

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	1441
Land:	Irak
Kilde:	HRW
Titel:	Submission to the CAT ahead of the review of the Republic of Iraq. 73rd Session
Udgivet:	1. marts 2022
Optaget på baggrundsmaterialet:	16. juni 2022



**Human Rights Watch Submission to the Committee Against Torture and Other Cruel, Inhuman, or Degrading Punishment Ahead of the Review of the Republic of Iraq
73rd Session: March 2022**

We write in advance of the 73rd session of the Committee’s review of the Republic of Iraq’s compliance with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Punishment (henceforth referred to as the Convention Against Torture), which Iraq ratified in June 2011. To date, Iraq has not yet ratified the Convention Against Torture Optional Protocol.

**Torture and Other Forms of Ill-Treatment in Government-Run Detention Centers
(art. 1, 2)**

Government authorities detain criminal suspects in overcrowded, unsanitary, and in some cases inhumane conditions.¹

A source within the penitentiary system shared with Human Rights Watch in 2019 photos of overcrowded prison cells in Nineveh holding women and children on charges of ISIS affiliation in conditions so degrading that they amounted to ill-treatment.² In August 2018, Human Rights Watch reported details relayed by two former detainees, and the father of a man who died in detention, of ill-treatment, torture, and death in facilities run by the Iraqi Interior Ministry’s Intelligence and Counterterrorism Office in the east Mosul area. One of the detainees said he witnessed and experienced repeated torture during interrogations, and saw nine men die there, at least two from the abuse.

¹ “Iraq: Hundreds Detained in Degrading Conditions,” Human Rights Watch news release, March 13, 2017, <https://www.hrw.org/news/2017/03/13/iraq-hundreds-detained-degrading-conditions>; “Iraq: Thousands Detained, Including Children, in Degrading Conditions,” Human Rights Watch news release, July 4, 2019, <https://www.hrw.org/news/2019/07/04/iraq-thousands-detained-including-children-degrading-conditions>.

² “Iraq: Thousands Detained, Including Children, in Degrading Conditions,” Human Rights Watch news release, July 4, 2019, <https://www.hrw.org/news/2019/07/04/iraq-thousands-detained-including-children-degrading-conditions>.

Iraqi authorities have made repeated public commitments to investigate instances of torture and extrajudicial killings of detainees in recent years without follow-through.³ Iraq's constitution prohibits torture but the Iraqi Parliament has been unwilling or unable to pass an anti-torture bill for years.⁴ The bill would require a judge to order a medical examination of any detainee alleging torture within 24 hours of learning of the allegation; such an order or examination does not often occur.⁵

Torture and Ill-Treatment of Children

Since 2014, Iraqi and KRG authorities have arrested thousands of children on suspicion of ISIS membership. Based on information from multiple sources, Human Rights Watch estimates that at the end of 2018, Iraqi and KRG authorities were detaining approximately 1,500 children for alleged ISIS affiliation.⁶ Hundreds of children, including at least 185 foreign children, have been convicted on terrorism charges and sentenced to prison terms in Iraq.⁷ Many experienced horrific torture at the hands of detention center authorities (see below, "Forced Confessions of Children").

Torture and Ill-Treatment of People Who Are or Perceived to be LGBT

Police officers have subjected and threatened lesbian, gay, bisexual, and transgender (LGBT) adults and children to forced anal exams in police custody, an internationally discredited practice that can rise to the level of torture.⁸

³ Statement by Dr. Saad Al-Hadithi, spokesperson for the Prime Minister's Information Office, August 17, 2017, <http://www.pmo.iq/press2017/17-8-20171.html> (accessed March 23, 2022).

⁴ Human Rights Watch news release, "Iraq: New Government, New Legislative Agenda," May 14, 2020, <https://www.hrw.org/news/2020/05/14/iraq-new-government-new-legislative-agenda>

⁵ Human Rights Watch news release, "Iraq: Appeals Courts Ignoring Torture Claims," September 25, 2019, <https://www.hrw.org/news/2019/09/25/iraq-appeals-courts-ignoring-torture-claims>; Human Rights Watch news release, "Iraq: Judges Disregard Torture Allegations," July 31, 2018, <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations>

⁶ Human Rights Watch report, "'Everyone Must Confess': Abuses Against Children Suspected of ISIS Affiliation in Iraq," March 6, 2019, <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq>

⁷ Human Rights Watch report, "'Everyone Must Confess': Abuses Against Children Suspected of ISIS Affiliation in Iraq," March 6, 2019, <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq>

