



HUMAN  
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## NO ONE IS SAFE

Abuses of Women in Iraq's Criminal Justice System



# **“No One is Safe”**

The Abuse of Women in Iraq’s Criminal Justice System

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Printed in the United States of America

ISBN: 978-1-623131-012

Cover design by Rafael Jimenez

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# “No One is Safe”

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## Summary

In May 2012, Hanan al-Fadl (not her real name) was grocery shopping in a market in central Baghdad when security forces dressed in civilian clothing seized her, bundled her into a car, and drove her to the office of a state institution, she told Human Rights Watch. There, she said, they beat her, shocked her with electric cables, and drenched her in cold water in an effort to force her to admit that she had taken a bribe. Hanan, a manager at a state-affiliated company that approves construction projects, said she realized she was paying the price for refusing to waive through a project in which the contractor had used sub-standard materials. “I made a mistake,” she said. “I didn’t know someone important in the government had a stake in the project.” Beaten and tortured for hours, Hanan said she refused to confess—until her interrogators threatened her teenage daughter.

They pulled up her picture on my mobile, and said, “Is this [name withheld]?” They knew her name, where she went to school, everything. They said “We can take her just like we took you.” I would have said anything at that point.

After holding her for more than a day, security forces took her to a judge, who refused to acknowledge bruises and swelling on her face, she said. She did not have a lawyer. Four months later, a Baghdad court convicted her of forgery and sentenced her to three years in prison, based solely on her “confession” and the testimony of a “secret informant.” When Human Rights Watch visited Hanan, she had been detained in Baghdad’s Central Women’s prison for more than a year.

Hanan is one of thousands of Iraqis imprisoned by a judicial system plagued by torture and rampant corruption. Last April, United Nations High Commissioner for Human Rights Navi Pillay issued a scathing indictment of Iraq’s “not functioning” justice system, citing numerous convictions based on confessions obtained under torture and ill-treatment, a weak judiciary, and trial proceedings that fall far short of international standards.

There are far fewer women than men in Iraqi prisons. As of June 2013, more than 1,100 women like Hanan were in Iraqi prisons and detention centers, according to the Iraqi

parliament's Human Rights Committee and the United Nations Assistance Mission for Iraq (UNAMI). They estimated the male prison population to be over 40,000.

Both men and women suffer from the severe flaws of the criminal justice system. But women suffer a double burden due to their second class status in Iraqi society. According to witness accounts and to information numerous civil society activists and international nongovernmental organizations (NGOs) provided to Human Rights Watch, women are frequently targeted not only for crimes they themselves are said to have committed, but to harass male family or tribal members. Furthermore, once they have been detained, and even if they are released unharmed, women are frequently stigmatized by their family or tribe, who perceive them to have been dishonored.

The abuse of women by Iraqi security forces and violations of their rights by Iraq's judiciary have become increasingly contentious issues. Hanan's account echoes Iraqi media reports that security forces have been unlawfully detaining and abusing women—allegations that shocked Iraqis already familiar with stories of abuse against men. As one human rights activist said: “Normally, in Iraqi society, a man beating a woman in public is impossible.... What's happening to women shows that no one is safe.”

In response to the media reports and to subsequent mass protests against the treatment of women in detention, Prime Minister Nuri al-Maliki announced in January 2013 that he would task Deputy Prime Minister Hussein al-Shahristani with overseeing reforms to the criminal justice system. But a year later, the government has not made desperately needed reforms, and the justice system remains plagued by corruption and abuses against women from all sects, classes, and regions.

## **Main Findings**

This report documents abuses to which the criminal justice system subjects women during arrest, interrogation, trial, and imprisonment.

Between December 2012 and April 2013, Human Rights Watch interviewed 27 women and 7 girls, Sunni and Shia; their families and lawyers; medical service providers in women's prisons; civil society representatives; foreign embassy and United Nations staff in Baghdad; Justice, Interior, Defense, and Human Rights ministry officials, and two deputy

prime ministers. We also reviewed court documents, lawyers' case files, and government decisions and reports.

The report finds that security forces carry out illegal arrests and other due process violations against women at every stage of the justice system, including threats and beatings. Israa Salah (not her real name), for example, entered her interview with Human Rights Watch in Iraq's death row facility in Baghdad's Kadhimiyya neighborhood on crutches. She said nine days of beatings, electric shocks with an instrument known as "the donkey," and *falaqa* (when the victim is hung upside down and beaten on their feet) in March 2012 had left her permanently disabled. A split nose, back scars, and burns on her breast were consistent with her alleged abuse. Israa was executed in September 2013, seven months after we met her, despite lower court rulings that dismissed charges against her because a medical report documented she was tortured into confessing to a crime.

The report also finds that women are subjected to threats of, or actual, sexual assault (sometimes in front of husbands, brothers, and children.) Some detainees reported a lack of adequate protection for female prisoners from attacks by male prison guards, including those from adjoining male prisons. Two women reported that sexual assault by prison guards resulted in pregnancy. Women and officials reported that the likelihood of a woman being subject to sexual assault is far higher during arrest and interrogation, prior to a woman's confinement in prison. "[W]e expect that they've been raped by police on the way to the prison," Um Aqil, an employee at a women's prison facility told Human Rights Watch.

For example, Fatima Hussein (not her real name), a journalist accused of involvement in the murder of a parliamentarian's brother and of being married to an Al-Qaeda member, described physical and sexual torture in early 2012 at the hands of one particular interrogator in Tikrit, Colonel Ghazi. She described Ghazi tying her blindfolded to a column and electrocuting her with an electric baton, hitting her feet and back with cable, kicking her, pulling her hair, tying her naked to a column and extinguishing cigarettes on her body, and later handcuffing her to a bed, forcing her to give him oral sex, and raping her three times. "There was blood all over me. He would relax, have a cigarette, and put it out on my buttock, and then started again," she said.



Women who spoke with Human Rights Watch, who all explicitly denied involvement in alleged crimes, also described being pushed towards confessions by interrogators threatening to hurt loved ones. Fatima described Ghazi passing her the phone, with her daughter at the end of the line, before threatening: “I’ll do to your daughter what I did to you.” Israa Salah, arrested in January 2010 due to alleged involvement in terrorism, was told her teenage daughter, Afrah, was in solitary confinement in the same facility and would be raped if Israa did not confess. “They knew everything about her: how she was dressed, who her friends were, and they showed me pictures of her,” Israa said. She then signed and fingerprinted a blank piece of paper.

More than 10 women showed Human Rights Watch scars on their bodies that appeared to be consistent with the torture they described having undergone.

Security forces conduct random and mass arrests of women that amount to collective punishment of women for alleged terrorist activities by male family members, often their husbands. Authorities have exploited vague provisions in the Anti-Terrorism Law of 2005 to settle personal or political scores—detaining, charging, and trying women based on their association to a particular individual, tribe, or sect. According to statistics provided by an official from the Prime Minister’s Office, 4,200 women in Interior and Defense ministry facilities were Sunni and 57 were Shia.

Many women told Human Rights Watch they were forced to sign or fingerprint “confessions” they were not allowed to, or could not read, an abuse to which high female illiteracy makes women especially vulnerable. In nine cases women told Human Rights Watch they were forced to sign or fingerprint blank pieces of paper.

In almost all of the cases documented by Human Rights Watch, courts based convictions on coerced confessions and secret informant testimony. Women—like many Iraqi men—have little or no access to an adequate defense, either because they cannot afford one or because lawyers are fearful of taking on politically sensitive cases. Women are frequently detained for months and even years without charge before seeing a judge or having a trial, in contravention of Iraqi laws that prohibit arbitrary arrest and detention and enshrine the right to access to counsel, and articles 9 and 14 of the International Covenant on Criminal and Political Rights (ICCPR), which enshrine detainees’ rights to be

informed of the reasons for their detention, to be charged promptly, and to be brought promptly before a judge.

In many cases that Human Rights Watch documented, judges and investigating officers colluded to extract bribes from detainees and their families to secure their release. In several cases women paid bribes but remained detained. In others, judges accepted bribes from security forces to issue or prolong arrest and detention orders, and ignored allegations of abuses by security officials against female detainees. When Laila Abd al-Rahim (not her real name), 25, who was accused of killing her husband, told an investigative judge in Baghdad al-Jadida Court that she had been raped and tortured, she said the judge told her: “What? Do you want them to pamper you?”

Finally, many women—like men—remain in detention long after judges have dismissed the charges against them or they have served their sentences. In February 2013, Deputy Prime Minister al-Shahristani acknowledged to Human Rights Watch that authorities had held detainees in prison for months or even years after judges issued orders for their release because they lacked the necessary Interior Ministry approval to be released.

Human Rights Watch’s visits to two prisons revealed conditions that failed to meet international standards on women’s detention, including no facilities for child care for the children who are frequently incarcerated with their mothers, poor hygiene, and overcrowding—amounting to what one detainee, Fatima Hussein, described as “a whole city of women.” Iraqi law allows for children under the age of four to remain in prisons with their mothers, but women reported that there have been instances of children remaining in prisons until they are 7-years-old. A prison employee told Human Rights Watch that in one instance a child who was incarcerated with his mother on death row remained in the prison for several weeks after she was executed.

The abusive practices documented in this report violate Iraqi laws and international standards on arrest and detention. The Iraqi government claims it informs prisoners about complaint mechanisms housed in the Justice, Interior, Defense and Human Rights ministries. Most women interviewed did not know about these grievance mechanisms. Two women who alleged that security forces raped them in detention said they did not receive forensic examinations or post-rape care, and that the officers remain on duty.

Factors that discourage women from filing complaints include lack of legal representation, or mistrust in representation when it is provided. Fear of retaliation, stigma, and rejection by families and the community also inhibit women's ability to report and seek redress for abuses of their rights in detention. Such concerns are well-founded: the mere implication that a woman has been sexually abused exposes her to risk of permanent dislocation and violence from her family, and may harm her economic and social prospects.

## **Official Response**

Officials—including Deputy Prime Minister al-Shahristani and the justice and human rights ministers— have dismissed reports of abuse of women in detention as exceptional cases. Human Rights Watch's research, including first-hand interviews and information provided by other organizations that have researched detention for years, indicates it is common, perpetrated at all levels of the security forces, and happens in wide variety of locations, including police stations, prisons, and military detention facilities.

These same officials have been keen to stress they are initiating reforms to combat security force abuses, which they blame on security challenges, lack of capacity among Iraqi institutions, and the legacy of Saddam Hussein's time. Iraq is still in a "transition from dictatorship," one parliamentarian said.

Officials in the Justice and Interior ministries claim that media and reports by NGOs of abuses are exaggerations based on detainees' lies, abuses that could not be committed against women in Iraqi society. Despite written requests, the Justice, Defense, and Interior ministries and the Office of the Prime Minister had at the time of writing not responded to Human Rights Watch's request for information about measures that they have taken to address the multiple problems documented in this report.

