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Violence and Discrimination based on Sexual Orientation and Gender Identity in Iraq

A Report for the United Nations Committee on
the Elimination of Discrimination Against Women

Submitted for the formulation of the List of Issues and Questions for the review of Iraq's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) during its review of Iraq during the Pre-Sessional Working Group to the 74th Session to be held in March 2019.

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I. Introduction

This report addresses urgent areas of concern related to the status of human rights of lesbian, gay, bisexual, and transgender (LGBT)¹ people in Iraq and is intended to supplement information the Government of Iraq provided in its fifth periodic report to the Committee on the Elimination of Discrimination against Women (the Committee) for its Pre-Sessional Working Group to the 74th Session to be held in March 2019. Violence and discrimination against LGBT individuals in Iraq continues to flourish, and victims are guaranteed virtually no protection or redress. Yet the Iraqi Government's report to this Committee makes no mention of the rights of LGBT people. The Government of Iraq has failed in its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to promote and protect the human rights of those who face violence and discrimination based on their sexual orientation and gender identity.

Faced with the ever-present possibility of discrimination, extreme violence, torture, and murder, being perceived as LGBT in Iraq places one in immediate danger. The state-sanctioned culture of anti-LGBT discrimination permeates Iraq's institutions and society. Perpetrators of egregious anti-LGBT human rights violations include victims' family members, militia fighters and religious militants from various groups, as well as government officials. Members of the security forces and police are, at best, non-responsive to human rights violations committed on the basis of sexual orientation or gender identity, and at worst, active participants in them. People in Iraq can count on virtually no protection or recourse for anti-LGBT violence and discrimination.

Iraqi community service providers and human rights activists, including victims of anti-LGBT discrimination and violence, take great risks to record human rights violations committed on the basis of sexual orientation and gender identity. The shared hope of these individuals and their international allies is that these stories will spur immediate action on the part of the Iraqi government to ensure greater safety and protections for Iraqi LGBT people. Even in times of conflict, the Iraqi government is obligated to adhere to CEDAW, and there are basic steps it can take now to help protect LGBT people from human rights violations, namely by acknowledging that LGBT people, like all people, have human rights that must be respected.

Our organizations wish to further the work of the Committee on the Elimination of Discrimination against Women by providing independent information concerning the rights protected by CEDAW. We respectfully request that the Committee's review cover areas of concern related to the status of the rights of LGBT persons in Iraq.

II. Violence and Discrimination on the basis of Sexual Orientation and Gender Identity (Articles 2, 3, 4 & 15)

The Government of Iraq is obligated to promote, defend, and protect the rights of its lesbian, gay, bisexual, and transgender (LGBT) citizens under human rights law, including under CEDAW. This Committee has previously made clear that sexual orientation and gender identity are grounds for protection under the Convention, such as in General Recommendation No. 28 which

¹ No data is available from individuals who identified as intersex.

states: “The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as...sexual orientation and gender identity.”² Additionally, General Recommendation No. 33 regarding access to justice states that, “Grounds for intersectional or compounded discrimination may include...being lesbian, bisexual, transgender women or intersex persons” and that these “intersecting factors make it more difficult for women from those groups to gain access to justice.”³

General Recommendation No. 35 on gender-based violence further affirms the inclusion of sexual orientation and gender identity under the Convention and calls on States to repeal all legal provisions that discriminate against or encourage gender-based violence against women, including lesbian, bisexual, or transgender women.⁴

A. Violence and discrimination faced by LGBT Iraqis

The mere perception of being LGBT is extremely dangerous in Iraq and living openly as an LGBT person is nearly impossible. For victims of anti-LGBT discrimination, including violence, there is no viable recourse in the Iraqi State.⁵ Government security forces not only fail to investigate acts of discrimination and violence against LGBT people, but they also stand by and allow murderous hate violence to occur, fully aware of what is happening.⁶ Furthermore, security forces and government officials themselves commit anti-LGBT discrimination and violence.⁷ The government’s denial of access to justice for victims of these human rights violations encourages further discrimination and acts of violence, including those committed by health professionals and others who capitalize on LGBT peoples’ vulnerable status.⁸