⁸ One 18-year-old man told Human Rights Watch he was subjected to a forced anal exam when he was 17; another 18-year-old man said police attempted to subject him to a forced anal exam when he was also 17. "Masa," a 19-year-old transgender woman, said when she was 16 she was arrested and threatened with an anal exam by police officers. See "'Everyone Wants Me Dead': Killings, Abduction, Torture, and Sexual Violence Against LGBT People in Iraq," March 23, 2022, <https://www.hrw.org/report/2022/03/23/everyone-wants-me-dead/killings-abductions-torture-and-sexual-violence-against#884>

In addition to carrying out due process abuses against them, detention authorities torture and ill-treat LGBT people, including with sexual assault, beatings, and withholding food and water.⁹

Failure of Iraqi and KRG Authorities to Monitor, Investigate, or Prosecute Crimes Against Humanity, Allegations of Torture, Ill-Treatment, Violence (arts. 2, 4, 5, 6, 12, 14, 15)

Despite prohibitions against torture in the constitution and penal code, Iraq's criminal justice system relies heavily on confessions as the sole evidence in a trial, including in particular the current trials of thousands of ISIS suspects.¹⁰ Article 37(1) of the Iraqi Constitution stipulates that "all forms of psychological and physical torture and inhuman treatment are prohibited," and that "any confession made under force, threat or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law."¹¹ Iraq's criminal procedure code also prohibits torture and judges cannot rely on confessions extracted by torture.¹² However, it does not explicitly state that other evidence obtained by torture should be excluded.

Judges in Iraq rarely respond to allegations of torture in the courtroom appropriately, if at all. Most ignore the allegations, or, in some cases, order a retrial without investigating the officer implicated in the abuse.¹³ For example, several boys convicted for suspected ISIS affiliation whom Human Rights Watch interviewed in 2018 said that they told the judge in their case that they made

⁹ "'Everyone Wants Me Dead': Killings, Abduction, Torture, and Sexual Violence Against LGBT People in Iraq," March 23, 2022, <https://www.hrw.org/report/2022/03/23/everyone-wants-me-dead/killings-abductions-torture-and-sexual-violence-against#884>

¹⁰ GSDRC Applied Knowledge Services Report, "Formal justice in Iraq," December 12, 2014, <https://assets.publishing.service.gov.uk/media/57a089a6ed915d622c00032d/hdq1175.pdf>; Human Rights Watch report, "Flawed Justice: Accountability for ISIS Crimes in Iraq," December 5, 2017, <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq>; Qassim Abdul-Zahra and Susannah George, "Iraq holding more than 19,000 because of IS, militant ties," March 21, 2018, <https://apnews.com/article/after-the-caliphate-islamic-state-group-ap-top-news-international-news-iraq-aeccc6571de54f5dba3543d91deed381> (accessed March 28, 2022).

¹¹ Iraqi Constitution, art. 37, https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en (accessed on November 6, 2017).

¹² Iraq's Criminal Procedure Code, No. 23 of 1971, <http://gjpi.org/wp-content/uploads/gipi-cpc-1971-v2-eng.doc>, art. 127 (accessed on November 6, 2017); and "KRG: Children Allege Torture by Security Forces," Human Rights Watch news release, January 29, 2017, <https://www.hrw.org/news/2017/01/29/krg-children-allege-torture-security-forces>.

¹³ Human Rights Watch news release, "Iraq: Judges Disregard Torture Allegations," July 31, 2018, <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations>; Human Rights Watch news release, "Iraq: Chilling Accounts of Torture, Deaths," August 19, 2018, <https://www.hrw.org/news/2018/08/19/iraq-chilling-accounts-torture-deaths>

their confession under torture, but each said that the judge appeared to ignore their claim.¹⁴ Moreover, people who have experienced torture in detention sometimes attend their judicial hearings with visible signs of abuse on their bodies, which judges often fail to inquire about or investigate.

Iraqi law does not provide details on how to investigate allegations of torture. According to counterterrorism judges, when a defendant alleges being subjected to torture during interrogation, a judge should order a forensic examination to assess the claim and transfer the case to a higher court for review.¹⁵ In addition, the General Amnesty Law grants detainees who claim they were convicted based on a confession extracted by torture the right to petition for a retrial.¹⁶ In truth, this rarely happens.

Barriers to Justice for At-Risk Populations

There is a serious failure by state authorities to monitor, investigate, and prosecute violence against LGBT people and gender-based violence against women and girls by state officials as well as by non-state actors such as armed groups and families. Access to legal redress, including for victims of torture, remains elusive for such people.

