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Submission to the Universal Periodic Review of Iraq November 2019

Introduction

Since Iraq's last UPR review in 2014, it has seen the rise and fall of the Islamic State (also known as ISIS). In its wake, hundreds of thousands of Iraqis have fallen victim to ISIS abuse, displacement because of fighting, and abuse at the hands of Iraqi forces in the context of counterterrorism operations. As battles have come to a close, the state has chosen to focus on harsh prosecutions and victor's revenge over transitional justice and reconciliation efforts.

Justice for ISIS Abuses

Since 2014, ISIS fighters captured and extrajudicially killed civilians, often targeting minorities, community leaders and Iraqi armed forces. They carried out dozens of explosive attacks on civilian populated areas. Under international law some of the brutal crimes prosecuted by ISIS since 2014 amount to war crimes and may amount to crimes against humanity or genocide. Iraq has failed to pass legislation to make war crimes and crimes against humanity specific offences under Iraqi law, though it noted a recommendation to do so in its last review in 2014.

Iraqi judges have instead prosecuted ISIS suspects with the single charge of ISIS affiliation, under Iraqi counterterrorism legislation. The trials have generally been rushed, based on the sole basis of a confession, and did not involve victim participation. Authorities have done little to protect, gather, and use in criminal prosecutions evidence found at mass gravesites left by ISIS. The Iraqi government and Kurdistan Regional Government (KRG) have conducted thousands of trials of ISIS suspects without a strategy to prioritize investigating the worst abuses under Iraqi and international law.

Based on a United Nations Security Council resolution adopted in September 2017, a UN investigative team, UNITAD, was created to document serious crimes committed by ISIS in Iraq. By early 2019 the team was focused mainly on the exhumation of mass graves left by ISIS.

Iraq accepted a recommendation in its review in 2014 to strengthen compensation for victims of terror, and already in 2009, passed Law No. 20 "Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions", creating governmental decisions to compensate Iraqis affected by terrorism, military operations, and military errors. However, compensation commissions in areas that fell under ISIS control in 2014 have subsequently received thousands of compensation requests but have yet to pay out any claims from 2014 onwards.

Recommendations

- Iraq's parliament should criminalize war crimes, crimes against humanity, and genocide.
- All relevant Iraqi and KRG authorities should engage in discussions to develop a national strategy for ISIS prosecutions and a range of other initiatives, including truth-telling and reparations, to address ISIS crimes. The strategy should include public communications on all justice processes, and advocate for victims' participation;
- The judiciary should urgently develop a coordinated strategy to prioritize the prosecution of those who committed the most serious crimes by bringing charges for the full range of crimes committed, and with a clear role for victim engagement;
- All relevant Iraqi and KRG authorities should ensure that the compensation commission established by the 2009 law is compensating all victims of all military attacks and operations

Arbitrary Detention, Due Process, and Fair Trial Violations

In the context of the last four years of counterterrorism operations, Iraqi forces have [arbitrarily detained](#) hundreds of ISIS suspects, predominately Sunni men, many of them for months. According to witnesses and family members, security forces have regularly detained suspects without any court order, arrest warrant, or other document justifying arrest and often did not provide a reason for the arrest.

Authorities have systematically violated the due process rights of ISIS suspects and other detainees, such as guarantees under Iraqi law for detainees to see a judge within 24 hours, to have access to a lawyer throughout interrogations, and to have families notified of their detention and to be able to communicate with them. Judges have also ignored claims made by foreign women charged with ISIS affiliation for having entered Iraq and lived in ISIS-controlled areas that their husbands brought them against their will. Children above the ages of nine have also been prosecuted for illegal entry into the country despite statements in court that their parents brought them to Iraq without their consent.

In addition, security forces have arbitrarily detained protesters and journalists. For example, in March 2018 protests launched by civil servants in the Kurdistan Region of Iraq for unpaid wages, [KRG](#) security forces arbitrarily detained dozens of protesters and journalists.

Despite requests, the government of Iraq has failed to release information on which security and military structures have a legal mandate to detain and interrogate individuals, and in which facilities.