IraqQueer and its partners estimate the killings in 2017 at more than 220.⁹ In 2018, IraqQueer continued to document killings of Iraqis based on sexual orientation and gender identity, including the killing of 15 year-old Hamoudi Al Mutairi who was filmed on camera while dying.¹⁰ Of 257 LGBT individuals interviewed between 2015-2018, 96% stated that they have faced verbal and/or physical violence.¹¹ Verbal bullying and abuse are extremely common

² Committee on the Elimination of Discrimination against Women, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para. 18, U.N. Doc CEDAW/C/GC/28 (December 16, 2010).

³ Committee on the Elimination of Discrimination against Women, *General recommendation No.33 on women’s access to justice*, para. 8, U.N. Doc CEDAW/C/GC/33 (July 23, 2015).

⁴ Committee on the Elimination of Discrimination against Women, *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, para. 31(a), U.N. Doc. CEDAW/C/GC/35 (July 14, 2017).

⁵ IraqQueer, OutRight Action International, *Dying to Be Free: LGBT Human Rights Violations in Iraq, in Response to the Fifth Periodic Report of the Republic of Iraq*, p. 8 (2015).

⁶ Id.

⁷ Id.

⁸ Id.

⁹ IraqQueer, *Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq*, p. 6 (2018).

¹⁰ IraqQueer, Press release (October 10, 2018), available at: <https://www.iraqueer.org/blog/iraqueer-s-statement/>

¹¹ IraqQueer, *Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq*, p. 9 (2018).

against LGBT people. Wearing skinny jeans, having long hair, and having a more “feminine” gender expression are all reasons for why those individuals have faced verbal abuse.¹² In many cases, LGBT people have faced physical violence, rape, and in extreme cases, death.¹³ Data compiled by IraQueer indicate that from 2015 – 2018 the Islamic State of Iraq and the Levant (ISIL) was responsible for 10% of crimes against LGBT people, while government authorities and affiliated armed groups are responsible for 53% of crimes and violations against LGBT people.¹⁴

IraQueer has received reports from several individuals who have experienced instances of verbal, physical, and sexual abuse at various checkpoints across Baghdad and other cities. IraQueer is also in possession of several videos showing the police humiliating and physically abusing trans people, while filming the injustices themselves. Similarly, LGBT individuals, especially “masculine” women, “feminine” men, and trans people, have faced physical abuse in Northern Iraq under the Kurdistan Regional Government. Many of those individuals have been detained without being informed about their rights, or without access to legal representation.¹⁵ A lesbian living in Slemani reported that she was detained by the police several times. She told IraQueer, “A police officer threatened to rape me and said that it might make me a real woman.”¹⁶

Lesbians face double discrimination for being women — who lack the same rights and protections as men in Iraq — and lesbians who challenge the norms of sexual practices in Iraq. They are often forced into marriage, and end up being controlled by their husbands and families without the ability to express their identities.¹⁷ Lesbians also face difficulties connecting with each other due to the lack of online and offline safe spaces.¹⁸ A lesbian living in the Kurdistan Region of Iraq said, “Every day I spend with my husband, another part of me dies. My father forced me to marry my cousin. I no longer recognize myself in the mirror.”¹⁹ Stories like hers are very common amongst the lesbian community, which is forced to face these abuses while being isolated from each other and the rest of the LGBT community.²⁰

Trans people face violence and discrimination, including sexual abuse, at the hands of law enforcement, families, neighbors, and even strangers.²¹ Together with men who are perceived to be gay, they are often the victims of the most visible kinds of hate crimes, such as public executions and harassment.²²

¹² Id, at 8.

¹³ Id, at 9.

¹⁴ Id, at 13.