While there are mechanisms in place to file formal complaints, logistical, social, and structural obstacles render the system woefully inadequate to ensure accountability for wrongdoing. LGBT people can be arrested under a range of vague provisions of the penal code aimed at policing morals and public indecency and limiting free expression.¹⁷ The combination of hypervulnerability, loosely defined “morality” clauses, and the absence of anti-discrimination legislation and reliable complaint systems is a formidable barrier that impedes LGBT people’s ability and willingness to report abuses they suffer to the police, or file complaints against law enforcement agents, creating an environment in which police and armed groups can abuse them with impunity. Victims sometimes choose not to file complaints against law enforcement and armed groups due to

¹⁴ Human Rights Watch report, “‘Everyone Must Confess’: Abuses Against Children Suspected of ISIS Affiliation in Iraq,” March 6, 2019, <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq>

¹⁵ Human Rights Watch interview with Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017. See Human Rights Watch report, “Flawed Justice: Accountability for ISIS Crimes in Iraq,” December 5, 2017, <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq#1184>

¹⁶ General Amnesty Law, August 2016 (no.27/2016), http://www.iraq-ig-law.org/ar/webfm_send/1629, art. 9. See Human Rights Watch report, “Flawed Justice: Accountability for ISIS Crimes in Iraq,” December 5, 2017, <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq#1184>

¹⁷ These include penal code articles 41, 128, 200, 210, 394, 398, 401 – 404, 409, and 502. For more information, see Human Rights Watch report, “‘Everyone Wants Me Dead’: Killings, Abduction, Torture, and Sexual Violence Against LGBT People in Iraq,” March 23, 2022, <https://www.hrw.org/report/2022/03/23/everyone-wants-me-dead/killings-abductions-torture-and-sexual-violence-against#884>

threats, fear of retaliation, and fear of public exposure of their identities.¹⁸

Failure of Iraqi, KRG, and International Authorities to Monitor, Investigate, or Prosecute Crimes Against Humanity against Yezidi Women and Girls Subject to Abuses by ISIS (arts. 2, 4, 5, 6, 12, 14, 15)

Human Rights Watch and other organizations documented a system of organized rape, sexual slavery, and forced marriage by Islamic State (also known as ISIS) forces of Yezidi women and girls.¹⁹ However, Human Rights Watch research in 2019 found no case where an ISIS member had been prosecuted or convicted for those specific crimes. Moreover, the crimes committed against Yezidi women and girls amount to war crimes and possibly crimes against humanity or genocide against the Yezidis. Despite this, Iraq does not criminalize war crimes, crimes against humanity or genocide. ISIS suspects are instead charged with violating provision 4 of the counterterrorism law, primarily for ISIS membership, support, sympathy, or assistance.²⁰

This approach makes it less likely that the process will establish a more comprehensive judicial record of the crimes committed, and gather the evidence of these crimes from witnesses and victims. The overreliance on counterterrorism laws also makes it less likely that the process will prioritize and punish the most serious offenses committed by ISIS.

Iraqi judges told in 2019 Human Rights Watch that provision 4 is all-encompassing and indirectly includes crimes such as rape and other crimes committed by ISIS members.²¹ They also justified not bringing additional charges by stating that victims do not come forward to file complaints and

¹⁸ Human Rights Watch report, “‘Everyone Wants Me Dead’: Killings, Abduction, Torture, and Sexual Violence Against LGBT People in Iraq,” March 23, 2022, <https://www.hrw.org/report/2022/03/23/everyone-wants-me-dead/killings-abductions-torture-and-sexual-violence-against#884>

¹⁹ “Iraq: Forced Marriage, Conversion for Yezidis,” Human Rights Watch news release, October 2014, <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>; “Iraq: ISIS Escapees Describe Systematic Rape, Yezidi Survivors in Need of Urgent Care,” Human Rights Watch news release, April 14, 2015, <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>; Sarah Margon (Human Rights Watch), “ISIL’s Reign of Terror: Confronting the Growing Humanitarian Crisis in Iraq and Syria” testimony, Senate Foreign Relations Committee, December 9, 2014, <https://www.hrw.org/news/2014/12/09/isils-reign-terror-confronting-growinghumanitarian-crisis-iraq-and-syria-testimony>; “Iraq: Protect Mass Graves, Evidence of Possible ISIS Genocide Endangered,” Human Rights Watch news release January 30, 2016, <https://www.hrw.org/news/2016/01/30/iraq-protect-mass-graves>; and Rothna Begum and Samer Muscati (Human Rights Watch), “Interview: These Yezidi Girls Escaped ISIS. Now What?,” April 15, 2015, <https://www.hrw.org/news/2015/04/15/interview-these-yezidi-girls-escaped-isis-now-what>.