This notwithstanding, in its last review, Iraq supported a recommendation to improve due process guarantees and strength its criminal investigation and prosecuting capacities in order to prevent and eliminate arbitrary detention and extrajudicial killings, and another to reform judicial practices under the counterterrorism law so that the law could not be used as a pretext for arrests without warrants and lengthy detentions without trial.

Recommendations

- Judges should ensure that all suspects benefit from the presumption of innocence, and their full due process rights including that defense lawyers have access to defendants from the moment of arrest, through detention and interrogation;
- Law enforcement should redouble efforts to ensure that defendants are brought before a judge within 24 hours of their detention;
- Prison authorities should ensure that all detainees have the right to communicate with their families;
- Authorities should make public which security and intelligence branches have a legal mandate to detain and interrogate, and where all detention facilities are located.

Torture and Other Forms of Ill-Treatment

Detainees in Iraq have continued to give Human Rights Watch graphic accounts of torture during interrogations, in some cases leading to [deaths](#) in custody. These allegations are consistent with reports of [widespread](#) use of torture by Iraqi forces as a [method](#) to extract confessions instead of carrying out robust criminal investigations. In particular, authorities have detained ISIS suspects in overcrowded, and in some cases inhumane, conditions.

Despite commitments by the prime minister in September 2017 to investigate allegations of torture and extrajudicial killings, authorities seemingly have taken no steps to investigate these abuses. In 16 terrorism trials Human Rights Watch monitored in 2018, defendants alleged torture, including to extract confessions, but most judges did not take any [action](#) to investigate the allegations, and in only one instance was an officer investigated and sanctioned. It is worth noting that in 2014 Iraq accepted three recommendations to investigate all allegations of torture and not to admit as evidence any confessions obtained through torture. It also noted a recommendation to ratify Optional Protocol to the Convention Against Torture, but has made no indication of whether it plans to do so.

Recommendations

- Iraq's High Judicial Council should issue guidelines on the steps judges are obliged when a defendant alleges torture;_
- Judges should investigate all credible allegations of torture and the security forces responsible, and order transfers of detainees to different facilities immediately after they allege torture or ill-treatment, to protect them from retaliation;
- Parliament should pass the draft Anti-Torture Law pending before parliament, which would require judges to order a medical examination of any detainee alleging torture within 24 hours of learning of the allegation;
- Iraq's foreign minister should urge parliament to ratify the Optional Protocol to the Convention Against Torture. Pending this ratification, the government should commit to setting up a National Preventative Mechanism that can inspect all detention centers in Iraq and set up effective complaint mechanisms for authorities and facilities involved in detention and interrogations;
- The heads of the federal intelligence agency, NSS and the new Minister of Interior, once appointed, should issue statements to their chain of command on the prohibition of the use of torture and their commitment to punish perpetrators;
- The Prime Minister should publicly condemn the use of torture by all law enforcement, security and military personnel.

Enforced Disappearances

The International Center for Missing Persons, which has been working in partnership with the Iraqi government to help recover and identify the missing, estimates that the number of missing people in Iraq could range from 250,000 to 1 million people. Since 2014, Iraqi military and security forces have forcibly disappeared predominately Sunni Arab males in the context of counterterrorism operations, as well as in other cases. A range of military, security and intelligence actors have been responsible for the enforced disappearances, many of which took place at checkpoints or the homes of those disappeared. Despite requests from the families of the disappeared for information, Iraqi authorities have given none. Authorities have not responded to queries from Human Rights Watch as to which channels are available to families searching for loved ones. An initiative in 2015 and in 2017 to pass a new law that prohibits enforced disappearances as a distinct crime has been stalled in parliament.