¹⁵ Mari Shibata, *How one man is trying to make it safer to be LGBTQ in Iraq*, The Washington Post (July 27, 2016), https://www.washingtonpost.com/news/soloish/wp/2016/07/27/how-one-man-is-trying-to-make-it-safer-to-be-lgbtq-in-iraq/?utm_term=.d6db88cdf15b.)

¹⁶ IraQueer, *Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq*, p. 13 (2018).

¹⁷ Id. at 10.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

B. The Government of Iraq's Failure to Prevent, Investigate, Punish and Provide Redress for Violence and Discrimination Against LGBT Persons

According to human rights testimonials and interviews with Iraqi community-based human rights advocates, the most basic rights and fundamental freedoms of LGBT persons are regularly violated in Iraq with impunity.²³ People who experience severe discrimination, torture, physical injury, and even murder on the basis of real or perceived sexual orientation or gender identity find no recourse in the institutions that should provide protection and support, such as government police and security forces, or medical facilities.²⁴ Multiple sectors of society are implicated in these human rights violations, including civilians, militia members, religious leaders, police and security forces, government officials, healthcare workers and others.²⁵

Faced with continued armed conflict, militia violence, and the weakening of government institutions since 2003, LGBT people in Iraq are especially vulnerable to violence from these various actors. The risks for them are constant, and since 2003, Iraq has also experienced a number of organized, deadly campaigns targeting large numbers of people based on their real or perceived sexual orientation or gender identity.²⁶ Government actors and militias instigate, inspire, and tolerate violent persecution.²⁷

The killing campaigns organized by groups like Asa'ib Ahl Al-Haq (the League of the Righteous), have been a regular occurrence for more than a decade.²⁸ The latest campaign was reported to have taken place in January of 2017 when more than a hundred names were put on a list that was distributed around neighborhoods in Baghdad, warning those listed to either change or be killed.²⁹ When fighting against the Islamic State began in 2014, Iraqi government forces aligned with militias, including Asa'ib Ahl al Haq,³⁰ and evidence pointed to collusion between government forces and militia in revenge killings.³¹

²³ IraQueer, OutRight Action International, *Dying to Be Free: LGBT Human Rights Violations in Iraq, in Response to the Fifth Periodic Report of the Republic of Iraq*, p. 3 (2015).

²⁴ Doctors at hospitals in Iraq regularly deny LGBT people healthcare, or charge them double or triple the rate for treatment. Three of the many hospitals that have engaged in extortion and denial of treatment based on real or perceived sexual orientation or gender identity include Al Yarmouk Hospital, Al Kindi Hospital, and Al Samir Hospital. Interview, Saturday, January 24, 2015 (on file with authors); Email with Iraqi service provider and advocate, May 24, 2015 (on file with authors).

²⁵ IraQueer, OutRight Action International, *Dying to Be Free: LGBT Human Rights Violations in Iraq, in Response to the Fifth Periodic Report of the Republic of Iraq*, p. 3 (2015).

²⁶ Id.

²⁷ Id.

²⁸ IraQueer, *Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq*, p. 8 (2018).

²⁹ Id. at 8.

³⁰ David D. Kirkpatrick, *Shiite Militias Pose Challenge for U.S. in Iraq*, The New York Times (September 16, 2014), http://www.nytimes.com/2014/09/17/world/middleeast/shiite-militias-pose-challenge-for-us-in-iraq.html?_r=0

³¹ Amnesty International, "Iraq: Testimonies point to dozens of revenge killings of Sunni detainees," (June 27, 2014), <http://www.amnesty.org/en/for-media/press-releases/iraq-testimonies-point-dozens-revengekillings-sunni-detainees-2014-06-27>. Human Rights Watch documented "the extrajudicial killings of hundreds of prisoners in June and July of this year by Iraqi army, police and special forces [and] a pattern of government-backed Shi'a militias kidnapping and killing Sunni men in Baghdad, Diyala and Babel provinces.... [T]he government has significantly increased its use of militias and sectarian volunteers in its fight against ISIS." Human Rights Watch, *Iraq: 22nd*

For LGBT people, the fact that police and other government authorities are complicit in sexual and physical violence against them, as described above, further discourages reporting violence and threats against them.