²⁰ Iraqi Counterterrorism Law, No. 13 of 2005.

²¹ See Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women on Iraq, 74th Session, September 2019, <https://www.hrw.org/news/2019/10/07/submission-committee-elimination-all-forms-discrimination-against-women-iraq>; Human Rights Watch report, *Flawed Justice: Accountability for ISIS Crimes in Iraq*, December 2017, <https://www.hrw.org/report/2017/12/05/flawed-justice/accountability-isis-crimes-iraq#>.

the courts lack the capacity to identify victims, despite large amounts of documentation by various organizations of crimes against victims. Even in cases in which defendants have admitted to subjecting Yazidi women to sexual slavery, prosecutors have still neglected to charge them with rape, which carries a sentence of up to 15 years. Moreover, victims of ISIS abuse, including Yazidis, have not been able to participate in court proceedings.

In June 2017, a Judicial Investigation Board for Crimes Against the Yazidis was reportedly established to investigate crimes committed against them by ISIS.²² However, key Yazidi groups say they have never heard of the work of this body.²³ Several ongoing trials for crimes against humanity committed by members of non-state armed groups in Iraq against the Yazidis are taking place in Germany under the principle of universal jurisdiction.²⁴

Almost 3,000 Yazidi women and children remain missing following abductions by ISIS, and despite years since the defeat of ISIS in most areas. Many are believed to remain living with the families of deceased ISIS fighters, either in hiding or in detention camps, or held captive by armed groups in Syria.²⁵ There has been no systematic effort by the Iraqi authorities to rescue or ensure their return. Instead families and Yazidi volunteers have largely driven all such rescue efforts.

While Yazidi community leaders have welcomed back women and girl victims of ISIS, there has been more reluctance of accepting children born of rape. Some families have told women to leave such children, forcing women to either abandon their children during escape or to remain with their children and unable to return to their families or communities.

On March 1, 2021, Iraq's parliament passed the Law on Yazidi Female Survivors, which recognized crimes committed by ISIS including kidnapping, sexual enslavement, forced marriage, pregnancy, and abortion against women and girls from the Yazidi, Turkman, Christian, and Shabak minorities as genocide and crimes against humanity.²⁶ The law provides for compensation for survivors, as well as measures for their rehabilitation and reintegration into

²² "Iraqi Supreme Judicial Council Decides to Form Tribunal for Crimes Against Yazidis," *Bas News*, June 12, 2017, <http://www.basnews.com/index.php/en/news/iraq/357193> (accessed October 27, 2017).

²³ See Human Rights Watch Submission to the Committee on the Elimination of All Forms of Discrimination Against Women on Iraq, 74th Session, September 2019, <https://www.hrw.org/news/2019/10/07/submission-committee-elimination-all-forms-discrimination-against-women-iraq>;

²⁴ See Trial International Report, "Universal Jurisdiction Annual Review 2021," 2021, available https://trialinternational.org/wp-content/uploads/2021/04/TRIAL_International_UJAR-2021.pdf

²⁵ Jane Arraf and Sangar Khaleel, "3,000 Yazidis are Still Missing. Their Families Know Where Some of Them Are," *New York Times*, October 3, 2021, <https://www.nytimes.com/2021/10/03/world/middleeast/yazidis-missing-isis.html> (accessed March 31, 2022).

²⁶ "Iraq: UN expert welcomes law to aid ISIL atrocity survivors, but more needs to be done for children born from rape," UN OHCHR press release, April 21, 2021, <https://www.ohchr.org/en/press-releases/2021/04/iraq-un-expert-welcomes-law-aid-isil-atrocity-survivors-more-needs-be-done?LangID=E&NewsID=27018> (accessed March 31, 2022).

society and the prevention of such crimes in the future. In September 2021, the parliament passed the necessary regulations to implement the law but, even months later, little progress had been made towards applying the law.²⁷

Domestic Violence (arts. 2, 4, 12, 13, 14)

Domestic violence remains a serious problem in Iraq and there are few avenues for survivors to seek shelter.²⁸ Iraq's criminal code does not criminalize domestic violence and only general provisions relating to assault could apply in such instances. Even worse, several provisions in the criminal code enable impunity for violence against women including domestic violence. They include provisions that allow the husband to punish his wife and parents to discipline their children, mitigated sentences for violent acts including murder for so-called "honorable motives" or if catching his wife or female relative in the act of adultery/sex outside of marriage, and allowing perpetrators of rape or sexual assault to escape prosecution or have their sentences quashed if they marry their victim.²⁹