## **Anti-Terrorism Law**

Interviews with female detainees, lawyers, and judges indicate that authorities are detaining at least 100, and perhaps many more, women under Law No. 13 of 2005—Iraq's Anti-Terrorism Law—which mandates the death penalty for "those who commit ... terrorist acts," and "all those who enable terrorists to commit these crimes." Many women are detained under article 4 of the law for allegedly "covering up" for their husbands.

Women appear to be disproportionately targeted for their relationships to male family members whom the government considers suspects, particularly in terrorism cases. Targeting women as a way to reach male suspects punishes them for crimes they have not committed, violating their right to due process of law.

Justice Ministry officials did not respond to Human Rights Watch requests for disaggregated figures on how many women are detained or convicted on terrorism charges. Twenty-three out of the twenty-seven women and four of the seven girls interviewed for this report had been held for allegedly covering up for male family members. They, their lawyers, and family members said the women had been charged based on confessions gleaned through threats and physical abuse, including severe beatings; burns with cigarettes on women's breasts, thighs, arms, and legs; the use of electric shock on women's hands and feet; and the use of *falaqa*.

Articles 109 and 213 of the Code of Criminal Procedure allow arrests and convictions based on secret informant testimony, which may consist of unsupported allegations. This compounds due process violations, and is a factor in the ability of security forces and judges to force female detainees to pay bribes to avoid long periods of detention.

## Lack of Accountability

Justice, Interior, and Defense ministry officials could not provide information regarding any official who had been prosecuted and convicted of torturing a detainee.

One obstacle to ensuring justice is the enormous danger that judges face when performing their duties: current and former judges told Human Rights Watch that government officials and armed groups frequently harass and threaten judges, who have no protection from attacks. In 2012, armed militants killed at least eight judges and made assassination attempts on at least ten others.

Numerous other shortcomings in the justice system, such as corruption, political interference, and legal obstacles contribute to lack of accountability for abuses against women in detention facilities. For example, the Office of the General Prosecutor appears to rarely investigate allegations of torture by law enforcement officers. Human Rights Watch could not identify any instance in which the Office of the General Prosecutor investigated

torture allegations against law enforcement officials without the victim or family formally filing a complaint, although officials said that Interior Ministry regulations require investigative judges to initiate torture complaints.

Lack of transparency also hampers accountability. The Defense, Interior, and Justice ministries have not made public statistics of prisoners, nor disaggregated their locations by charge, partly due to the inadequate record-keeping used to record prisoner intake and releases. Women are detained in Interior and Defense ministry-controlled facilities even though prolonged detention in these facilities is illegal, according to Deputy Prime Minister al-Shahristani and the head of the Interior Ministry's human rights directorate.

Scarcity of resources is a real impediment to the ability of the government to train law enforcement officials, build adequate prison facilities, and implement reforms. But it does not explain or justify the scale of abuses against detainees by security and judicial officials, the lack of basic standards of fairness in detention, interrogation, and trials, or the absence of meaningful accountability.

## Next Steps

Problems plaguing the criminal justice system are massive and the system needs a general overhaul. There are nonetheless immediate steps the government can take to begin to address the abuses that women suffer in the criminal justice system.

A full set of recommendations appears at the end of this report. The necessary changes, both general and specific to women, that the Iraqi authorities should undertake include:

- Acknowledging the prevalence of abuses of female detainees and condemning torture and ill-treatment in pretrial detention; promptly investigating allegations of torture and ill-treatment; prosecuting guards and interrogators who abuse; and disallowing coerced confessions.
- Ensuring that arrests of women comply with the Code of Criminal Procedure, which requires that defendants have access to a lawyer with adequate time to prepare an effective defense and to challenge evidence against them.
- Reforming Iraq's Anti-Terrorism Law, which provides significantly fewer protections for suspects and detainees than the Code of Criminal Procedure; investigating

credible allegations that officers and judges routinely use the law to arrest women in order to harass family members; and releasing men and women held without arrest warrants—particularly those being held without charge on “suspicion of terrorism.”

- Amending articles in the Code of Criminal Procedure to eliminate use of testimony by secret informants, who are frequently paid; penalizing judges or security officials who use such testimony as a basis for arrest or conviction; and giving detainees the right to sue if courts or security officials use such testimony to convict them.
- Ensuring that detention only occurs in regular police stations and prisons, and initiating a public outreach campaign to inform Iraqis of their rights during arrest, detention, and sentencing.

Iraq's future as a society based on rule of law depends on establishing a credible Iraqi criminal justice system embodying international standards of fairness and holding accountable officials responsible for serious crimes such as torture.

The failings of the criminal justice system documented in this report show that the Prime Minister al-Maliki's government has so far failed to eliminate many of the abusive practices that Saddam Hussein institutionalized and United States-led Coalition Forces continued.

## Methodology

This report is based on research conducted by two Human Rights Watch researchers and a consultant in Baghdad between December 2012 and March 2013.

We interviewed three women who had been released from prison in the preceding weeks, and one who was released during our visit as a result of Human Rights Watch's intervention with Deputy Prime Minister Hussein al-Shahristani and the Justice Ministry on her case.

We obtained permission to visit a juvenile facility in Karrada, Baghdad, where we interviewed 7 girls under 18 detained in the facility, the warden, and a doctor who said she visits the facility weekly.

We obtained permission to visit prisons for two days in late February. We interviewed 14 women in detention in Baghdad's Central Prison for Women in the Rusafa complex ("Site 4"); 7 women in the death row facility in central Baghdad ("Shaaba Khamsa"); an employee at Shaaba Khamsa; and the wardens of both these detention facilities.

Where possible we interviewed women and girl detainees in private, although in some cases we interviewed girls in groups at their request. In all cases, we interviewed detainees without prison officials present. We inspected detention facilities and interviewed prison administrators and other employees (such as guards, doctors, and childcare providers).

We interviewed 13 family members of women in detention or who had been detained previously. We interviewed seven lawyers who represented female detainees and four representatives of NGOs who had conducted prison visits; four judges who preside in criminal courts and two former judges; and two tribal sheikhs who were working on a governmental committee created to oversee prisoner releases. We also met with academic experts on Iraq's security forces and prison system; journalists; and United Nations officials and diplomatic staff who had visited women's detention facilities.

We conducted interviews, mainly in Arabic via an Iraqi translator, at detention and prison facilities, the offices of NGOs, and other private settings. Interviewers and interpreters were female. Iraqi NGOs, lawyers, and other detainees assisted us in identifying persons to interview.

Human Rights Watch conducted follow-up telephone interviews with former detainees, their lawyers and families, and consulted official documents, including reports on detainee treatment and prison conditions, provided by officials, detainees and their lawyers and families, and NGOs.

We informed all persons interviewed of the purpose of the interview, its voluntary nature, and the ways in which the data would be collected and used. Without exception the detainees, family members, lawyers, and members of civil society and human rights groups we interviewed requested their real names not be used for reasons of personal security. Some government officials also spoke on condition of anonymity. Pseudonyms were selected to disguise the interviewee's identity and may not reflect their religious or regional background.

No interviewee received compensation. We reimbursed two interviewees for the small costs they incurred to travel to the interview location.

We also interviewed Iraqi government officials, including a deputy prime minister, the minister of human rights, and the minister of justice, and parliamentarians. We collected information from these officials on the procedures that security forces should follow during detention and interrogation and to which judges must adhere. We reviewed reports prepared by several governmental accountability bodies on abuses of detainees and questioned the relevant officials about known abuses. We requested interrogation protocols and guidelines, particularly regarding female detainees, in person and in follow-up written requests, from the Justice and Interior ministries, but were not provided with these handbooks.



# I. Background

## Iraq's History of Endemic Torture

The legacy of abuse inherited from Saddam Hussein's rule—torture, the death penalty, and extrajudicial executions—lives on in the criminal justice system of Iraq today.<sup>1</sup>

In 2004, Human Rights Watch, in its first comprehensive report on human rights conditions after the fall of Saddam Hussein's government, found that Iraqi authorities continued to routinely arrest suspects arbitrarily, hold them in prolonged pretrial detention without judicial review, subject them to torture, and detain them in “abysmal conditions in pretrial detention facilities.”<sup>2</sup> Courts still accepted coerced confessions as evidence and authorities failed to investigate and punish officials responsible for violations.

After 2003, US-led Coalition Forces transferred thousands of Iraqi detainees to Iraqi custody despite knowing that they faced a clear risk of torture. Leaked military cables indicate that US commanders frequently failed to follow up on credible evidence that Iraqi forces killed, tortured, and mistreated their captives. According to the documents, US authorities investigated some abuse cases, but much of the time they either ignored the abuse or asked Iraqis to investigate and closed the file.<sup>3</sup> International police advisers, primarily from the US, “turned a blind eye to these rampant abuses.”<sup>4</sup>

In some cases, Coalition Forces themselves committed abuses against prisoners, including female prisoners. Women that US forces detained in Abu Ghraib prison in 2004 said US soldiers beat and humiliated them and threatened them with rape, and held them in prolonged solitary confinement.<sup>5</sup>

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<sup>1</sup> Human Rights Watch, *Iraq: The Death Penalty, Executions, and Prison Cleansing*, March 11, 2003, <http://www.hrw.org/legacy/background/mena/iraq031103.htm>.

<sup>2</sup> Human Rights Watch, *The New Iraq?*, January 25, 2005, <http://www.hrw.org/reports/2005/01/24/new-iraq>.

<sup>3</sup> “Iraq: Wikileaks Documents Describe Torture of Detainees,” Human Rights Watch news release, October 23, 2010, <http://www.hrw.org/en/news/2010/10/24/iraq-wikileaks-documents-describe-torture-detainees> (discussing cables released in October 2010 by Wikileaks, mostly authored by low-ranking US officers in the field between 2004 and 2009).

<sup>4</sup> Human Rights Watch, *Iraq—At a Crossroads: Human Rights in Iraq Eight Years after the US-Led Invasion*, February 22, 2011, <http://www.hrw.org/reports/2011/02/21/crossroads>.

<sup>5</sup> “Iraq: A Decade of Abuses,” Amnesty International, press release, March 2013, Index MDE 14/001/2013, <http://www.amnesty.org/en/library/asset/MDE14/001/2013/en/bbd876ee-aa83-4a63-bff3-7e7c6ee130eb/mde140012013en.pdf> (accessed August 21, 2013).

Human Rights Watch, the International Committee of the Red Cross (ICRC), and journalists extensively documented extreme cases of torture and inhuman treatment at locations in Iraq other than Abu Ghraib.<sup>6</sup> From 2003 to 2006, a special military and CIA task force responsible for capturing and holding high-level armed combatants at Camp Nama in Baghdad regularly stripped detainees naked, subjected them to sleep deprivation and extreme cold, placed them in painful stress positions, humiliated, and beat them.<sup>7</sup>

Former Iraqi detainees and their relatives have filed court complaints, and the United Kingdom government and the ICRC conducted investigations, into allegations of the use of torture and inhuman and degrading treatment by UK forces in Iraq between 2003 and 2007. In a ruling in May 2013, the UK High Court indicated there were 700-800 such cases of allegations of ill-treatment by UK forces.<sup>8</sup>

US government and Coalition Provisional Authority (CPA) policies have had an enormous impact on criminal justice, police, security, and counterterrorism institutions and personnel in Iraq. The CPA, under order number one (“De-Ba'athification of Iraqi Society”), fired top-ranking Ba'ath Party members from all government positions, resulting in a loss of institutional knowledge regarding the functioning of the police force and other government institutions.