III. Lack of Accountability for Sexual Violence and Gender-Based Crimes Committed by ISIL (Articles 2, 3, 5, 6, & 15)

A. Background on ISIL Gender-Based Crimes: Rape, Torture and Murder Based on Prescribed Gender Roles

Wartime abuses against people who are marginalized within their societies are rarely documented. As a result, such violations are excluded from human rights discourse and from future justice processes. In effect, they are left out of history. For this reason, Iraqi activists, at great personal risk, have been documenting such crimes, and not only those committed by the terrorist organization, the Islamic State of Iraq and the Levant (ISIL) but also by Iraqi government forces and other militias. They have preserved critical information about perpetrators and larger criminal networks. Many of these same documenters have also provided safe passage and shelter to people at imminent risk of sexual slavery or murder.

For this reason, in the fall of 2017, advocates filed a communication³²—the first of its kind—to the International Criminal Court (ICC), to advance protection of the rights of women including real or perceived LGBT people. The petition argues that the international community should prosecute ISIL fighters for crimes committed on the basis of gender, including discrimination based on sexual orientation and gender identity. These crimes are all forms of gender-based persecution.

While knowledge of egregious crimes committed against women and perceived or actual LGBT persons in armed conflict itself is not new, this is the first time the world has seen robust documentation of crimes against women including real or perceived LGBT persons for transgressing gender norms during an armed conflict. The petition therefore offers a new opportunity to challenge this type of violence.

Under ISIL occupation in Iraq, women, girls, men and boys including real or perceived LGBT persons, and those otherwise perceived as stepping outside of traditional gender roles were

Special Session of the UN Human Rights Council (September 1, 2014), <http://www.hrw.org/news/2014/09/01/iraq-22nd-special-session-unhuman-rights-council>.

³² See Human Rights and Gender Justice (HRGJ) Clinic, City University of New York (CUNY) Law School, MADRE & the Organization of Women's Freedom in Iraq (OWFI), *Communication to the ICC Prosecutor Pursuant to Article 15 of the Rome Statute Requesting a Preliminary Examination into the Situation of: Gender-Based Persecution and Torture as Crimes Against Humanity and War Crimes Committed by the Islamic State of Iraq and the Levant (ISIL) in Iraq* (2017), available at <https://www.madre.org/sites/default/files/PDFs/CUNY%20MADRE%20OWFI%20Article%2015%20Communication%20Submission%20Gender%20Crimes%20in%20Iraq%20PDF.pdf> [<http://perma.cc/9S4X-4BR2>] [hereinafter HRGJ Clinic et al., Article 15 Communication].

targeted for violence on a staggering scale.³³ For example, in June 2015, ISIL executed two women by shooting them in the head after finding messages on the women's phones that ISIL claimed proved they were lesbians.³⁴ In June 2016, ISIL executed two women by shooting them in the head after accusing them of being lesbians. Again, ISIL claimed that conversations and photos on the victims' phones proved their homosexuality.³⁵

B. The Government of Iraq's Failure to Prosecute Sexual and Gender-Based Crimes Committed by ISIL

Prosecutions of ISIL fighters are fast-tracked under Iraq's counter-terrorism law, which carries a death penalty sentence. Sentencing hearings last on average about 10 or 20 minutes.³⁶ Convictions are often based on ties to ISIL, rather than on the specific nature and type of crimes committed.³⁷ This low bar for mass conviction means that courts are not investigating the most egregious crimes. Justice actors are also not distinguishing between the guilty and the victims in some situations, with some perpetrators going free and some victims—including women forced into marriages with ISIL fighters—receiving the death penalty. No effort is being made to inform victims of when or where alleged perpetrators are being brought to trial, giving victims no opportunity to participate.³⁸ Local Iraqi civil society organizations, as well as the international community, are calling for transparent and fair trials that acknowledge the sexual and gender-based crimes committed by ISIL and the impacts they have on victims.³⁹