Human Rights Watch identified in March 2022 at least 40 cases of domestic violence against Iraqi LGBT people by their parents or relatives, at least once for their sexual orientation or gender identity and expression, including: being locked in a room for extended periods, being denied food and water, being burnt, beaten, raped, electrocuted, attacked at gunpoint, subjected to conversion practices and forced hormone therapy, subjected to forced marriages, and forced to work for long hours without compensation.³⁰

The draft anti-domestic violence law, originally introduced in the Iraqi parliament in 2015 and further amended in 2016, remains pending despite renewed efforts for its passage in 2019. The strengths of the draft bill, reviewed by Human Rights Watch in 2017, include provisions for

²⁷ "Iraq: Yazidi reparations law progress welcome, but more must be done to assist survivors," Amnesty International press release, November 2, 2021, <https://www.amnesty.org/en/latest/news/2021/11/iraq-yezidi-reparations-law-progress-welcome-but-more-must-be-done-to-assist-survivors/> (accessed March 31, 2022); "Six months after adoption of the Law on Yazidi Female Survivors no tangible progress has been made toward implementation," Coalition for Just Reparations press release, September 1, 2021, https://c4jr.org/wp-content/uploads/2021/09/01092021_C4JR-Media-Statement-ENGLISH.pdf

²⁸ "Iraq: Urgent Need for Domestic Violence Law," Human Rights Watch press release, April 22, 2020, <https://www.hrw.org/news/2020/04/22/iraq-urgent-need-domestic-violence-law>. According to a 2014 UNAMI Human Rights Office report, there are very few working shelters and many victims of domestic violence are often sent to temporarily stay in female prisons. See: UNAMI Human Rights Office/OHCHR Baghdad, "Report on Human Rights in Iraq: January – June 2014," August 2014. Existing women's rights organizations with such shelters have often been physically attacked and threatened by armed groups or families, and faced hostility from some government officials.

²⁹ These include penal code articles 41(1), 128(1), 398, and 409, and Law No. 111 of 1969.

³⁰ For more information, see "'Everyone Wants Me Dead': Killings, Abduction, Torture, and Sexual Violence Against LGBT People in Iraq," March 23, 2022, <https://www.hrw.org/report/2022/03/23/everyone-wants-me-dead/killings-abductions-torture-and-sexual-violence-against#884>

services for domestic violence survivors, protection orders (restraining orders), and penalties for their breach, and the establishment of a cross-ministerial committee to combat domestic violence.³¹ However, the bill has several gaps and provisions that would undermine its effectiveness.³²

Iraqi and KRG Authorities' Use of Torture to Extract Confessions (art. 1, 2, 4, 5, 6, 10, 15)

UNAMI released a report in August 2021 based on interviews with more than 200 detainees, over half of whom shared credible allegations of torture.³³ The report found that the 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 by Iraqi and KRG forces to extract confessions in Iraq.³⁴

Detainees in Nineveh, where authorities hold the most ISIS suspects, have shared with Human Rights Watch graphic accounts of torture during interrogations in Mosul's prisons under the control of the Ministry of Interior. In some cases, torture contributed to the deaths of detainees.³⁵ These allegations are consistent with reports of the widespread use of torture by Iraqi forces to extract confessions instead of carrying out robust criminal investigations.³⁶

³¹ Human Rights Watch, "Iraq: Strengthen Domestic Violence Bill," March 19, 2017, <https://www.hrw.org/news/2017/03/19/iraq-strengthen-domestic-violence-bill>.

³² One of the major problems with the draft law is that it prioritizes reconciliation over protection and justice for abused victims. The draft law calls for the parties to be referred to family reconciliation committees and for prosecutions of abusers to be dropped if reconciliation is reached. Women in Iraq are often under tremendous social and economic pressure to prioritize the family unit over their own protection from violence.

³³ "Iraq: Ending torture through accountability, compliance and prevention – UN," UNAMI press release, August 3, 2021, <https://iraq.un.org/en/138505-iraq-ending-torture-through-accountability-compliance-and-prevention-un>

