

Flygtningenævnets baggrundsmateriale

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IRAQ

Following the demise of the Islamic State in Iraq since December 2017, ILGA World has removed Iraq from the list of countries that impose the death penalty for same-sex sexual activity.¹ However, though there is no formal legal prohibition against same-sex sexual intimacy, there have been cases of same-sex couples and individuals prosecuted for same-sex sexual intimacy on the basis of other criminal provisions such as “prostitution” and “public indecency”. There also remains a significant threat of violence against people on the basis of their same-sex desire or gender expression—those perceived as non-heterosexual or gender non-conforming—across the country.²

Provisions in force

After the American invasion in 2003 the **Penal Code** of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations. Notably, even though Article 394 mentions consensual buggery, it applies only if the victim is aged 18 or below. It therefore does not criminalise same-sex sexual acts between consenting adults.

Immodest acts

Article 401

Any person who commits an immodest act in public is punishable by a period of detention not exceeding 6 months plus a fine not exceeding 50 dinars or by one of those penalties.

Human Rights Situation

Until December 2017, the Daesh (or ISIS/ISIL) held areas of northern Iraq and northern Syria. It was known to target men and women on account of their gender expression, gender identity and their sexual orientation. The *Nusr* [‘Victory’ in Arabic] website, which claims to be the website of the Islamic Caliphate, has a section on Legal Jurisprudence (evidence-based rules and the Penal Code).³ One of the pages under this section is dedicated to “Punishment for Sodomy”, which states: “The religiously-sanctioned penalty for sodomy is death, whether it is consensual or not. Those who are proven to have committed sodomy, whether sodomiser or sodomised should be killed...”.

According to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, there were multiple executions of both men and women on the basis of their actual or “perceived homosexuality”.⁴ In August 2016, three women were executed by ISIS in Mosul for this reason, and several reports have emerged of ISIS executing gay and other men by throwing them off buildings, and, if they survived the fall, stoning them to death in a public event. Examples include two men thrown to their deaths in November 2015 in Fallujah and another two men in early 2016 in the city of Rawa and Tel-Afar. The last reported execution by ISIS appears to be in March 2017 in Mosul.⁵ Since December 2017, ISIS has lost most of its territory in Iraq following its

¹ For an explanation of why Iraq was included under the “Death Penalty” category see: International Lesbian, Gay, Bisexual, Trans and Intersex Association: Aengus Carroll and Lucas Ramón Mendos, *State Sponsored Homophobia 2017: A world survey of sexual orientation laws: criminalisation, protection and recognition* (Geneva: ILGA, May 2017), 128.

² “Iraq 2017 Human Rights Report” (US State Department, Bureau of Democracy, Human Rights and Labor 2018); *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, A/HRC/38/44/Add.1, 5 June 2018.

³ “قته البيت ونظم العقوبات”, *The Nusr*.

⁴ *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq*, A/HRC/38/44/Add.1, 5 June 2018, para 27.

⁵ Loaa Adel, “Photos: Islamic State stones a youth accused of homosexuality in Mosul”, *Iraqi News*, 27 March 2017.

military defeat.⁶ In January 2019, it was reported that the building from which many of these executions were carried out was being demolished.⁷

Non-State actors in Iraq including Sharia judges, are also known to order executions of men and women for same-sex sexual behaviour, despite the fact that Iraq's civil code is silent on same-sex sexual behaviour, and the country's legal system does not defer to the Sharia court. It is also known that both police and militias have frequently kidnapped, threatened and killed LGBT people, as documented by OutRight since 2014, and charted on their Timeline.⁸

In a report by LGBT advocacy group IraQueer, it was found that there has been at least one annual killing campaign targeting queer individuals carried out by different groups.⁹ This included ISIS (10%), armed groups like Asa'eb Ahl Al-Haq (31%) and the government (22%). Non-state actors are also a significant source of violence, with family members making up 27% of the violence committed.

In 2017, a theatre actor was tortured and killed in Baghdad for "looking gay".¹⁰ A 14-year-old boy was also murdered in 2018 because of his perceived sexual orientation and the entire killing was filmed by the culprit who taunted the victim with homophobic slurs while attacking him.¹¹ Additionally, it was reported that suspected LGBT community spaces have been burned down or bombed.¹²

However, SOGI-related activism efforts have been documented.¹³ IraQueer launched a publicity campaign in Baghdad by putting up posters and banners in support of LGBT equality.¹⁴ Another LGBT group, Rasan, has been organising awareness campaigns about LGBT issues in Sulaymaniyah.¹⁵ Originally founded as an organisation focusing on women's rights, the group has taken on LGBT

issues: one of the activities the group did was painting the city walls with murals promoting LGBT awareness.¹⁶

National Human Rights Institution

Iraq has a National Human Rights Institution in accordance with the Paris Principles: the High Commission for Human Rights. However, it does not address SOGIESC issues in its work.

UN voting record

Iraq was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three HRC resolutions on human rights, sexual orientation and gender identity in 2011, 2014 and 2016.

At the session of Third Committee of the UN General Assembly held in November 2016, Iraq voted against the LAC amendment to remove Operative Paragraph 2,¹⁷ and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016. Additionally, Iraq voted in favour of the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

Iraq accepted the only recommendation given to it (from France) with SOGI content in 2nd UPR in October 2014: "Guarantee equality of civil and political rights. Avoid all forms of discrimination based on ethnicity, religion, gender or sexual

⁶ Christopher M Blanchard, "Iraq: Issues in the 115th Congress" (Congressional Research Service, October 4, 2018).