In its report to this Committee, the Iraqi government generally acknowledges the sexual and gender-based violence that some women faced under ISIL, particularly the targeting of Yazidi women.⁴⁰ However, the government has failed to fully acknowledge and provide accountability for ISIL crimes amounting to gender-based persecution and targeting women who transgressed the rigid gender roles prescribed by ISIL ideology, including such crimes committed against real

³³ Id.; See also, Lisa Davis, *Reimagining Justice for Gender-Based Crimes at the Margins: New Legal Strategies for Prosecuting ISIS Crimes Against Women and LGBTIQ Persons*, 24 Wm. & Mary J. Women & L. 513 (2018).

³⁴ See, *supra* note 32, HRGJ Clinic et al., Article 15 Communication, para. 63.

³⁵ See, *supra* note 32, HRGJ Clinic et al., Article 15 Communication, para. 73.

³⁶ *Open Letter to the U.N. Security Council on the Government of Iraq's Prosecutions of ISIS Fighters* (June 2018), <https://www.madre.org/press-publications/human-rights-report/open-letter-un-security-council-government-iraqs-prosecutions>; Margaret Coker and Falih Hassan, *A 10-Minute Trial, a Death Sentence: Iraqi Justice for ISIS Suspects*, The New York Times (April 17, 2018).

³⁷ *Open Letter to the U.N. Security Council on the Government of Iraq's Prosecutions of ISIS Fighters* (June 2018), <https://www.madre.org/press-publications/human-rights-report/open-letter-un-security-council-government-iraqs-prosecutions>.

³⁸ *Open Letter to the U.N. Security Council on the Government of Iraq's Prosecutions of ISIS Fighters* (June 2018), <https://www.madre.org/press-publications/human-rights-report/open-letter-un-security-council-government-iraqs-prosecutions>; Human Rights Watch, *Flawed Justice: Accountability for ISIS Crimes in Iraq*, p. 54 (2017).

³⁹ *Open Letter to the U.N. Security Council on the Government of Iraq's Prosecutions of ISIS Fighters* (June 2018), <https://www.madre.org/press-publications/human-rights-report/open-letter-un-security-council-government-iraqs-prosecutions>.

⁴⁰ Government of Iraq, *Seventh Periodic Report Submitted by Iraq under Article 18 of the Convention, Due in 2018*, para. 11, UN Doc. CEDAW/C/IRQ/7 (August 15, 2018).

or perceived LGBT persons.

Without acknowledgement and accountability for the full range of crimes and the gender discriminatory basis on which many of them were committed, justice cannot be obtained for victims and communities cannot rebuild. The Government of Iraq should acknowledge crimes committed by ISIL if it hopes to support its citizens in creating sustainable peace.

IV. Lack of Access to Safe Employment and Necessary Health Services for LGBT People in Iraq (Articles 11 &12)

Discrimination in employment and healthcare dramatically impact the lives of LGBT individuals in Iraq. Several have reported to human rights documenters that they were denied employment or fired for looking “too feminine” or for refusing to engage in sexual practices with their employers.⁴¹ They also state that sexual advances from employers occur very often, and are always unreported. LGBT individuals not only lack legal protection, but also fear the possibility of being legally persecuted for redefining social norms and “damaging the public honor.”⁴²

In particular, members of the trans community face extreme danger simply by existing, especially those who choose to undergo hormone treatment and show physical changes, and Iraqi law denies them gender-affirming healthcare. Hormone treatments are not legal and make transitioning even more dangerous.⁴³ In addition, the law does not permit sex change operations.⁴⁴ People who manage to undergo the surgery outside of Iraq face difficulties in obtaining legal documents that reflect their gender identity. In an interview with IraQueer, a trans women stated: “Accessing hormones that I can use is life-threatening, but every day I wasn’t a girl was a day I thought of committing suicide. I know I will face even more danger when my body starts to change, but I rather die looking like who I really am than to die looking like what the society wanted me to be.”⁴⁵