Recommendations

- Iraqi authorities should establish an independent commission of inquiry to investigate all cases of enforced disappearances and custodial deaths nation-wide at the hands of military, security, and intelligence forces across all official and unofficial detention facilities. The commission should:
 - a) be mandated to recommend cases for prosecution;
 - b) include working groups on data collection, legislative reform, and investigations into individuals' fate and whereabouts;
 - c) have the authority to recommend cases for prosecution and report publicly on its findings within one year;
 - d) establish a mechanism to compensate victims of enforced disappearance and their families; and e) establish a nationwide register of forcibly disappeared persons, or another streamlined mechanism to allow families to seek information about relatives disappeared and ensure the fulfilment of family rights to truth, justice, and reparations.
- The judiciary should promptly investigate existing allegations of enforced disappearances, locate and release those held illegally by military and security forces, and prosecute the perpetrators of enforced disappearances;
- The judiciary should prosecute law enforcement officers of all ranks, including those with superior authority, who are found to be responsible for enforced disappearances and punish commanding officers and others in a position of government authority who ordered or knew of these abuses.

Collective Punishment of Families of Suspected ISIS-Affiliates

As ISIS has lost significant territory, the millions of people who lived for varying periods of time under the group have now returned to government-controlled areas. As this has happened, Iraqi families with perceived ISIS affiliation, usually because of their relatives' actions, family name, tribal affiliation, or area of origin, have been [denied](#) security clearances required to obtain identity cards and all other civil documentation they may have lost during their time living under ISIS. This has impacted their freedom of movement, right to education, right to work, and right to apply for welfare benefits and obtain birth and death certificates needed to inherit property or remarry.

Denial of security clearances has also blocked families with perceived ISIS affiliation from being able to make claims to the governmental commission to compensate Iraqis affected by terrorism, military operations, and military errors; to bring court cases; or to challenge the seizure of property by Iraqi security forces or other local families. In Nineveh, families with perceived ISIS affiliation have also said they were sometimes [denied](#) access to humanitarian assistance, usually by community leaders.

Lawyers providing legal services to ISIS suspects and their families, or those perceived to be, have reported that security forces threatened, and in some instances, detained, them for providing these services.

Despite joint government and humanitarian efforts to facilitate the return of displaced persons to areas once held by ISIS, local [decrees](#) and other preventative measures prevented families with perceived ISIS affiliation from returning home to some areas, including in Anbar, Diyala, Nineveh, and Salah al-Din. In some instances, these families have been [forced](#) from their homes into [camps](#) by Iraqi armed forces or have been forced into secondary displacement. Generally these families are suffering from significant limits to their free movement rights.

Recommendations

- The Prime Minister, Ministers of Interior, Defense and Justice, and the heads of the range of military, security and intelligence branches should condemn and prohibit all acts of collective punishment and punish any forces who facilitate it;
- The Prime Minister, Ministers of Interior, Defense and Justice, and the heads of the range of military, security and intelligence branches should remove from the security clearance regime a range of basic services that all Iraqis have a right to access, including civil documentation, welfare, healthcare and free movement.

Freedom of Assembly and Expression

On numerous occasions since 2014 Iraqi forces have used excessive force against peaceful protesters. In March 2018 for example, [KRG](#) security forces arbitrarily detained dozens of protesters and journalists at protests by civil servants demanding [unpaid wages](#). Some protesters alleged security forces also beat them.

Protests that began in central and southern Iraq in July 2018 demanding improved access to water, jobs, and electrical power turned [violent](#) in some areas, particularly in Basra, with Ministry of Interior forces injuring dozens of protesters, and killing a few through their excessive use of force when trying to disperse crowds and detain protesters. The protests in Basra [continued](#) through September, with violence increasing on both sides leading to protesters burning down buildings and leaving at least 15 dead.

At its last review, Iraq accepted a recommendation to guarantee an enabling environment to the activities of journalists, human rights defenders and civil society. It supported two recommendations to amend legislation to fully guarantee freedom of expression, association and assembly. However, since 2014 it has not made any such amendments. It supported a recommendation to investigate killings and violence against journalists and hold perpetrators accountable. In very few instances have the authorities investigated incidents of attacks on journalists or protesters, and in no instance that Human Rights Watch is aware of, have Iraqi forces been punished for such crimes.

Recommendations

- The judiciary should investigate all arbitrary arrests, excessive uses of force, and other attacks on journalists, protesters and activists and hold accountable perpetrators, including Iraqi forces and those in command control;
- The human rights and legal committees in parliament should conduct a comprehensive review of legislation to determine which laws need to be amended in order to fall in line with international standards.