During and after its official occupation of Iraq, the US created institutions that were intended to provide accountability—including human rights directorates in the security ministries and Iraq’s official anti-corruption body, the Integrity Commission. But as security deteriorated and the nascent Iraqi state apparatus became more authoritarian, official intimidation, threat of arrest, and the example of US forces jailing suspects indefinitely without charge, hobbled those state watchdogs.<sup>9</sup> CPA officials, and later US

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<sup>6</sup> Human Rights Watch, *United States—Getting Away With Torture: The Bush Administration and Mistreatment of Detainees*, July 12, 2011, <http://www.hrw.org/reports/2011/07/12/getting-away-torture-o>.

<sup>7</sup> Human Rights Watch, *Iraq—No Blood, No Foul: Soldiers’ Accounts of Detainee Abuse in Iraq*, July 23, 2006, <http://www.hrw.org/reports/2006/07/22/no-blood-no-foul-o..>

<sup>8</sup> R (Ali Zaki Moussa and others) v. the Secretary of Defence, English High Court of Justice Case No: CO/5503/2012, [2013] EWHC 1412 (Admin), May 24, 2013, para 3. <http://www.bailii.org/ew/cases/EWHC/Admin/2013/1412.html> (accessed November 14, 2013).

<sup>9</sup> Zaid al-Ali, “Iraq: Ten Years of Hubris and Incompetence,” *Open Democracy*, March 22, 2013, <http://www.opendemocracy.net/zaid-al-ali/iraq-ten-years-of-hubris-and-incompetence> (accessed June 27, 2013).

and other embassy officials, were ineffective in promoting the implementation of legal reforms that would protect Iraqis' human rights.<sup>10</sup>

In 2005, Iraq's parliament, under Prime Minister Ibrahim al-Jaafari, passed the Anti-Terrorism Law, which allows security forces to detain people on broad terrorism charges. The parliament passed the legislation at a time when US forces were responsible for Iraq's security, and the US military, both prior to and following the law's passage, regularly detained suspects without formally charging them with a specific crime.<sup>11</sup>

UN Security Council resolutions 1546, 1637, and 1723 authorized Coalition forces to detain persons "for imperative reasons of security," and US military procedure during operations in Iraq held any person considered a "security risk" could be held indefinitely, without their case coming before a court.<sup>12</sup> US practice provided a precedent for Iraqi security forces' incommunicado detention of suspects in addition to the wide power granted by the Anti-Terrorism Law. US detention and mistreatment of women were a "source of particular anger for average Iraqis and insurgents alike" while the US occupied Iraq.<sup>13</sup>

The US trained Iraqi police from December 2003 until US troops withdrew in December 2011. But soon after, the Iraqi government exerted its control over the judiciary and replaced many police and military commanders with people loyal to the ruling Dawa party or Prime Minister Nuri al-Maliki, rather than for their professional qualifications.<sup>14</sup>

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<sup>10</sup> Human Rights Watch, *The New Iraq?*

<sup>11</sup> See International Crisis Group, "Loose Ends: Iraq's Security Forces Between U.S. Drawdown and Withdrawal," October 26, 2010, <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/iraq/099-loose-ends-iraqs-security-forces-between-us-drawdown-and-withdrawal.aspx> (accessed October 20, 2013); Michael R. Gordon and Bernard E. Trainor, *The Endgame: The Inside Story of the Struggle for Iraq, from George W. Bush to Barack Obama* (New York: Pantheon Books, Random House, 2012).

<sup>12</sup> United Nations Security Council, Resolution 1546 (2004), S/Res/2004, June 8, 2004, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1546\(2004\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1546(2004)) (accessed December 23, 2013); "UN: Tell US to End Illegal Detention Procedures in Iraq: US-Led Force Holds Thousands Without Due Process," Human Rights Watch news release, August 27, 2008, <http://www.hrw.org/en/news/2008/04/27/un-tell-us-end-illegal-detention-practices-iraq>. The UK also claimed that, under UN Security Council Resolution 1546, British troops in Iraq had the right to indefinitely detain people without charge. In *Case of Al Jeddah v. United Kingdom*, the European Court of Human Rights found this practice to be arbitrary detention in violation of the European Convention of Human Rights, article 5 § 1. *Case of Al Jeddah v. United Kingdom*, No. 27021/08, July 7, 2007, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?#{\"dmtdocnumber\":\[\"887954\"\],\"itemid\":\[\"001-105612\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?#{\) (accessed November 21, 2013).

<sup>13</sup> Dan Murphy, "US to release five female prisoners in Iraq," *The Christian Science Monitor*, January 26, 2006. <http://www.csmonitor.com/2006/0126/p25s01-woiq.html> (accessed July 30, 2013).

<sup>14</sup> Ibid. (citing Robert Perito, "Policing Iraq: Protecting Iraqis from Criminal Violence," United States Institute of Peace, June 2006, <http://www.usip.org/publications/policing-iraq-protecting-iraqis-criminal-violence>).

A report by Iraq's Human Rights Ministry in May 2013 indicates that deaths in prison due to torture are increasing. The ministry's "Annual Report on Conditions in Prisons and Detention Facilities in 2012" documented 117 deaths in prison in 2012, up from 52 in 2011 –of which 20 deaths in 2012 "appear to have resulted from torture."<sup>15</sup>

Representatives of NGOs, government officials, judges, and lawyers expressed their concern to Human Rights Watch that the criminal justice system encourages torture during interrogations in a range of facilities where women are detained, including Interior and Defense ministry detention facilities, and facilities run by forces that answer directly to the prime minister, including the Counter-Terrorism Service, the 56<sup>th</sup> (Baghdad) Brigade, and the 57<sup>th</sup> Brigade.<sup>16</sup> Lawyers and judges base convictions mainly on confessions or on secret informant testimony and seldom on other evidence.

A former high-ranking judge told Human Rights Watch that in cases over which he presided, and substantiated by anecdotal evidence from judicial colleagues still active, torture by security forces is rampant.<sup>17</sup>

The June 2013 UNAMI Human Rights Report said that nearly all detainees UNAMI interviewed alleged they had suffered abuse and mistreatment while held during investigation in Interior Ministry-run facilities prior to their transfer to the Justice Ministry.<sup>18</sup>

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<sup>15</sup> Human Rights Ministry Department for Prison Monitoring, "Annual Report on Conditions in Prisons and Detention Facilities, 2012," <http://www.humanrights.gov.iq/PageViewer.aspx?id=159> (accessed May 23, 2013).

A former judge and professor of law told Human Rights Watch in May that the ministry delayed publishing the report for five months due to its inclusion of this information.

<sup>16</sup> Human Rights Watch interview with international NGO representative [name withheld], Baghdad, December 21, 2012, discussing his conversation with a security official he had in the course of his work monitoring detention facilities. The security officer asked him, "If we don't torture them, how are we going to get them to confess?"; Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 21, 2012.

<sup>17</sup> Human Rights Watch interview with former judge (name withheld), Baghdad, February 22, 2013.

<sup>18</sup> United Nations Assistance Mission in Iraq (UNAMI), "Report on Human Rights in Iraq, July – December 2012," June 2013, [http://www.ohchr.org/Documents/Countries/IQ/HRO\\_July-December2012Report.pdf](http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2012Report.pdf) (accessed October 20, 2013). (stating: "In contrast to facilities under the authority of the MoJ, UNAMI continued to receive frequent reports from current and former detainees or their relatives and associates alleging incidents of arbitrary arrest, particularly in connection with the Anti-Terrorism Law, and subsequent denial of due process, as well as abuse, including torture and other forms of mistreatment. Nearly all such allegations concerned pre-trial detainees held in detention facilities under the authority of the Ministry of Interior ... or the Counter-Terrorism Directorate... In UNAMI's view, many of the problems faced by Iraq's detention facilities and prisons are partly due to the fact that prisons and detention centres are run by a range of Ministries and security agencies, with little coordinated oversight or accountability. Responsibility is split between the MoJ, MoI, Ministry of Defence ... and the Ministry of Labour and Social Affairs ... while security for prisons and detentions centres is often in the hands of police or military units. Assurances by the GoI that more uniform oversight of detention facilities will be introduced have yet to be implemented. Reliance by the courts on confessions also contributes to a culture where torture and abuse of

## Women's Rights in Iraq

Women's rights have suffered dramatically in Iraq since the Gulf War of 1991: as security and stability have eroded, militias promoting misogynist ideologies have targeted women and girls for assassination and intimidated them to stay out of public life. Women risk harassment and abuse from Iraq's virtually all-male police and other security forces, compounding their frequent victimization at home.<sup>19</sup> Fathers, brothers, and husbands sometimes kill women for a wide variety of perceived "honor" transgressions.<sup>20</sup> Iraqi law protects perpetrators of violence against women: Iraq's penal code considers "honorable motives" to be a mitigating factor in crimes, including murder. The code also gives husbands a legal right to discipline their wives.<sup>21</sup>

A 2011 Human Rights Watch report found that "[t]he biggest victims [of ongoing insecurity] in Iraq are young women. They are widowed, trafficked, forced into early marriages, beaten at home and sexually harassed if they leave the house, which is a new phenomenon in Iraq."<sup>22</sup>

The current dire circumstances in which Iraqi women live mark a dramatic break from the relatively good socioeconomic conditions they formerly enjoyed. For much of the 20th century, the rights of Iraqi women and girls were relatively well-protected.<sup>23</sup> The Iraqi Provisional Constitution of 1970 guaranteed equal rights to women before the law. A 1976 compulsory education law mandated that both sexes attend school through the primary level.<sup>24</sup> The literacy gap between males and females began to narrow after the government

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detainees are seen by some officials as legitimate means to secure convictions, particularly in the case of persons detained under the Anti-Terrorism Law."); see also Human Rights Watch, *At A Crossroads*.

<sup>19</sup> Human Rights Watch, *At A Crossroads*.

<sup>20</sup> UNAMI, "Report on Human Rights in Iraq, July – December 2012," June 2013, [http://www.ohchr.org/Documents/Countries/IQ/HRO\\_July-December2012Report.pdf](http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2012Report.pdf) (accessed October 20, 2013) (stating: "UNAMI remains concerned about respect for the rights and the status of women in Iraq, in particular in regard to so-called 'honour' crimes, trafficking and domestic violence," although UNAMI could not obtain accurate statistics of "High rates of domestic and other forms of violence ... given the conservative nature of Iraqi society and the unwillingness or inability of victims or family members to report incidents to the police or other authorities.").

<sup>21</sup> Iraq Penal Code, Law no. 111 of 1969, art. 41.

<sup>22</sup> Human Rights Watch, *At a Crossroads*.