V. Discriminatory Media Portrayal of LGBT People in Iraq (Articles 2, 3, & 5)

The media has played a significant role in promoting violence against LGBT people in Iraq and the Kurdish Region, and the Government, which controls most media outlets, has failed to address the abusive coverage. By using homophobic, biphobic, and transphobic language and propagating inaccurate information about LGBT people, the media has been instrumental in agitating and perpetuating discriminatory sentiments towards LGBT people. The use of words like “faggot”, “abnormal” and other offensive terms are commonplace in the Iraqi media when referring to LGBT individuals. The LGBT community is often discussed on TV by guests and talking head “experts” who have never worked on matters related to LGBT rights and do not

⁴¹ IraQueer, *Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq*, p. 8-9 (2018).

⁴² Articles 403, 430 and 431 of the Iraqi Penal Code; IraQueer, *Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq*, p. 10 (2018).

⁴³ IraQueer, *Fighting for the Right to Live: The State of LGBT+ Human Rights in Iraq*, p. 9 (2018).

⁴⁴ Id.

⁴⁵ Id. at 9-10.

have a background that qualifies them to share informed opinions about LGBT people before a mass audience. Religious leaders and psychiatrists often use personal beliefs and values as the basis for “expert opinions” instead of relying on facts. They influence the public by making sweeping homophobic and transphobic claims that lack factual basis, such as the idea that being LGBT is the result of rape and needs to be treated, or that LGBT people represent a threat to the institute of marriage and the safety of children.

Media, namely television, plays a major role in shaping views across the Iraqi society. According to the 2017 Report by The Broadcasting Board of Governors (BBG), 91% of adults in Iraq get their news and information from TV. The lack of accurate sources of information about sexual orientation and gender identity for television media viewers is a source of great danger to LGBT people.

While media outlets’ programs and publications help mobilize violent campaigns and campaigners against LGBT individuals, the government’s Communication and Media Commission, which regulates and monitors media outlets, has not taken any noteworthy steps to hold media outlets accountable for unethical reporting and bias.⁴⁶ Because most media outlets are controlled by the government, it must be held all the more accountable for addressing the media's biased, homophobic, transphobic, and biphobic coverage and reporting, and it must be called on to promote positive, non-discriminatory coverage of LGBT people and issues.

VI. Suggested Questions for the Government of Iraq

- What steps is the Government of Iraq taking to investigate and end violence against and killings of LGBT people, including people who have non-conforming appearances and/or gender expression?
- What steps is the Government of Iraq taking to hold accountable government actors for endorsement of and participation in violence or discrimination against anyone, including LGBT people?
- What steps is the Government of Iraq taking to develop and implement public awareness and sensitivity campaigns directed at changing harmful attitudes towards LGBT individuals?
- Does the Government of Iraq have plans to clearly and publicly state that it does not tolerate any form of violence or discrimination against persons because of their real or perceived sexual orientation or gender identity?
- What technical and financial efforts is the Government of Iraq making to ensure that media portrayals of LGBT Iraqis do not disseminate discriminatory and incorrect information?

⁴⁶ Id. at 17.

- What measures is the Government of Iraq implementing to guarantee that all LGBT people have access to safe and stable employment opportunities, as well as full and equal access to health services?
- What efforts is the Government of Iraq taking to hold ISIL fighters accountable for sexual and gender-based crimes, including crimes committed against persons based on their perceived or actual sexual orientation or gender identity?
- What measures is the Government of Iraq taking to support the inclusion of sexual and gender-based crimes and other internationally recognized crimes in prosecutions of ISIL fighters?
- What measures is the Government of Iraq taking to ensure the safety of witnesses and victims participating in trials or filing for assistance from any retaliation?