³⁴ "Iraq: Torture Persists in Mosul Jail," Human Rights Watch news release, April 18, 2019, <https://www.hrw.org/news/2019/04/18/iraq-torture-persists-mosul-jail>; "Kurdistan Region of Iraq: Detained Children Tortured," Human Rights Watch news release, January 8, 2019, <https://www.hrw.org/news/2019/01/08/kurdistan-region-iraq-detained-children-tortured>; "Iraq: ISIS Child Suspects, Arbitrarily Arrested, Tortured," Human Rights Watch news release, <https://www.hrw.org/news/2019/03/06/iraq-isis-child-suspects-arbitrarily-arrested-tortured>. See also: "Iraq: Ending torture through accountability, compliance and prevention – UN," UNAMI press release, August 3, 2021, <https://iraq.un.org/en/138505-iraq-ending-torture-through-accountability-compliance-and-prevention-un>; Amnesty International press release, "Iraq: mass execution of 21 individuals is an outrage," November 17, 2020, <https://www.amnesty.org/en/latest/news/2020/11/iraq-mass-execution-of-21-individuals-is-an-outrage-2/>

³⁵ "Iraq: Chilling Accounts of Torture, Deaths," Human Rights Watch news release, August 19, 2018, <https://www.hrw.org/news/2018/08/19/iraq-chilling-accounts-torture-deaths>.

³⁶ "Iraq: Ban Abusive Militias from Mosul Operation," Human Rights Watch news release, July 31, 2016, <https://www.hrw.org/news/2016/07/31/iraq-ban-abusive-militias-mosul-operation>; "Iraq: Flawed Prosecution of ISIS Suspects," Human Rights Watch news release, December 5, 2017, <https://www.hrw.org/news/2017/12/05/iraq-flawed-prosecution-isis-suspects>.

Human Rights Watch reviewed files of 30 cases tried by Baghdad courts between 2009 and 2018 in which defendants alleged torture, and in June and July 2018 researchers sat in on an additional 18 serious crime trials of ISIS suspects in Baghdad. In 22 cases, the defendants alleged torture to extract confessions, but judges took no action to investigate the allegations, and in only one instance did judicial authorities investigate and sanction an officer.³⁷

A 2019 Human Rights Watch study of appeals court decisions in terrorism-related cases showed that in close to two dozen cases in 2018 and 2019 judges appeared to ignore torture allegations or to rely on uncorroborated confessions.³⁸ Some of the torture allegations had been substantiated by forensic medical exams, and some of the confessions were apparently extracted by force. In each of these cases, the trial courts took the torture allegations seriously, found them credible, assessed the evidence, and acquitted the defendants. Despite this, on prosecution appeal, the Federal Court of Cassation appeared to ignore torture allegations or to rely on uncorroborated confessions and ordered retrials.

Two French citizens transferred from northeast Syria to Iraq in early 2019 and prosecuted in Baghdad for ISIS affiliation told a judge in May 2019 that Iraqi security forces tortured or coerced them into making a confession.³⁹ Also in 2019, one man had to have his arm amputated because of arterial damage caused by torture in custody.⁴⁰

Forced Confessions of Children

Human Rights Watch published a report in March 2019 based on 29 interviews with current or former detainees aged 14 to 18 convicted of ISIS affiliation by the KRG.⁴¹ Nineteen children said that *Asayish* (KRG security) officers tortured them to confess to ISIS association including by beating them with plastic pipes, electric cables, or rods. Some were subjected to electric shocks or tied in painful stress positions. The methods of torture the children described were similar to

³⁷ “Iraq: Judges Disregard Torture Allegations,” Human Rights Watch news release, July 31, 2018, <https://www.hrw.org/news/2018/07/31/iraq-judges-disregard-torture-allegations>.

³⁸ “Iraq: Appeals Courts Ignoring Torture Claims,” Human Rights Watch news release, September 25, 2019, <https://www.hrw.org/news/2019/09/25/iraq-appeals-courts-ignoring-torture-claims>.

³⁹ “Iraq: French Citizens Allege Torture, Coercion,” Human Rights Watch news release, May 31, 2019, <https://www.hrw.org/news/2019/05/31/iraq-french-citizens-allege-torture-coercion>.

⁴⁰ “Iraq: Amputation Apparently Caused by Torture,” Human Rights Watch news release, June 26, 2019, <https://www.hrw.org/news/2019/06/26/iraq-amputation-apparently-caused-torture>.