<sup>23</sup> "Background on Women's Status in Iraq Prior to the Fall of the Saddam Hussein Government," Human Rights Watch, November 2003, <http://www.hrw.org/background/wrd/iraq-women.htm>; see also Freedom House, *Women's Rights in the Middle East and North Africa: Citizenship and Justice*, "Iraq", Sazeema Nazir and Leigh Tomppert, eds., Oxford: Rowman and Littlefield Publishers, Inc., 2005, p. 86, (stating: "Until the mid-1980s, women were guaranteed equal access to education and employment opportunities under the Ba'ath regime; Iraqi women achieved significant strides in the political, economic, and education spheres.").

<sup>24</sup> Human Rights Watch, *At a Crossroads* (citing The Compulsory Education Law 118/1976, which stated that education is compulsory and free of charge for children of both sexes from six to ten years of age, and girls were free to leave school thereafter with the approval of their parents or guardians).

passed legislation in 1979 for the eradication of illiteracy.<sup>25</sup> The government also changed labor and employment and personal status laws, granting women better workplace opportunities and greater equality in marriage, divorce, and inheritance, in order to supplant family and tribal loyalty with loyalty to the government and ruling Ba'ath party.<sup>26</sup>

That changed after Iraq's defeat in the 1991 Gulf War, when Saddam Hussein embraced Islamic and tribal traditions as a political tool to consolidate his waning power, and reversed many of the positive steps advancing women's and girls' status in Iraqi society. The position of women in Iraqi society rapidly deteriorated.<sup>27</sup> Women and girls suffered from increasing restrictions on their freedom of mobility and protections under the law. In an attempt to attract support from conservative and religious groups and tribal leaders, the government introduced decrees and legislation that negatively impacted women's legal status in the labor code, criminal justice system, and personal status laws.<sup>28</sup> Security forces escalated the use of gender-specific abuses, including sexual violence, against female political activists and relatives of dissidents.<sup>29</sup>

The insecurity created by the US-led 2003 occupation of Iraq, followed by sectarian strife that engulfed the country, further eroded women's rights. Human Rights Watch documented a wave of sexual violence and abductions against women in Baghdad following the invasion.<sup>30</sup> Women and girls told Human Rights Watch that insecurity and fear of rape and abduction kept them in their homes, out of schools, and away from work. Although assailants kidnapped many men as well, the consequences for women and girls were worse due to concerns of family "honor."

For women and girls, the shame associated with such events was a lasting stigma because of the presumption that abductors had raped or sexually assaulted the woman or girl

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<sup>25</sup> UN Economic and Social Commission for Western Asia, "Arab Women in ESCWA Member States," E/ESCWA/STAT/1994/17, 1994, p. 88.

<sup>26</sup> Ibid. (stating that "All illiterate persons between the ages fifteen and forty-five had to attend classes at local "literacy centers," and citing articles 80-89 of the Unified Labor Code, Law 81/1987, which established "protections of working women" and art. 4, which established the right to equal pay; the Maternal Law of 1971; and changes to the personal status law in 1978).

<sup>27</sup> Sami Zubaida, "The Rise and Fall of Civil Society in Iraq," *Open Democracy*, February 5, 2003, [http://www.opendemocracy.net/conflict-iraqwarquestions/article\\_953.jsp](http://www.opendemocracy.net/conflict-iraqwarquestions/article_953.jsp) (accessed October 23, 2013.)

<sup>28</sup> UN Commission on Human Rights, "Report of the Special Rapporteur on Violence against Women," E/CN.4/2002/83, January 31, 2002.

<sup>29</sup> Amnesty International, "Iraq: Decades of Suffering, Now Women Deserve Better," Al Index: MDE 14/001/2005, February 22, 2005, p. 1.

<sup>30</sup> Human Rights Watch, *Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad*, July 16, 2003, <http://www.hrw.org/reports/2003/07/15/climate-fear-o>.

during her ordeal, regardless of whether this had happened. The same assumption was made of women detained by security forces, particularly after women claimed that militias, insurgents, Iraqi security forces, multinational forces, and foreign private military contractors raped them.<sup>31</sup>

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<sup>31</sup> Human Rights Watch, *At a Crossroads*.

## II. Illegal Arrests and Detentions of Women

They called me daughter of a bitch, daughter of a whore.... They pointed a gun at my head and threatened to rape me and continue the electricity if I didn't agree to everything the judge read from his papers. They told me, 'We will do whatever you can think of if you don't say yes.'

—Ibtihal Ahmad, detainee in the Site 4 detention facility<sup>32</sup>

### Mass Arrests and Collective Punishment

Human Rights Watch found that security officials in the Interior and Defense ministries round up women, especially family members of male suspects, without an arrest warrant, deny women access to a lawyer, and fail to bring detained women before an investigative judge according to Iraq's Code of Criminal Procedure. At least 15 female detainees, their families, and lawyers told Human Rights Watch that they were detained as a part of a round-up of an entire family or village. Security officers conducted warrantless raids in neighborhoods and detained some residents for several days.<sup>33</sup>

Ten women reported that security forces questioned them not about their activities, but about their relatives.<sup>34</sup> Security forces released some of the women without ever charging them, and charged others with "covering up" for their husbands or other male family members, effectively punishing them for familial associations rather than any wrongdoing.<sup>35</sup> A former judge, who asked not to be identified, said:<sup>36</sup>

If someone is arrested as part of an emergency operation, no matter how urgent, an investigative judge must still issue an arrest warrant.<sup>37</sup> In exceptional cases, where there is an explosion, for example, the arresting

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<sup>32</sup> Human Rights Watch interview with Ibtihal Ahmad, Site 4 detention facility, Baghdad, February 28, 2013. The names of all detainees quoted in this report have been changed to protect their security and avoid potential retaliation.

<sup>33</sup> Human Rights Watch interview with Majida Obeidi, Baghdad, February 23, 2013; Human Rights Watch interview with Sundus Abd al-Razzaq and Ibtihal Ahmad, Site 4 detention facility, Baghdad, February 28, 2013; Human Rights Watch interview with criminal defense lawyer, Baghdad, February 21, 2013.

<sup>34</sup> See e.g. Human Rights Watch interviews with Sundus Abd al-Razzaq and Ibtihal Ahmad, and Nadia Ali Abdullah, Site 4 detention facility, Baghdad, February 28, 2013; Human Rights Watch interviews with Israa Salah, Nesrin Najim Emad, and Marwa Qassem Tamim, and Duaa Khazal Hamoudi, Shaaba Khamsa detention facility, Baghdad, March 1, 2013.

<sup>35</sup> *Ibid.*

<sup>36</sup> Human Rights Watch interview with former judge (name withheld), Baghdad, February 24, 2013.

<sup>37</sup> Human Rights Watch interview with former judge (name withheld), Baghdad, February 24, 2013.



unit can collect testimonies at the scene while they await the issuance of arrest warrants. But what happens in fact is that they arrest them and later have a judge provide a warrant that justified the arrest.<sup>38</sup>

He added that security forces “often arrest a large number of people in an area where an incident occurs without an arrest warrant.”

A lawyer, who asked not to be identified, said that this practice was especially frequent in arrests of women. “They arrest the women just to get at one person– their husband, or their brother,” he said.<sup>39</sup> Another lawyer who also requested anonymity said:

Individual officers have taken the law into their own hands to arrest the wife and children to put pressure on the husband, but the wife is not responsible.<sup>40</sup>...If a man is arrested and won’t confess, they bring his wife in.

Arrests of women because of their relationships to suspects, without any evidence that they have committed a crime, amount to collective punishment, and violate international human rights law’s guarantee of the rights to liberty of person and the right to a fair trial.<sup>41</sup> These prohibit arbitrary detention and require that detention only be in accordance with clear domestic law, that detainees be informed immediately of the reason for their detention and are promptly brought before a judge and charged with a criminal offense. Such arrests also violate Iraqi laws protecting these rights, including provisions of Iraq’s Constitution and Code of Criminal Procedure.<sup>42</sup>

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<sup>38</sup> Ibid.

<sup>39</sup> Human Rights Watch interview with lawyer (name withheld), Baghdad, February 27, 2013.

<sup>40</sup> Human Rights Watch interview with lawyer (name withheld), Baghdad, February 24, 2013.

<sup>41</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. ratified by Iraq on Jan. 25, 1971, art. 9. In its General Comment on Article 4 of the International Covenant on Civil and Political Rights (concerning states of emergency), the UN Human Rights Committee stated that state parties may “in no circumstances” invoke a state of emergency “as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance ... by imposing collective punishments.” UN Human Rights Committee, General Comment No. 29 (Article 4 of the International Covenant on Civil and Political Rights).

<sup>42</sup> Iraq Code of Criminal Procedure, Law No. 23 of 1971; Global Justice Project: Iraq, “Criminal Procedure Code 23 of 1971,” April 25, 2009, <http://gjpi.org/2009/04/25/criminal-procedure-code-23-of-1971/> (accessed June 29, 2013); Constitution of Iraq, January 30, 2005, <http://gjpi.org/wp-content/uploads/2009/01/agreed-final-english-translation-of-constitution-25-jan-2006.doc>. (accessed August 21, 2013).

On November 3, 2012, federal police invaded 11 homes in the town of al-Tajji, 20 kilometers north of Baghdad, and detained 11 women and 29 children overnight in their homes. The lawyer representing the women told Human Rights Watch that people were detained from every house in the village.<sup>43</sup>

After detaining 12 of the women and girls, aged 11 to 60, for several hours in their homes, police took them to a police station where they held them without charge for four days.<sup>44</sup> Throughout their detention, police put plastic bags over each of their heads until they began to suffocate, and electrocuted and beat some of them, according to the women's accounts.

Majida Obeidi, 22, detained as part of the Tajji operation, told Human Rights Watch that at around midnight on November 3, a large number of security forces raided the village and invaded the house where she was staying with her four young children and her husband's 12-year-old second wife.<sup>45</sup> Some wore the uniform of the National Guard, others were Special Forces, and some wore civilian clothes, she said.

I think there were about 10 or 15 soldiers. Zahra [the second wife] and I were alone in the house with my children. They blew open the doors and streamed in. They demanded to know where my husband was, but they didn't know his name, and they asked where we kept the weapons. They looked for the weapons under the floor and ripped bricks off the house but they didn't find anything.

They held them overnight in her home, and then took Majida and her children, along with 11 other women and 25 of their children, to the federal police brigade headquarters in the Kadhimyia compound, also known as Camp Justice, in Baghdad. Police held them there for four days, and then transferred them to the al-Shaaba al-Khamsa detention facility in the same compound. Police released the children after three days, but detained 12 of the women for a month before bringing them before an investigative judge. Majida said the officers repeatedly questioned her about her husband, and then accused her of being a terrorist.

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<sup>43</sup> Human Rights Watch interview with lawyer (name withheld), Baghdad, December 18, 2012.

<sup>44</sup> Ibid.

<sup>45</sup> Human Rights Watch interview with Majida Obeidi, Baghdad, February 25, 2013.

Why don't you show us the bodies of the Shia you slaughtered—where have you hidden them?" They said horrible things to me.... I don't want to repeat them. They called me daughter of a bitch, daughter of a whore.