⁷ "Iraq's Mosul Demolishes Iconic Building Used By ISIS To Kill 'Gay' Men", NDTV, 14 January 2019.

⁸ "Exposing persecution of LGBT individuals in Iraq", OutRight Action International, 19 November 2014; "Timeline of publicized executions for 'indecent behavior'", OutRight Action International, 2 April 2016.

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

¹⁰ "Iraqi Actor Reportedly Murdered For 'Looking Gay'", *alBawaba The Loop*, 3 July 2017.

¹¹ Sara Al Shurafa, "Iraqi teenager brutally killed because of his looks", *Gulf News*, 11 October 2018.

¹² Rachel Banning-Lover, "Where are the most difficult places in the world to be gay or transgender?", *The Guardian*, March 1, 2017.

¹³ Bethan McKernan, "Iraq's only openly gay activist on how he's fighting to make his country safer", *The Independent*, 16 August 2016.

¹⁴ "In Baghdad, a daring poster campaign to defend LGBT rights", *France24 The Observers*, 22 June 2018.

¹⁵ Alex MacDonald, "The world is changing: Iraqi LGBT group takes campaign to streets", *Middle East Eye*, 10 March 2018.

¹⁶ Michael K Lavers, "Kurdish group launches pro-LGBT human rights campaign", *Washington Blade*, 3 January 2017.

¹⁷ Operative Paragraph 2 was an attempt by the Africa Group to defer consideration and action on HRC Resolution 32/2 under the pretext that further consultations were needed to determine the legal basis upon which the IE SOGI would operate on. For more information, see: Out Right, ISHR, ILGA and ARC International, *Defending the independent expert on protection against violence and discrimination based on sexual orientation and gender identity at the 71st Session of the United Nations General Assembly* (2017), 4.

orientation": this remained unaddressed in the delegation's formal response.¹⁸

The next UPR cycle of Iraq will take place in October 2019.

Treaty Bodies

In 2015, the Human Rights Committee (CCPR) included concerns on the stigmatisation and social exclusion of people on the basis of SOGI, and their inability to publicly demonstrate peacefully. The Committee acknowledged, "... diversity of morality and cultures must (...) always be subject to the principles of universality of human rights and non-discrimination". It urged the State to "vigorously" combat stereotypes, ensure enjoyment of Covenant rights to all, investigate, prosecute perpetrators and compensate victims, collect data on SOGI-related crime, and create anti-discrimination legislation that lists SOGI as a ground for protection".¹⁹

Also in 2015, the Committee Against Torture expressed concern that attacks against LGBT people occur regularly and with impunity, at times leading to death. As such, Iraq should "take effective measures to prevent violence based on real or perceived sexual orientation and gender identity and ensure that all acts of violence are investigated and prosecuted promptly, effectively and impartially, perpetrators brought to justice and victims provided redress".²⁰

In 2015, the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern that LGBTI persons are particularly affected by discriminatory practices and recommended the

Government of Iraq should adopt a comprehensive anti-discrimination legislation in accordance with article 2 of the ICESR.²¹

In 2015, the Committee on the Rights of the Child (CRC) urged the state to ensure that LGBT children or children who are cared for by LGBT persons, as well as gender non-conforming children, are not subjected to any form of discrimination, by raising the public's awareness of equality and non-discrimination on the basis of sexual orientation and gender identity.²² It also called on the State to take all necessary measures to protect LGBT and children non-conforming children from all forms of attack; hold perpetrators of attacks fully accountable; and ensure that the sexual or gender identity of the victim is under no circumstances accepted as a mitigating circumstance.²³

Special Procedures

In 2017 the Special Rapporteur on extrajudicial, summary or arbitrary executions visited Iraq and published a mission report in June 2018.²⁴ On the killings and attacks on LGBT people, the Special Rapporteur recommended the Government of Iraq to "conduct proper investigation and prosecute all those responsible for attacks against, and killings of, LGBTI persons, including by members of Government and affiliated forces as well as armed non-State actors".²⁵ It also called on the Government to "implement national policies to end the endorsement of and participation in violence or discrimination against anyone, including LGBTI person's by Government officials, including police and Security Forces".²⁶

¹⁸ Report of the Working Group on the Universal Periodic Review: Iraq, A/HRC/28/14, 12 December 2014, para. 127.98.

¹⁹ Concluding observations on the fifth periodic report of Iraq, CCPR/C/IRQ/CO/5, 3 December 2015, para. 11 - 12.

²⁰ Concluding observations on the initial report of Iraq, CAT/C/IRQ/CO/1, 7 September 2015, para. 25.

²¹ Concluding observations on the fourth periodic report of Iraq, E/C.12/IRQ/CO/4, 27 October 2015, para. 19 and 20.

²² Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4, 3 March 2015, para. 20.

²³ *Id.*, para. 28.

²⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, A/HRC/38/44/Add.1, 5 June 2018.

²⁵ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her mission to Iraq, A/HRC/38/44/Add.1, 5 June 2018, para. 84.

²⁶ *Ibid.*