⁴¹ Human Rights Watch report, “‘Everyone Must Confess’: Abuses Against Children Suspected of ISIS Affiliation in Iraq,” March 6, 2019, <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq>

the accounts of 17 boys held for alleged ISIS association at the same detention center who spoke with Human Rights Watch in December 2016.⁴²

Many of the children told Human Rights Watch that they confessed to ISIS involvement simply to stop the torture, but that they had little or no actual involvement with ISIS.⁴³ Most said that their court hearings appeared to be based almost entirely on their confessions, despite the fact that these allegedly had been extracted under torture.⁴⁴

Torture and Ill-Treatment of Children and Adults by ISIS Fighters (arts. 1, 2, 13)

In 2017, Human Rights Watch reported on the arbitrary detention, ill-treatment, torture, and forced marriage of Sunni Arab women and girls in areas under ISIS control in Iraq.⁴⁵ Human Rights Watch interviewed four women who said they had been detained by ISIS in 2016, for periods between three days and a month. Another woman said an ISIS fighter, her cousin, forced her to marry him and then raped her. A sixth woman said that ISIS fighters destroyed her home as punishment after her husband escaped ISIS and tried to forcibly marry her. Five of the six women said that ISIS fighters beat them.

Human Rights Watch and others reported on similar abuses by ISIS fighters against Yezidi women in 2015.⁴⁶

A 31-year-old transgender Iraqi woman, “Khadija,” told Human Rights Watch she experienced horrific torture in 2021 by people who identified themselves as members of Asa’ib Ahl al-Haqq, a Popular Mobilization Force (PMF) group that had previously threatened her. She and her friends were abducted and subjected to rape, beatings, burns, and other acts of violence targeting sensitive areas on her body. In 2011, Khadija was beaten and subjected to other acts of mutilation by people who identified themselves as members of the Mahdi Army armed group.⁴⁷

⁴² Human Rights Watch report, “‘Everyone Must Confess’: Abuses Against Children Suspected of ISIS Affiliation in Iraq,” March 6, 2019, <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq>

⁴³ Human Rights Watch report, “‘Everyone Must Confess’: Abuses Against Children Suspected of ISIS Affiliation in Iraq,” March 6, 2019, <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq>

⁴⁴ Human Rights Watch report, “‘Everyone Must Confess’: Abuses Against Children Suspected of ISIS Affiliation in Iraq,” March 6, 2019, <https://www.hrw.org/report/2019/03/06/everyone-must-confess/abuses-against-children-suspected-isis-affiliation-iraq>

⁴⁵ Human Rights Watch news release, “Iraq: Sunni Women Tell of ISIS Detention, Torture,” February 20, 2017, <https://www.hrw.org/news/2017/02/20/iraq-sunni-women-tell-isis-detention-torture>

⁴⁶ Human Rights Watch news release, “Iraq: ISIS Escapees Describe Systematic Rape,” April 14, 2015, <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>

⁴⁷ See “‘Everyone Wants Me Dead’: Killings, Abduction, Torture, and Sexual Violence Against LGBT People in Iraq,” March 23, 2022, <https://www.hrw.org/report/2022/03/23/everyone-wants-me-dead/killings-abductions-torture-and-sexual-violence-against#884>, “Khadija’s Story.”

“Anwar,” a 21-year-old gay Iraqi man, told Human Rights Watch he was abducted by members of Harakat Hezbollah al-Nujaba, a PMF group, in 2018 and subjected to torture including sexual violence and electric shocks.⁴⁸

The Iraqi government has largely failed to hold accountable members of the various armed groups who have in recent years abducted and tortured LGBT people.⁴⁹

In 2017, the UN Security Council created an investigative team, UNITAD, to document serious crimes committed by ISIS in Iraq. Given the deeply flawed Iraqi criminal proceedings against ISIS suspects and ongoing fair trial concerns in the country, it remained unclear to what extent the team has supported the Iraqi judiciary in building case files on these atrocities in line with international standards.

Shackling of Persons with Psychosocial Disabilities (arts. 1, 2, 4, 12, 13)

In Iraq, people with psychosocial disabilities (mental health conditions) can be shackled - chained or locked in confined spaces.⁵⁰ This inhumane practice exists due to inadequate support and mental health services as well as widespread stigma, such as the belief that mental health conditions are the result of possession by evil spirits or witchcraft.⁵¹ Lack of financial means to access mental health services has also been reported as the reason why some families resort to shackling.⁵²

The UN Special Rapporteur on torture has noted that shackling “unequivocally amount(s) to torture even if committed by non-State actors under conditions in which the State knows or ought to know about them.”⁵³

⁴⁸ Ibid, “Anwar’s Story.”

⁴⁹ See “‘Everyone Wants Me Dead’: Killings, Abduction, Torture, and Sexual Violence Against LGBT People in Iraq,” March 23, 2022, <https://www.hrw.org/report/2022/03/23/everyone-wants-me-dead/killings-abductions-torture-and-sexual-violence-against#884>

⁵⁰ Human Rights Watch Report, “Living in Chains: Shackling of People with Psychosocial Disabilities Worldwide”, October 6, 2020, https://www.hrw.org/sites/default/files/media_2020/10/global_shackling1020_web_2.pdf, p. 34.