The judge charged the women with terrorism under article 4 of the Anti-Terrorism Law for "covering up" for their husbands.

A high-level government official confirmed the details of the women's detention and added that according to the brother of one woman, a colonel in Kadhimeyya offered to release his sister if he paid him US\$6,500.<sup>46</sup> The statements of dozens of officials, lawyers, detainees, and their families indicate that bribery of this nature is common. The brother paid, but the colonel did not release his sister.

After tribes in Anbar and Baghdad began campaigns calling for the women to be released, an investigative judge and military intelligence general ordered that 12 of the women be detained "on suspicion of terrorism." A senior official told Human Rights Watch that the judge and general issued arrest warrants based on "fabricated" charges for all of the women and girls "in order to protect [the involved officers and judge]."<sup>47</sup> An 11-year-old girl was charged with covering up terrorist acts and accused of taking documents from a locker and hiding them in her clothes, the official said.

The Interior Ministry's human rights director, who asked to be identified as "General Muhammad," denied that the women were illegally arrested. When Human Rights Watch questioned General Muhammad about Majida Obeidi's allegations that 8<sup>th</sup> Brigade officers beat and electrocuted her and several other women while holding them incommunicado, he flatly denied the allegations.<sup>48</sup>

Human Rights Watch spoke with two girls, aged 11 and 12, who were arrested in the Tajji operation, in the Karrada juvenile detention facility in Baghdad. At the time of the interview they had been detained for 10 days. The girls confirmed that federal police broke into their homes at around the same time, then held them for one-and-a-half months in

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<sup>46</sup> Human Rights Watch interview with adviser in the prime minister's office (name withheld), Baghdad, February 24, 2013.

<sup>47</sup> Ibid.

<sup>48</sup> Human Rights Watch interview with General Muhammad, head of the human rights directorate, Ministry of Interior, Baghdad, February 24, 2013.

Kadhimeyya.<sup>49</sup> Alia Tamimi, 12, said she was in her home with her mother, her three older sisters, and her brother and his wife when federal police entered.

They scared us when they came in. They kicked and broke into the door, shouting and screaming at us, late at night. Police stayed with us in the house for 12 hours.<sup>50</sup>

The girls' lawyer told Human Rights Watch the girls were being held on suspicion of terrorism, which carries a penalty of death, under article 4 of the Anti-Terrorism Law. When Human Rights Watch interviewed them, they said they were not aware of the charges on which they were being held, and that they had not seen a lawyer or their parents. They said that security officers had not ill-treated them.

Dozens of women detainees arrested since the end of 2012 told Human Rights Watch that security forces arrested them without showing an arrest warrant, interrogated them about male family members without accusing the women of any crime, and demanded bribes for their release. Several women at the Site 4 detention facility told Human Rights Watch that they were detained "on behalf of" a husband, brother, or other male relative. Some women remained in detention after the arrests of their male relatives, either because they were then charged with covering up for their relative or with having committed a crime for which they were not originally charged.

### **Nadia Ali Abdullah**

Security forces arrested Nadia Ali Abdullah, 45, and her six children and beat Nadia during a raid on her home in the Ghazaleyya neighborhood of west Baghdad on March 28, 2012, when they were looking for her brother-in-law. Judges have repeatedly renewed Nadia's detention for further interrogation on "suspicion of terrorism," but she has never been charged or tried. At the time of writing, she remained in detention at the Site 4 facility, Baghdad's central prison for women that the Justice Ministry administers, which is where Human Rights Watch spoke with her on February 28, 2013.

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<sup>49</sup> Human Rights Watch interview with Zahra Jassem and Alia Tamimi, Karrada juvenile detention facility, Baghdad, December 19, 2012.

<sup>50</sup> Human Rights Watch interview with Alia Tamimi, Karrada juvenile detention facility, Baghdad, December 19, 2012.

Nadia, who was diagnosed with colon cancer in 2006, told Human Rights Watch that security officials, whom she could not identify but believed to be joint army and police forces, raided her home shortly after the noon prayer, while she was preparing lunch for herself and her children.<sup>51</sup> The raid occurred shortly after a suicide bomb attack in the neighborhood, she said, and in the context of a series of mass arrests in the area at the time by police and army, ahead of the Arab League Summit that was held in Baghdad in April 2012.

As soon as I opened the door they started beating us up and shouting at us, holding out an ID and asking me who was pictured in the ID. I didn't know who it was. The beatings lasted for about a half an hour. They beat us so hard that finally my youngest daughter begged them to stop beating me, telling them, "Stop, she has cancer and you'll kill her." They even beat Sarah, my 17-year-old daughter, who is mentally disabled. They turned the place upside down, searching the house and destroying everything.

Nadia said that security forces then took her and her children to her brother-in-law Mahmud Muntathar's home, where they detained his sister, Lama Muhammad Abdullah, 51; his wife, Khadija Najim Abdullah, 37; his sister-in-law, Shukreya Najim Abdullah, 68, along with around 15 children, mostly between the ages of 6 and 10. None of them had been detained before, "even when the Americans were here," Nadia said. That night, security forces took them to al-Ghazaleyya police station, where they detained them for six days before releasing the children.

Security forces' and judges' questions to her focused on the identity of a man whom she says she does not know but whom she said she saw in the area at the time of the bombing, and also on her brother-in-law Mahmud, 38, who was arrested the same day and who police intelligence forces have detained at the Muthanna Airport ever since without allowing him to see a lawyer, she said.

They interrogated me over and over about the man I saw outside my house, but I told them I knew nothing about him, and about my brother-in-law. On the fourth day we were able to see a lawyer and on the sixth day they took

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<sup>51</sup> Human Rights Watch interview with Nadia Ali Abdullah, Site 4 detention facility, Baghdad, February 28, 2012.

us to the interrogation judge. He also asked me if I knew anything about the man outside our house and I said, ‘No.’ Then I was transferred here [to Site 4], along with the other [three] women with me. The investigative judge released them after four weeks, but I’m still here.

The authorities never presented Nadia with evidence of her involvement in any crime and she did not confess, she said, but interrogation judges repeatedly issued orders prolonging her detention “for interrogation.” Iraq’s Code of Criminal Procedure allows investigative judges to renew detention orders for 15 days at a time, indefinitely.<sup>52</sup> She never saw an arrest warrant and did not have a lawyer during her initial presentation to the interrogation judge, she said. Nadia claims investigators found no evidence linking her, her brother-in-law, or his family to the suicide bomb attack.

On October 15, 2012, Nadia said she was presented to Baghdad’s Central Criminal Court in Rusafa, popularly known as the Clock Court. “The judge asked me all the same questions about my brother-in-law,” and transferred her case from the federal police to the intelligence police, she said. Nadia said that on February 13, 2013, the intelligence police from Muthanna summoned her and wrote down her “case” for the fourth time:

No one told my lawyer. Afterward they took me back to the Clock Court. The judge and a court lawyer were there. The judge asked me all the same questions about my brother-in-law as before, and I gave him all of the same answers: I told him what I said before, that I have no idea what happened and that my brother-in-law doesn’t have links with anyone. The judge asked me if I had changed my testimony since the previous times I went before the judge. When I told him no, he asked me, “Why are you still here?” Then the judge told the lawyer to file a request for my release because they had no evidence to keep me. I think the lawyer filed this request but I don’t know.

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<sup>52</sup> Iraq Code of Criminal Procedure, Law No. 23 of 1971, article 109, “(A) If the person arrested is accused of an offence punishable by a period of detention exceeding 3 years or by imprisonment for a term of years or life imprisonment, the judge may order that he be held for a period of no more 15 days on each occasion or order his release on a pledge with or without bail from a guarantor. . . .(B) If the person arrested is accused of an offence punishable by death the period stipulated in subparagraph A may be extended for as long as necessary for the investigation to proceed until the investigative judge or criminal court issues a decision on the case on completion of the preliminary or judicial investigation or the trial.”

### **Sundus Abd al-Razzaq and Ibtihal Ahmad**

On September 1, 2012, at about 7 p.m., some 20 members of the federal police's 8<sup>th</sup> Brigade arrested Sundus Abd al-Razzaq, 34, and her mother, Ibtihal Ahmad, 70, during a raid on their home in the Ghazaleyya neighborhood of west Baghdad.

According to the women, security forces broke into their home, beat them, questioned them about Sundus's husband, Khalid, and held them both, along with 13 other women from the neighborhood and Sundus's 3 young children in their home for several hours.

Sundus told Human Rights Watch,

They put us together in the kitchen and kept us waiting there for my husband to arrive, but he never came. They called us bitches and horrible names ... they never showed us an arrest warrant. There hadn't been any attacks in the area recently so I don't know why they held us.<sup>53</sup>

After arresting Sundus and Ibtihal, security forces took the two women and their children to the nearby home of Ibtihal's daughter-in-law, Um Mariam, 36, in Baghdad's Dora neighborhood. Um Mariam told Human Rights Watch that security forces forcibly entered her home at around 2 a.m.

They broke into my house and searched it. My children were in the house, all six of them, five girls and a boy. They couldn't sleep for days afterward. They didn't show me any arrest warrant. The whole time they asked me about Ibtihal, my mother-in-law, and I couldn't understand why because she is 70, [and about] Sundus's husband.<sup>54</sup>

Police then transferred all three women to an Interior Ministry-run detention facility in Baghdad's al-Saha neighborhood, where they separated them from each other and from their children, they said. Police questioned Um Mariam for an hour-and-a-half before releasing her without charge. She told Human Rights Watch:

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<sup>53</sup> Human Rights Watch interview with Sundus Abd al-Razzaq and Ibtihal Ahmad, Site 4 detention facility, Baghdad, February 28, 2013.

<sup>54</sup> Human Rights Watch interview with Um Mariam, Baghdad, February 20, 2013.

The man asking me questions slapped me across the face hard. They wouldn't tell me why they had brought me there, just that they wanted to know about Ibtihal and about Sundus's husband. After asking me questions about them for an hour-and-a-half, someone who seemed to be the director came in and told the interrogators to stop, that I have six fatherless children and to let me go.

Sundus said that her interrogators' questions focused on her husband, Muhammad, not her. After separating the women and children in the federal police detention facility at al-Saha, interrogators beat and electrocuted her and demanded she tell them about Khalid, repeatedly asking, "What does he do?" And when I said, 'I don't know what to tell you. Do you want me to lie?,' they said, 'Yes, say it, even if it's a lie!'" Sundus said they suspected Khalid of "belonging to a terrorist organization."

The authorities held Sundus and Ibtihal for 40 days in the 8th Brigade headquarters in Ghazaleyya. Sundus and Ibtihal said that security forces there beat and tortured them daily for the first five days of their detention. Sundus said:

They took us with the children. For the first half-hour they held us in the same room. Then they separated us and the torture started. The first day they tortured me all night, through until the morning. I was bleeding on the floor. I couldn't breastfeed my baby. They used electricity on me the first four or five days, after that they mostly just beat me.... My shoulders are still damaged and I can't pray.

