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Iraq: Step Toward Justice for ISIS Child Suspects

Improved Trials Should Be Replicated

(Beirut) – A special committee of judges to adjudicate cases of children in detention in [Iraq](#) for alleged links to the Islamic State (ISIS) during the first half of 2020 appeared to comply with international human rights standards better than other Iraqi courts, Human Rights Watch said today.

Committee records from January to June 2020 that Human Rights Watch reviewed show that it closely reviewed individual cases and ordered the release of 75 alleged child offenders for reasons including lack of evidence and preventing double jeopardy, as well as under provisions of Iraq’s amnesty law.

“The work of this committee suggests that some Iraqi judges understand how to apply international human rights principles and are doing so even if the rest of the system ignores them,” said [Belkis Wille](#), senior crisis and conflict researcher at Human Rights Watch. “We hope that the High Judicial Council shares this positive example with courts across the country to allow this to become the norm rather than the exception.”

For years, Iraqi and Kurdistan Regional Government judicial authorities have [charged](#) hundreds of children with terrorism for alleged ISIS affiliation. Many of the charges have been based on dubious accusations and [forced confessions](#), regardless of the extent of ISIS involvement, if any. This approach has flouted international norms that children recruited by armed groups should be treated first and foremost as victims, not criminals.

For over a decade, a committee in Nineveh chaired by a judge, working alongside a general prosecutor and social worker, has been adjudicating the cases of suspects who were children at the time they allegedly joined terrorist organizations. From January to June, this committee appeared to take a more human rights-compliant approach toward cases involving child ISIS suspects. In June, judicial authorities dissolved the committee, stating that it had reviewed all pending cases, but another committee in Nineveh also adjudicating child terrorism cases has continued to work.

In August, a source close to the Nineveh Federal Court of Appeal and the Bar Association who requested anonymity told Human Rights Watch that the committee reviewed 300 case files before it was disbanded in June. Records show that the committee, unlike other Iraqi courts, attempted to review individual cases more fairly and better apply international standards. The committee convicted 202 people, dropped charges against and released 31, and pardoned and released 44 under Iraq’s 2016 Amnesty Law. The source shared with Human Rights Watch the court records of 29 of the 75 released, 23 under the amnesty law, 3 for a sentence was already served, and 3 acquitted for lack of evidence. It also reviewed court records of five of those who were convicted.

The committee dropped three of the cases because the defendant had already served a sentence for the same crime. In case 137/GH.M\2020, the suspect was arrested in 2018 and sentenced under the counterterrorism law to two years in prison. After he served the sentence, Mosul authorities re-arrested him for the same charge of ISIS-affiliation. The committee found that the defendant, “may not be convicted of the same crime twice” and the authorities were “ordered to permanently cease proceedings against the accused.”

In case 73\GH.M\2020, a Kurdistan Regional Government court sentenced a defendant to 10 months under the Kurdistan Region’s Anti-Terrorism Law (no.3/2006). Following a second arrest, the committee ordered the new terrorism charges dropped and released him since he already had served a sentence based on these charges. Human Rights Watch has previously [documented](#) cases in which child suspects were tried on terrorism charges in the Kurdistan Region and then put on trial again in Baghdad-controlled territory, regardless of whether they had been acquitted or convicted and served a sentence in the Kurdistan Region.

In each case of the 23 released under the amnesty law, the defendant had confessed to participating in ISIS training for between 7 and 30 days before turning 18, but there was no evidence that they engaged in other ISIS activities. In case 118\GH.M\2020, the defendant admitted that he had participated in a one-month training with ISIS in 2014, when he was under age 15. The committee judges found that “the accused minor was not yet 15 years old at the time and didn’t comprehend the results of his actions, and that merely taking a course without carrying out any terrorist activity cannot be considered affiliation.”

In a positive step, all of the decisions taken by the committee were upheld by the children's cases committee of the Federal Court of Cassation.

In five cases, the committee convicted defendants who had confessed to participating in fighting on behalf of ISIS and manning checkpoints. They all said their confessions had been coerced, but the committee stated that there was additional evidence in each case to substantiate the charge, including ISIS documents mentioning their names.

Since the advent of ISIS in Iraq, Iraqi and Kurdistan Regional Government authorities have charged hundreds of children with terrorism for alleged ISIS affiliation under counterterrorism legislation. Under Iraq's 1983 [Juvenile Welfare Act](#), the minimum age of criminal responsibility is 9, and in the Kurdistan Region it is 11. Iraqi law states that judicial authorities handling cases of those under 18 at the time of the alleged crime should send a child found guilty to a “youth rehabilitation school” – designed to provide social rehabilitation and reintegration through education or vocational training. A source familiar with the work of the prisons service said that the cells within *Tal Kayf prison holding these suspects are being called* “youth rehabilitation schools” but he said there is no programming whatsoever for those inside, and that the cells are identical to those for adult detainees, with no access to any reading or studying materials besides the Quran. He added that they were [overcrowded](#), with prison authorities providing insufficient food for all the inmates.

Children should only be detained [as a last resort and for the shortest appropriate period](#). International law regarding children and armed conflict says that countries should assist children illegally recruited by armed groups or forces, including providing appropriate assistance for their physical and psychological recovery and social reintegration. The UN Committee on the Rights of the Child has also stated that countries should refrain from charging and prosecuting children for mere association with a non-state armed group, including those designated terrorist groups.

The High Judicial Council should mainstream the example set by the committee to improve the judiciary's respect for international legal standards protecting child soldiers across the country.

The Iraqi government and Kurdistan Regional Government should amend counterterrorism laws to end the detention and prosecution of children solely for participating in ISIS training or membership, recognizing that international law prohibits recruiting children into armed groups. Until the time that the laws are amended, the High Judicial Council should instruct judges across Iraq to release all children who have not committed other crimes and ensure their rehabilitation and reintegration. Children who may have committed other violent offenses should be treated in accordance with international juvenile justice standards.

The authorities should also end all use of torture, investigate those responsible and hold them accountable, and work with the United Nations and other credible child protection groups to establish programs to help rehabilitate and reintegrate children formerly associated with armed groups.

“Iraq took a small step toward protecting the rights of children rather than trampling them, but even this progress is at risk if authorities don't replicate it elsewhere,” Wille said.

ecoi.net summary:

According to a review conducted by HRW, a special committee of judges for cases of children detained for alleged links to the Islamic State (IS) group complied with international human rights standards better than other Iraqi courts

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Austrian Red Cross
Austrian Centre for Country of Origin and Asylum
Research and Documentation (ACCORD)

Wiedner Hauptstraße 32, 1041 Wien
[T \(Telefon\)](tel:+43158900583) +43 1 589 00 583
[F \(Fax\)](tel:+43158900589) +43 1 589 00 589
info@ecoi.net

[Contact](#)
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