enact a law that would criminalize the international crimes of genocide, war crimes, and crimes against humanity, Iraq has failed to do so. Prosecutions of ISIS's crimes have instead been conducted under Iraq's overbroad terrorism law, most often for alleged membership in ISIS and without reference to specific crimes committed. Trials were generally rushed and did not involve victim participation. Convictions were based primarily on confessions including those apparently extracted through torture. Authorities systematically violated the due process rights of suspects, such as guarantees under Iraqi law that detainees see a judge within 24 hours, have access to a lawyer throughout interrogations, and that their families are notified and be able to communicate with them.

In March 2021, Iraq adopted the Yazidi Survivors Law, establishing an administrative reparation program aimed at giving effect to survivors' right to reparation by allowing survivors to apply for compensation in the form of a monthly salary, and includes provisions for other forms of restitution such as provisions for a plot of land, continued education, employment, and the search for those who remain missing. While several compensation payments have been made under this law, its non-financial provisions have yet to be fully realized.

Recommendations:

- Enact a law that prohibits and provides penalties for international crimes including genocide, war crimes, and crimes against humanity, and ratify the Rome Statute of the International

Criminal Court.
- Incorporate the crime of enforced disappearance into domestic law as a specific offence.
- Ensure full respect for all fair trial and due process guarantees enshrined in article 14 of the International Covenant on Civil and Political Rights
- Fully and equitably implement the Yazidi Survivors' Law No. 8 of 2021 and all of its provisions.
- Designate an accountable agency and create a secure information management system for the storage of confidential information and evidence received from the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD).

Women's and Girls' Rights

Women and girls in Iraq continue to struggle against patriarchal norms embedded in Iraq's legal system. Iraq's penal code enables impunity for male violence against women, including provisions that allow the husband to punish his wife, parents to use corporal punishment as a form of "discipline" for their children, and mitigated sentences for violent acts including murder for so-called "honorable motives." The penal code also allows perpetrators of rape or sexual assault to escape prosecution or have their sentences quashed if they marry their victim.

Women's rights groups continued to advocate for an anti-domestic violence law, but efforts in parliament stalled. Federal Iraq's penal and criminal codes outlaw violence within the family but there are no specific provisions prohibiting domestic violence. Survivors of gender-based violence had limited access to shelter or justice, and some survivors of human trafficking were tried and convicted for prostitution. While there were a small number of underground shelters for women in federal Iraq, run by local NGOs, they were not widely supported, but often criticized, and sometimes attacked by families of victims and raided by authorities.

In the KRI, authorities enacted a law on domestic violence in 2011 but do not effectively implement it, meaning that perpetrators continue to enjoy impunity. The few government shelters in the KRI only allowed women to enter or leave with court orders, which can only be obtained after filing a formal criminal complaint against their abuser.

Religious leaders in Iraq conduct thousands of marriages each year, including child marriages, that flout Iraqi laws and are not officially registered. These unregistered marriages function as a loophole around legal restrictions on child marriage and have disastrous effects on women and girls' ability to get government services and social services linked to their civil status, obtain birth certificates for their children, or claim their rights to dowry, spousal maintenance, and inheritance.

For example, women and girls are required to show proof that they are married to give birth in hospitals, contrary to international standards on the right to health. As a result, some girls and women are forced to opt for at-home births with limited access to emergency obstetric services. Without a civil marriage contract, women are ineligible for certain social protection schemes, such as monthly salaries provided to widows, divorcees, and abandoned wives under Social Protection Law No. 11 of 2014. Women and girls in unregistered marriages seeking divorce have no legal protection or recourse to claim their rights to dowry, spousal maintenance, and inheritance.

Recommendations:

- Fully criminalize marital rape in all circumstances, including for registered and unregistered marriages.
- Take the necessary steps to enact a comprehensive domestic violence law by urgently revising the draft to ensure that it meets international standards and then passing it without delay.
- Repeal article 41(1) of the Iraqi Penal Code which gives a husband a legal right to "punish" his wife, and parents to use corporal punishment to discipline their children.
- Repeal articles 128 and 409 of the Iraqi Penal Code, which identify "The commission of an offence with honorable motives" as a "mitigating excuse," providing a reduced sentence for individuals who kill or assault their partners or female relatives if found engaging in adultery or sex outside of marriage.
- Repeal article 398 of the Iraqi Penal code which allows perpetrators of rape or sexual assault to escape prosecution or have their sentences quashed if they marry their victim.
- End all inquiries about the marital status of girls and women accessing health care and ensure all women and girls have access to in-hospital births.
- Expand cash transfer and social assistance programs to ensure universal and adequate coverage for mothers with children under the age of 18.

Children's Rights

Over the last 20 years, the rate of child marriage in Iraq has steadily increased. Iraq's Personal Status Law sets the legal age for marriage at 18, or 15 with a judge's permission dependent on the child's "maturity and physical capacity," in violation of international law and best practices. A 2021 study by the Ministry of Planning and the Central Statistical Organization found that 25.5 percent of married women in Iraq were married before they were 18, and 5.2 percent of women were married before 15.

A report published by Human Rights Watch in March 2024 found that unregistered religious marriages are essentially functioning as loopholes enabling child marriage. According to UNAMI, 22 percent of marriages outside the courts involved girls under the age of 14. Local partners told Human Rights Watch that they estimate most unregistered marriages involved girls under 18. The consequences of child marriage for girls include increased risks of gender-based violence, death in childbirth, mental health harms, and being blocked from education.