Ibtihal said that four men at the 8th Brigade headquarters interrogated her about Khalid.

I told them I only know he works as a laborer. They beat me up and electrocuted me during two days, asking me over and over where he works and what he does. When I didn't know the answers they handcuffed my hands behind my back, blindfolded me and beat and kicked me, calling me bad names. They would do this two or three times a day, about a half-an-hour each time, for three days. They kept me in the guard's room, and when they wanted to interrogate me they called for me.... After 17, maybe 20 days



they brought me to a judge. They pointed a gun at my head and threatened to rape me and continue to the electricity if I didn't agree to everything the judge read from his papers. They told me, "We will do whatever you can think of if you don't say 'Yes.'"

Sundus confirmed that security forces did not take her and her mother to an investigative judge until 20 days after their arrest. She had no lawyer during the judicial hearing where she confessed to having an explosive belt. Security forces then continued to detain her, her mother and her children for about another 20 days before transferring them to Site 4, Baghdad's central prison for women.

Salma Abd al-Razzaq, Sundus's sister, said that security forces held Sundus's 6-year-old and 4-year-old sons and 5-month-old girl with Sundus for the first six days in the 8th Brigade headquarters.<sup>55</sup> Salma said that after the children were released to her care, the six-year-old boy told her about watching interrogators torture his mother:

He told me, "They blindfold her and tied her hands and legs together. She started to turn around and around and shake from the electricity." He said that he could hear her saying to the guards, the interrogators, "I am like your sister or mother. Why are you torturing me?" Then they would beat her harder and say, "You are my enemy."

Salma said that Sundus's infant daughter was extremely dehydrated when security forces released her. "When we took her to the doctor, [he was] horrified, asking 'Where has this child been?'" she said. She added:

By the time they were transferred [to Site 4], Sundus's breast milk had dried up, because of the torture and because she was so dehydrated. I brought her children to visit her in Site 4. The moment they saw the security officers, they urinated on themselves from fear.

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<sup>55</sup> Human Rights Watch interview with Salma Abdelrazzaq, Baghdad, February 19, 2013.

## Warrantless Arrests and Arbitrary Detentions

Most of the women Human Rights Watch interviewed said that security forces arrested them without arrest warrants and did not bring them before an investigative judge within the 24 hours required by Iraq's Code of Criminal Procedure. These cases are not limited to mass arrests. Human Rights Watch documented judges colluding with security forces to provide warrants after the time required by the code.<sup>56</sup> Lawyers, judges, and activists told Human Rights Watch that in highly-charged political cases, security officers dispose with procedure altogether.<sup>57</sup> Women are detained outside the purview of the Justice Ministry for prolonged periods, from weeks to months at a time, which a deputy prime minister and justice minister told Human Rights Watch is illegal.<sup>58</sup>

### Souad Ahmad Abd al-Rahman

Security forces arrested Souad Ahmad Abd al-Rahman, 40, along with her husband, Muhammad, 44, and their handicapped 14-year-old daughter, Safia, and 10-year-old son, Muhammad, from their car on September 5, 2012 when they were en route to a hospital for their daughter's routine medical treatment.

Souad Abd al-Rahman's mother-in-law, Khadija Mitaab Karim, 69, from Baghdad's al-Firat neighborhood, told Human Rights Watch that an hour after security forces took her son and daughter-in-law and their children, security forces wearing green camouflaged uniforms and red berets came to her house and arrested another of her sons, Ahmad, 39, and her 17-year-old grandson.<sup>59</sup> "I saw them take them out blindfolded," she said. "I kept asking them what was going on, but they just said, 'Don't worry, we'll return them

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<sup>56</sup> Human Rights Watch interview with retired judge (name withheld), Baghdad, May 21, 2013.

<sup>57</sup> Human Rights Watch interviews with Hanaa Edwar, Founder and General Secretary of the Iraqi Al-Amal Association, Baghdad, February and May, 2013; Human Rights Watch interview with retired judge (name withheld), Baghdad February 20, 2013; Human Rights Watch interview with 3 currently sitting judges (names withheld), Erbil, May 24, 2013.

<sup>58</sup> Human Rights Watch interview with Minister of Justice Hassan al-Shimmari, Baghdad, February 14, 2013; Human Rights Watch interviews with Deputy Prime Minister Hussein al-Shahristani, Baghdad, February 13, 2013 and April 29, 2013. The detention of women in irregular facilities was confirmed by an inspector in the human rights directorate of a security ministry, Human Rights Watch Interview with security ministry inspector (name withheld), Baghdad, February 23 2013 (stating that in the course of his inspections of detention facilities, he has "documented many terrible things" but that they would "never go anywhere" because of obstruction by his superiors or because of judges' failure to hear the cases or to issue judgments against those cases they do hear); and by Aqil Tarahy, Inspector General of the Interior Ministry (Human Rights Watch interview with Aqil Tarahy, Inspector General of the Interior Ministry, Baghdad, February 21, 2013) and Human Rights Minister Muhammad Shia Sudani (Human Rights Watch interview with Muhammad Shia Sudani, Ministry of Human Rights, Baghdad, December 20 2012 and February 18, 2013.)

<sup>59</sup> Human Rights Watch interview with Khadija Mitaab Karim, Baghdad, February 13, 2013.

shortly.” At no point did anyone show her an arrest warrant or explain the reason for the arrests, she said. Khadija Karim waited fruitlessly for a month to hear from her detained relatives, and then began to search for them in Baghdad’s detention facilities. “I went to the government’s places: Bab al-Sheikh police station, Abu Ghraib, Tajji, Tasfirat, the [Muthanna] airport [prison]... but everyone told me they weren’t there,” she said.

After another month, Khadija went to the forensic examiner at the medical hospital in Bab al-Muthanna. She saw an image of her son Muhammad’s body on one of three screens where the hospital projects images of unidentified bodies that have been found in Baghdad. “They told me they found his body on the street in front of Bab al-Sheikh police station,” Khadija said.

One month after finding her son’s body, Khadija was able to locate her daughter-in-law and grandchildren: police forces had detained them in the Qanaa General Security office, in Baghdad’s Baladiyyet neighborhood, for three months. Interior Ministry forces released her grandchildren into her care. Khadija said that her granddaughter Safia, who is paralyzed, told her that “when the human rights groups would come to the prison, they would take us and hide us in the bathrooms.” Muhammad, Khadija’s grandson, told her that when security forces arrested him with his parents, they held his head next to a car tire and threatened run him over if he didn’t tell them “where they hid the weapons.” Souad Abd al-Rahman remained in Site 4 at the time of writing, and has not been convicted of any crime.

Khadija said that Souad is “poor and illiterate” and does not have a lawyer. Khadija visited Souad once in Site 4. Souad told her how security forces took her, her husband, and two children from their car, handcuffed them, and presented them papers to sign, under threat. “She told me they beat her and told her that if she didn’t sign the papers they gave her they would take off her clothes, so she signed,” said Khadija. “She told me that they took her before an investigative judge, who just asked her about her husband. She didn’t know at the time that he was already dead.”

Khadija said that all of her family members were arrested solely on the basis of a secret informant’s testimony. Khadija has submitted complaints to the parliamentary committees on human rights, security, and defense, she said, but the family did not have a lawyer and she does not know the results, if any, of the complaints. “We don’t trust [lawyers] and

anyway have no money to give them,” she said. “I’m old and sick and my family is all I have. I just want them back.”

### **Rasha al-Hussein**

On January 1, 2012, security forces arrested Rasha al-Hussein, an employee in former Vice-President Tariq Hashimi’s media center, from her parents’ home. Security forces did not have an arrest warrant and told her family that she was being taken for questioning.

According to a report prepared by the parliamentary Human Rights Committee, a copy of which the committee gave to Human Rights Watch, Rasha al-Hussein was likely initially detained in the Defense Ministry-controlled Muthanna Airport Prison, but prison and other authorities did not give her family any information about her whereabouts for over four months.

Security forces have arrested an unknown number of other members of Hashimi’s security and office staff, including at least one other woman, since December 2011. They are currently in custody in undisclosed locations, according to a local human rights organization which is working with the detainees and requested anonymity. Hashimi told Human Rights Watch in March 2012 that he had made “repeated requests to the government to find out where they are being held, but they have not responded.” Rasha al-Hussein’s whereabouts are currently unknown.

### **Amal Zaidi**

Amal Zaidi, 55, told Human Rights Watch that Iraqi Special Weapons and Tactics (SWAT) forces arrested her from her home in Baaquba, 30 miles northeast of Baghdad in Diyala province, on December 29, 2011, when she was at home with her daughter-in-law and five grandchildren.<sup>60</sup> Amal said that SWAT forces arrived in seven or eight vehicles, stormed and searched her house, and asked for her by name, but did not show her an arrest warrant. SWAT officers held her for two days in a detention facility in Baaquba, she said, then took her to a police station in Bohri’, where they held her for another 13 days before presenting her to an investigative judge.

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<sup>60</sup> Human Rights Watch interview with Amal Zaidi, Site 4 detention facility, Baghdad, February 28, 2013. SWAT forces are special emergency response forces ostensibly overseen by the Interior Ministry, but receive orders directly from the officer of the commander in chief (the prime minister). See Marisa Sullivan, “Maliki’s Authoritarian Regime,” Middle East Security Report 10, <http://www.understandingwar.org/report/maliki-authoritarian-regime> (accessed May 24, 2013).

The judge ordered Amal's detention on the basis of officers' allegations that her SIM card, which she said she had lost, was used in the commission of a kidnapping. She was convicted of terrorism on the sole basis of the officers' allegations about the SIM card, 11 months after her initial detention, in a single-session trial in the Qasr al-Adala court, she said.

[The judge] asked me about my SIM card and why I didn't report losing it, and accused me of giving it to someone else. That person used it to kidnap someone, he said. They brought a lawyer into the room but I never spoke to him.

Amal said a different lawyer visited her in Site 4 in November and told her officers would re-interrogate her, but they never did.

## Corruption and Unlawful Prolonged Detention

In addition to conducting arrests without warrants and holding detainees for long periods without charge, authorities have detained women long after they have been issued a judicial order for release, whether on bail, because they have been found innocent, or because they have completed their sentences.<sup>61</sup>

Corruption contributes to such unlawful detention practices, according to lawyers, detainees and government officials. "Corruption in the security forces and judiciary is the main reason people languish in prison," said one high-ranking government official.<sup>62</sup> "There are two ... problems with [releasing] detainees," one parliamentarian told Human Rights Watch.

[One] major problem is administrative delays. The second major problem is corruption. People have to pay to get out. So if your file is at the bottom of the

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<sup>61</sup> Human Rights Watch interviews with detainees in Justice Ministry facilities and former detainees in facilities run by the Interior and Defense ministries indicate that detainees are frequently subjected to illegally prolonged detentions. UNAMI's July – December 2012 Human Rights report documented illegal pretrial detentions and failure to release detainees, particularly in facilities "outside the authority and responsibility of the MoJ." UNAMI, "Report on Human Rights in Iraq, July – December 2012," June 2013, [http://www.ohchr.org/Documents/Countries/IQ/HRO\\_July-December2012Report.pdf](http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2012Report.pdf) (accessed October 20, 2013) (stating: "Detainees are frequently held for prolonged periods in pre-trial detention, often without access to legal counsel, owing to lack of resources for prosecutors or courts and a reluctance to utilise bail provisions where appropriate. UNAMI also continued to receive sporadic reports that authorities at times failed to release detainees as ordered by the courts at the conclusion of judicial investigations or trials, or after sentences had been served.").