⁵¹ Ibid., p.3, 34, 39; “A full episode / a child has been tied with ropes for years in the street under the heat of the sun, rain and cold # Ali_Azab,” (“حلقة كاملة/طفل يربط بالحبال لسنوات في الشارع تحت حرارة الشمس والمطر والبرد #علي_عذاب”), video clip, YouTube, <https://www.youtube.com/watch?v=P-sCydrUMws> (accessed January 4, 2022).

⁵² “A young man in his twenties chained in one of the villages of Sulaymaniyah,” (“تقييد شاب عشريني في إحدى قرى”), Rudaw, September 9, 2015, <https://www.rudaw.net/arabic/kurdistan/030920151> (accessed January 4, 2022).

⁵³ UNHRC, Follow up report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his follow-up visit to the Republic of Ghana, Session 31, A/HRC/31/57/Add.2, February 25, 2015, <https://undocs.org/en/A/HRC/31/57/add.2>, para. 72.

The government should:

- Pass a comprehensive anti-torture bill that sets out the procedures state officials should follow if someone alleges they were tortured.
- Ratify the Optional Protocol to the Convention Against Torture.
- Call on the High Judicial Council to issue detailed, step-by-step guidelines obliging judges to investigate all credible allegations of torture committed by Iraqi or KRG authorities or armed groups, dismiss any and all evidence, including confessions, obtained by torture, and punish those deemed responsible appropriately. These guidelines should include procedures to transfer detainees to the custody of different officials or a different facility immediately after they allege torture or ill-treatment and protect them from retaliation for reporting torture. These should also include procedures by which victims of torture are appropriately compensated.
- Review detention center policies and procedures to ensure that:
 - There is a clear legal basis for detentions;
 - Detainees have access to legal counsel, including during interrogations;
 - Detainees actually appear before a judge within 24 hours of their initial detention and at regular intervals thereafter, with the judge determining the legality and necessity of their continuing detention; and
 - Detainees are moved to facilities accessible to government inspection, and with regular access by independent monitors and relatives.
- Call on the High Judicial Council to urge judges to prosecute all individuals responsible for torture with the crime of torture.
- 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.
- Ensure that no victim of a crime is denied assistance, arrested, or harassed on the basis of their sexual orientation or gender identity, and safeguard the right of sexual and gender minorities to report crimes without facing the risk of arrest.
- Incorporate war crimes, crimes against humanity and genocide into the criminal code;
- Develop a national strategy for ISIS prosecutions and a range of other initiatives, including truth-telling and reparations, to address ISIS crimes;
- 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 including sexual violence and sexual slavery, and with a clear role for victim engagement.
- Assist families seeking the return of captured Yezidi women and children, ensuring that women are not forced into giving up children born of rape as the only way to

return, and establish programs to deal with stigma against victims and children born of rape, as well as specific guidelines on children born to women survivors.

- Pass the draft Anti-Domestic Violence Law, in line with international human rights standards, including removing all references to “reconciliation.”
- Pass comprehensive anti-discrimination legislation that prohibits discrimination on the grounds of sex, gender, gender identity and sexual orientation and includes effective measures to identify and address such discrimination.
- Repeal provisions in the Iraqi Penal Code including articles 41(1), 128(1), 398 and 409 that condone violence against women and LGBT people.
- Examine vague articles of the penal code, including paragraphs 200(2), 401, 402, 501, and 502, that could justify arbitrary arrest or harassment of people due to their actual or perceived sexual orientation or gender expression and identity; repeal or modify them, or otherwise ensure that they are not applied in an arbitrary or discriminatory manner contrary to international human rights law.
- Ensure that the treatment of children who committed criminal acts as members of ISIS are in line with international juvenile justice standards and are primarily targeted towards their rehabilitation and reintegration.
- Pending changes in law, issue a public instruction to all investigative judges, prosecutors and law enforcement officials that no child should be arrested, detained or prosecuted on suspicion of mere membership of ISIS. Adopt and implement handover protocols to ensure that children who have been associated with ISIS but not implicated in violent crimes are transferred promptly to appropriate rehabilitation programs.
- Ban shackling in law and in policy.
- Develop a time-bound plan to shift progressively to voluntary community-based mental health support and independent living services.
- Comprehensively investigate state and private institutions in which people with psychosocial disabilities live, with the goal of stopping chaining and ending other abuses.
- Establish independent and confidential complaints systems that receive and investigate complaints, including ill-treatment of persons with psychosocial disabilities in institutions.