Under Iraq's Birth and Death Registration Law of 1971, parents can only obtain birth certificates for babies born in wedlock. A child without a birth certificate cannot secure any other identity document and is at risk of losing their legal identity or becoming stateless. If their status is left unresolved, these children may be barred from enrolling in schools, getting jobs, obtaining travel documents, owning property, or getting married.

In June 2023, the Iraqi parliament introduced a draft child protection law, the first of its kind for the country and a vital step in safeguarding children's rights in Iraq. If passed, the law would address crucial issues like child labor, exploitation, and abuse. It would also explicitly enshrine children's fundamental rights into law, including the rights to life, health, education, and citizenship.

Recommendations:

- Adopt a national action plan to eliminate child marriage in Iraq.

- Set the minimum age of marriage at 18 with no exceptions by removing the exceptions in article 8(1) of the Personal Status Law allowing for the marriage of children with a judge's permission dependent on proof of physical capacity.
- Reform the relevant laws governing citizenship and birth registration to permit the registration of all births and granting of Iraqi citizenship and associated legal documents, including for children of Iraqi men and/or Iraqi women with unregistered marriages and children of unknown lineage.
- Allow children without documents to enroll in school and obtain education certificates.
- Increase access to education for girls, including by providing incentives for families to keep their daughters in school, such as monthly stipends provided to families contingent on their daughters' continued enrolment and attendance in school.
- Strengthen and pass the draft Child Protection Law under consideration in the Iraqi Council of Representatives, ensuring the integration of provisions to:
    - explicitly prohibit the recruitment and use of children by armed forces and groups, and ensure that affected children can benefit from needed services and support to promote recovery and facilitate reintegration;
    - explicitly prohibit child trafficking and online child sexual exploitation and abuse, and ensure the integration of broad gender-responsive provisions to make the internet safe for children;
    - prevent and eradicate harmful practices, including early and forced marriage and female genital mutilation.

LGBT Rights

On April 27, 2024, Iraq's parliament passed an amendment to the country's existing "Law on Combatting Prostitution," No. 8 of 1988 punishing same-sex relations with a penalty of between 10 and 15 years in prison as well as allowing for a prison term between 1 and 3 years for people who undergo or perform gender-affirming medical interventions and for "imitating women." The law also provides for 7 years in prison and a fine between 10 million Iraqi dinars (US$7,700) and 15 million dinars (US$11,500) for "promoting homosexuality," which is undefined. On August 8, 2023, the Iraqi Communications and Media Commission issued a directive ordering all media outlets to replace the term "homosexuality" with "sexual deviance" in their published and broadcast language and banning use of the term "gender."

The introduction of the 2024 amendment followed a proposed anti-LGBT law put forward by legislators in the Kurdistan Region of Iraq. In September 2022, members of the Kurdistan Regional Parliament introduced the "Bill on the Prohibition of Promoting Homosexuality." Under the bill, anyone who advocates for LGBT rights or "promotes homosexuality" would face up to a year in prison and a fine of up to five million dinars (US$3,430). The bill would also suspend, for up to one month, the licenses of media companies and civil society organizations that "promote homosexuality."

Although the bill was not passed, it was introduced amid a heightened crackdown on free assembly and expression in the Kurdistan region. On May 31, 2023, a court in the region ordered the closure of Rasan Organization over "its activities in the field of homosexuality."

In March 2022, Human Rights Watch published a report finding that LGBT people across Iraq face routine violence from security officials, who verbally abuse and sexually assault them, including at checkpoints, arbitrarily arrest them, and detain them. LGBT people also face online harassment,

blackmail, and targeting on social media and same-sex dating applications by armed groups.

In February 2023, Human Rights Watch documented the digital targeting of LGBT people across the Middle East and North Africa region, including in Iraq. Human Rights Watch found that Iraq's security forces have entrapped LGBT people on social media platforms and dating applications, subjected them to online extortion, and harassed them with online death threats.

Recommendations:

- Immediately repeal the amendment to the Anti-Prostitution Law.
- Repeal the CMC's directive which requires media outlets to replace the term "homosexuality" with "sexual deviance" in their published and broadcast language.
- Pass comprehensive anti-discrimination legislation that prohibits discrimination, including online, on the grounds of sex, gender, gender identity, and sexual orientation and includes effective measures to identify and address such discrimination.
- Investigate all reports of armed group or other violence against people targeted because of their actual or perceived sexual orientation, gender identity, or gender expression, and appropriately punish those found responsible.
- Investigate security forces' complicity in violence against LGBT people based on their sexual orientation or gender identity and expression, and engage directly with armed forces to stop the violence.
- Take all appropriate measures to end torture and other ill-treatment, disappearances, summary killings, and other abuses based on sexual orientation and gender expression and identity, and compensate all families of victims of unlawful killings and survivors of serious abuse.
- Safeguard the right of sexual and gender minorities to report crimes without facing the risk of arrest, and ensure no LGBT crime victim is denied assistance, arrested, or harassed on the basis of their sexual orientation or gender identity.
- Investigate and hold accountable individuals making online or offline statements that incite or threaten violence against LGBT people.