<sup>62</sup> Human Rights Watch interview with Minister of State for National Reconciliation Amer Khuzai, Baghdad, February 26, 2013.

pile, you pay money and it gets placed on top. This means that if you don't have money and you don't pay, your file keeps moving toward the bottom. Just because you have a judicial release order doesn't mean you'll get out.<sup>63</sup>

Articles 115 and 128 of Iraq's Code of Criminal Procedure allow a judge to order the release of a suspect on bail, or of a person determined not guilty, "if he is not being held for another offense" or "as long as there is no other legal reason for his detention."<sup>64</sup> Citing these provisions, detention facilities will not honor a judicial release order until the Interior Ministry assures the prison or detention facility the detainee is not wanted for another crime, referred to as the waiting period procedure (*fitrat 'aadem matlubeya*).

Officials and detainees alike told Human Rights Watch that the waiting period procedure is the source of much of the corruption between lawyers, security forces, and judicial officers. Eighteen female detainees told Human Rights Watch that security and judicial officers manipulated this procedure to extract bribes from detainees and their family members to secure their release, violating detainees' right to be free from arbitrary detention.

Sabha Baker Abbas, 58, is one of numerous women who told Human Rights Watch that police demanded money for her release. She said police forces from the Alweya police station raided her home in Karrada at 9 a.m. on September 23, 2012, where she was with her two sons, 12 and 14, and arrested her. Sabha told Human Rights Watch that police forces had previously ordered her to vacate the house because the owner, her landlord, was outside Iraq and wanted to take over the house.<sup>65</sup>

She said police held her in the Alweya police station for five days and demanded \$6,000 for her release and, when she could not pay, transferred her to the Site 4 detention facility.

When they first held me, there was no case against me—they didn't accuse me of any crime. An officer named Hayder in Alweya police station demanded \$6,000 from me and said they wouldn't let me go if I didn't pay.<sup>66</sup>

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<sup>63</sup> Human Rights Watch interview with Sami al-Askari, member of parliament, Baghdad, May 11, 2013.

<sup>64</sup> Iraq Code of Criminal Procedure, Law No. 23 of 1971, art. 115 (stating "When the pledge, bail or cash sum is submitted, the accused is released if he is not being held for another offence); art. 128 E (stating, "A detainee is released when a verdict of not-guilty, diminished responsibility, release or rejection of the complaint is issued, as long as there is no other legal reason for his detention).

<sup>65</sup> Human Rights Watch interview with Sabha Baker Abbas, Site 4 detention facility, Baghdad, February 28, 2013.

<sup>66</sup> Ibid.

Sabha said she did not see an investigative judge until two months after she had been in prison. When she was taken to an investigative judge, authorities did not admit her to the courtroom. When security officers left the courtroom, they informed her that she had been charged with prostitution—the first time, she said, she learned of the charges against her.

Sabha said that she was originally charged based on secret informant testimony, but that the court later rejected that testimony, and she was now detained without charge, with her release pending the completion of the Interior Ministry’s waiting period procedures. “If you talk to a lot of detainees,” she said, “you will find they are stuck here for the same reason.”

## **Iraqi Law Prohibiting Arbitrary Arrest and Detention**

### **Code of Criminal Procedure, Law No. 23 of 1971**

Women’s statements to Human Rights Watch indicate that security forces regularly violate Iraqi laws, which prohibit arbitrary arrest and detention and enshrine the right to access to counsel, as well as articles 9 and 14 of the International Covenant on Criminal and Political Rights, which enshrine detainees’ rights to be informed of the reasons for their detention, to be charged promptly, and to be brought promptly before a judge.<sup>67</sup>

Iraqi security forces arrest women without producing a judicial warrant and without informing the arrested person of the suspicions against them in breach of Iraqi law. Article 92 of the Code of Criminal Procedure requires that a person may be arrested only on the basis of a judicial warrant, other than in exceptional circumstances, and must be informed of the reason for arrest and of any charges against them.<sup>68</sup> The Interior Ministry spokesperson told Human Rights Watch that these “exceptional circumstances” include witnessing a crime or terrorist attack, in which case security forces may detain a witness but must obtain a judicial order for their detention within 24 hours.<sup>69</sup>

Article 123 of Iraq’s Code of Criminal Procedure requires that authorities bring detainees before an investigating judge within 24 hours of their arrest. Of the 25 women Human

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<sup>67</sup> International Covenant on Civil and Political Rights (ICCPR), adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1996), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Iraq on Jan. 25, 1971, arts. 9 and 14.

<sup>68</sup> Iraq Code of Criminal Procedure No. 23 of 1971, <http://gjpi.org/2009/04/25/criminal-procedure-code-23-of-1971/> (accessed June 29, 2013).

<sup>69</sup> Human Rights Watch interview with Saad Maan, Baghdad, February 24, 2013.

Rights Watch interviewed in detention, only one was brought to an investigating judge within 24 hours of her arrest. Article 322 of Iraq's Penal Code provides a punishment of imprisonment for "[a]ny public official or agent who arrests, imprisons or detains a person in circumstances other than those stipulated by law."<sup>70</sup> Articles 51-57 of the Code of Criminal Procedure require the investigating judge or investigators acting under his supervision to conduct the initial investigation and to gather evidence, interviewing witnesses and suspects (articles 58-68), and determining whether an arrested detainee should be released or referred for trial.

The Code of Criminal Procedure prescribes the conditions that must be met in order to extend pretrial detention. These include judicial review of detention every 15 days. Article 109 of the code, however, provides that the pretrial detention of a person accused of an offense punishable by death "may be extended for as long as necessary for the investigation to proceed or until the examining judge or criminal court issues a decision on the case on the completion of the preliminary or judicial investigation or trial." Any pretrial detention beyond six months is permissible only if the relevant court grants an "appropriate extension."

The Code of Criminal Procedure and Iraq's constitution also enshrine a detainee's right to counsel.<sup>71</sup> The former, adopted in 2005, states in article 19 (4): "The right to a defense shall be sacred and guaranteed in all phases of investigation and trial." Article 123 of the Code of Criminal Procedure entitles an arrested person to be represented by a legal counsel when being questioned during the pretrial period, and to have a court-appointed legal counsel free of charge if he or she cannot afford legal counsel of their choosing. Detaining authorities must also inform detainees of these rights before questioning them. As the accounts above illustrate, Iraqi security forces arrest and detain women for long periods without a warrant, and deny detainees access to lawyers. Investigative judges, who are responsible for issuing search and arrest warrants and orders prolonging suspects' detention, often collaborate with security officers to keep women detained on specious "suspicion of terrorism" charges, then demand bribes to secure release from custody, according to detainees and their families.

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<sup>70</sup> Iraq Penal Code No. 111 of 1969, <http://gjpi.org/wp-content/uploads/gjpi-pc-1969-v1-eng.doc> (accessed November 21, 2013).

<sup>71</sup> Iraq Code of Criminal Procedure, Law No. 21 of 1971, art.123; Constitution of Iraq, 2005, art. 19 (4).



Lawyers and activists confirmed women’s allegations that security forces regularly conduct arrest “sweeps,” in which security forces detain large numbers of people in a home or an entire neighborhood on suspicion of terrorism. “The big problem in Iraq is the detainees and convicts held in prison due to terrorism charges,” said a parliamentarian and former judge who is a member of one of the committees Maliki appointed to negotiate with protesters demanding improvements in the criminal justice system.<sup>72</sup>

So many people are held and arrested when an explosion occurs in a particular neighborhood ... then people are sentenced based on article 4 according to nothing more than secret informant testimony.<sup>73</sup>

Lawyers and activists also confirmed to Human Rights Watch that women are frequently detained on suspicion of terrorism without the authorities producing any evidence of their wrongdoing, frequently based on suspicion of their male relatives. Iraqi law provides that women cannot be compelled to testify against their husbands.<sup>74</sup> However, women said that they had been detained for *al-tasattur*, or covering up for their husbands, under article 4(2) of Iraq’s Anti-Terrorism Law, which provides penalties for “Anyone who intentionally covers up any terrorist act or harbors a terrorist with the purpose of concealment.”<sup>75</sup>

### **The Anti-Terrorism Law, Law no. 13 of 2005**

Despite the Penal Code provisions protecting suspects’ right to be free of arbitrary arrest and detention and right to a fair trial, Iraq’s Anti-Terrorism Law is frequently used to circumvent these protections.

The breadth of article 4 (“Penalties”), which states that “Anyone who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second and third articles of this law, shall be sentenced to death,” equally penalizes any “person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law,” and provides life imprisonment for “[a]nyone who intentionally covers up any terrorist act or harbors a

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<sup>72</sup> Human Rights Watch interview with parliamentarian (name withheld), Baghdad, February 24, 2013.

<sup>73</sup> Ibid.

<sup>74</sup> Iraq Penal Code, Law No. 111 of 1969, art. 247 (stating “Any person who is obliged by law to notify a public agent of a matter or matters known to him and who willfully refrains from doing so in the prescribed manner or at the time stipulated by law is punishable by detention or a fine. The same penalty applies to any public agent in charge of the investigation or prevention of an offence who neglects to report an offence that is brought to his attention. This is unless an action is brought as a result of a complaint or the offender is the spouse, ancestor, descendant, brother or sister of that public agent or his spouse’s ancestor, descendant, brother or sister or any relative by marriage of such persons.”).

<sup>75</sup> Law No. 13 of 2005 (“Anti-Terrorism Law”).

terrorist with the purpose of concealment,” facilitates arrests and detentions for a wide variety of otherwise non-criminal activities.<sup>76</sup>

A lawyer who represents 15 women who are detained for suspicion of terrorism without being officially charged described several of his cases to Human Rights Watch. In one typical case, security forces detained 18-year-old Noha at the 5th Brigade headquarters for four months because they could not locate her husband, whom she had married one month prior to her arrest.<sup>77</sup> She was eight months pregnant when Human Rights Watch interviewed her lawyer, and due to deliver her baby in prison. The lawyer explained:

The judicial system uses article 4 against women in the following way: Security officers arrest a woman, and ask her who her husband works with. If she answers, “Al-Qaeda,” she will be temporarily released. Then they go after the husband, asking who he works with and who his superiors are. He will answer, “Sami and Latif.” The police then go back to the woman and say, “Why didn’t you tell us about the others?” and charge her with *al-tasattur* and sentence her to life imprisonment. I have seen more than 20 such cases.<sup>78</sup>

Three other lawyers confirmed that the majority of women charged under article 4 are convicted on the basis of “covering up” for their husbands or for foreign visitors.<sup>79</sup>

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<sup>76</sup> Ibid.

<sup>77</sup> Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 21, 2013

<sup>78</sup> Ibid.

<sup>79</sup> Human Rights Watch interview with criminal defense lawyers (names withheld), Baghdad, February 21, 2013; Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 18, 2013.

### III. Torture and Sexual Abuse in Interrogations

I heard three voices. At first they didn't ask me anything. One of them immediately beat me on my face, breaking my tooth, and I fainted. They beat the hell out of me, and when I fainted again they took me to solitary confinement. I heard one of them say, 'Take her away. We'll enjoy ourselves with her tonight.'

–Israa Salah, death row detainee, Shaaba Khamsa, March 1, 2013<sup>80</sup>

Human Rights Watch found that security forces of the Interior and Defense ministries, and forces that operate unofficial detention facilities, tortured women in their custody. Human Rights Watch heard credible accounts of torture from women in prison, recently released detainees, and lawyers and families of detainees. More than 10 women showed Human Rights Watch scars on their bodies that appeared to be consistent with the torture they described having undergone.

Two women said that an Interior Ministry officer raped them in custody, and another detainee's family said that a high-ranking police officer raped their daughter while she was detained in police custody, with her mother detained in the adjoining room.

Human Rights Watch interviewed a prisoner on death row who confirmed that a police officer had raped her in custody, but requested that she not be identified because of her fear of stigma.<sup>81</sup>

Nearly all of the 25 women Human Rights Watch interviewed in detention said that security forces had verbally and physically abused them during arrest and interrogation in facilities run by the Interior and Defense ministries or in irregular places of detention, such as their homes or unofficial facilities, almost always prior to their admittance to a facility administered by the Justice Ministry.

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<sup>80</sup> Human Rights Watch interview with Israa Salah, Shaaba Khamsa detention facility, Baghdad, March 1, 2013.

<sup>81</sup> Ibid.

“Most women [who are raped] are raped in police departments, not prisons,” said Um Aqil, an employee at a women’s prison facility.<sup>82</sup> “But most wouldn’t say so, because of the shame.” Um Aqil said that the death row facility required that all women be given a pregnancy test prior to her confinement in the facility, “because we expect that they’ve been raped by police on the way to the prison,” she said.

The warden at Site 4, Baghdad’s Central Prison for Women, said that she refused to admit women who had not seen doctors prior to their imprisonment there out of concern that the prison administration could be blamed for abuses that Interior or Defense ministry officers committed. The warden said she physically “inspected the women” herself, but some detainees said prison officials took them for a forensic examination at government hospitals only after they were sent to the prison. According to several prisoners, doctors there perform only cursory medical exams. Two women said they only received a pregnancy test.<sup>83</sup> One said that these forensic exams had become more routine in order to document sexual abuse and torture after the issue became highly politicized in late 2012.<sup>84</sup>

### **Fatima Hussein**

On February 29, 2012, Fatima Hussein, a journalist, went to the army’s 5th Brigade headquarters in Baghdad’s Saidiya neighborhood to help release an acquaintance named Saddam who had called to say that he was being held there. When she arrived, an intelligence officer, Lieutenant Muhammad, told her that police in Tikrit had issued an arrest warrant for her for alleged involvement in the murder of a parliamentarian’s brother, she said.

She later learned the warrant was issued based on testimony by a secret informant. Fatima, 43, told Human Rights Watch that she believed her arrest was related to her journalistic work documenting abuses of detainees in a prison in Tikrit. She had sent documentation of these abuses to the Prime Minister’s Office shortly before her arrest.

The day after her arrest, security forces transferred Fatima to Tikrit and detained her in the Directorate for Major Crimes, housed in one of Saddam Hussein’s former palaces, until

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<sup>82</sup> Human Rights Watch interview with Um Aqil, Baghdad, December 16, 2012.

<sup>83</sup> Human Rights Watch interviews with two prisoners in the Site 4 detention facility, February 28, 2013.

<sup>84</sup> Human Rights Watch interviews with prisoner in the Site 4 detention facility, February 28, 2013.

March 7. During that week, the head of the directorate, a man she identified as Colonel Ghazi, accused her of murdering the brother of Nahida al-Deini, a member of parliament; participating in an attack on the Tikrit provincial council building; and being married to an Al-Qaeda member, she said. Security forces never presented her with evidence of her alleged involvement in any of the crimes.

When I got to Tikrit, Colonel Ghazi initially accused me of participating in Deini's murder. When I denied it, he blindfolded me and took me to an interrogation cell. Saddam was there, and I learned he was the secret informant. But they didn't interrogate me about the murder. Ghazi and Saddam accused me of helping to blow up the Tikrit provincial council building.... When I insisted that I am not guilty, he tied me up to a column. Then they started using electricity on me. I was blindfolded but it felt like an electric baton. Every time they used it my head hit the column. They electrocuted me seven times, on my upper and lower thighs and my chest. I lost consciousness for a bit, and when I woke up—it felt like they splashed cold water on me—I said “Okay, I'll confess.”

After that, she said, Colonel Ghazi removed her blindfold, gave her a blank piece of paper and ordered her to sign. Fatima, worried because the paper was blank, asked him whether he was going to add other charges against her. She said he became angry and tied her up again.

Then Ghazi kicked the chair I was sitting on. I fell on the ground, and he said to his bodyguards—there were about six of them—“Bring out the *falaqa*.” They [brought] a piece of wood and tied [my] feet to it, and hit them with cables that have high-voltage wire in it. They beat me seven or eight times, so many times, on my feet, and then they stood me up and said, “*Yalla*, run!” They would hit my back with the cable to get me to run faster.

Fatima said that Colonel Ghazi tied her, standing, to the column for two days. She was barely clothed and was not permitted to go to the bathroom, she said. “When they finally untied me, I collapsed,” she said. Officers took her back to Colonel Ghazi and she still refused to confess. He repeatedly kicked her in the face, she said.

I got very dizzy and couldn't see anything around me and I started to feel like people were kicking me from all over—in fact it was just him, kicking me everywhere. Every time I tried to resist him, he would pull my hair up and hit me in the face. There were six men in the room watching. They broke my teeth and my nose and they split my eyebrow and my wrist [she displayed these injuries to a Human Rights Watch researcher]. Then Ghazi ordered them to undress me. They undressed me and tied me back up to the column and he started to put the cigarettes out on my body while [the other officers] watched. He grabbed my breast and squeezed it and started putting the cigarettes out on my breasts, and thighs. He opened up my legs and put out the cigarettes on me. He put out cigarettes on my arms and hand. The whole time he was telling me, “Bitch, whore, slut, mother of cocks, you're a journalist that would fuck higher people.” He never asked me anything, just told me to sign, and when I refused he insulted me more.

After that, she said, the officers who had watched Ghazi beating her brought an *abaya* (a traditional loose woman's over-garment) and took her back into Ghazi's office. There he accused her of being married to an Al-Qaeda member, but Fatima refused to confess.

He told the bodyguards to drag me to another room, where I saw a mattress, a bed, a fridge, and a locker with uniforms. Then I got scared... I realized that they intended to do something sexual to me. They put me on the mattress, and removed my *abaya*. Ghazi grabbed me by the hair, pulled me up, and threw me back on the bed. He ordered a soldier to bring the handcuffs.... I was trying to cover my vagina with my hands. He took my arms away from protecting myself and tied me to the bed with handcuffs. He brought four handcuffs, one for each hand and foot—I was on my stomach—and they pulled my legs back and handcuffed my legs to the bed. He ordered everyone out of the room. Then he took off his clothes. He pulled my head back by my hair and would use his penis on my cheeks and face to push me to give him oral sex. I cried and screamed and he pulled my head back and then shoved it back into the mattress to choke me. He brought a white trash bag and put it around my head so I couldn't breathe. I was choking and shaking and he took it off right when I felt I was about to

die. I begged, “Please, for the sake of Allah, the sake of Muhammad, I will sign whatever you want.” And he said, “No, this time I don’t want you to sign.” So he came from the back. He raped me three times.... I started bleeding from the violence of it. There was blood all over me. He would relax, have a cigarette, and put it out on my buttock, and then started again. [T]he rape session lasted a long time; I know because when he took me back to the column I heard the morning *azzan* [call to prayer].

Fatima said that officers tied her to a column that day and night. The next day, she said, a TV crew who said they were from the state-owned Iraqiya channel came to the prison to film her confessing to terrorist acts. When she asked Colonel Ghazi what she was supposed to say in front of the camera, he gave her four pages of testimony and ordered her to memorize it in the next half-hour.

I said I can’t, it’s too much. He said, “Okay, there is someone on the phone who is very dear to you.” I took the phone and it was Hanaa [Fatima’s daughter]. I said, “Hanaa, where are you?” She said, “I’m here!” Ghazi took the phone back and said, “What do you think? I’ll do to your daughter what I did to you.” So I signed the blank pages and fingerprinted them [and] I started memorizing.

Fatima said the camera crew recorded her “confession” that terrorists had kidnapped her daughter; that she was forced to work with Al-Qaeda in order to get her back; that she transported suicide vests from Kirkuk to Tikrit for use in the provincial council bombing; and she identified herself in a photo that implicated her in the murder of MP Nahida al-Deini’s brother.

Every time I made a mistake explaining things, they would turn the camera off and pretend to hit me for not saying everything exactly as written. The journalist said, “Just speak, this guy will kill you!” They told me to say I confessed willingly with no torture and no beating.

The day after her videotaped “confession,” three officers took Fatima to a court in Beiji, approximately 200 kilometers north of Baghdad, where the judge dropped the charge of

participating in the murder of Nahida al-Deini's brother after the general prosecutor said there was no evidence against her. He then ordered her transfer to Baghdad on charges based on the testimony she had signed in Tikrit.

After a week of what she described as further mistreatment, authorities took her to the Directorate of Major Crimes in Karrada (the 52nd Brigade) on March 7, 2012, for seven days. An interrogation officer refused to question her because of the marks on her body, she said. Fatima told Human Rights Watch: "When he saw me he made a phone call and said, 'Sir, I can't carry out this interrogation, this woman is a mess.'"

A committee—Fatima did not know which, but presumed it was investigating her allegations of abuse—then interviewed her, asked if she had been beaten in Tikrit, and told her to file a complaint after she showed them the marks on her arms. "I told them I couldn't write because my wrist was broken, so they wrote it for me and I signed," she said. The next day officers took her to the interior affairs department in Tikrit "with a lot of letters and files," she said, where she repeated her story to another officer named Jaafer.

They told me they would take me to a judge and see what he says, and they took me to Tikrit hospital for a medical examination. They documented the torture marks on my body.<sup>85</sup> A female doctor inspected me and she got crazy when she saw what was on my body. They documented everything except the rape, even though it would have been possible to document the rape. After that they took me to Site 4, and there when they inspected my body and saw the torture marks on me, they got crazy too. They told me to write a report and a complaint to bring a suit against Ghazi.

Fatima spent seven months in Site 4 before she saw an investigative judge, who issued an order for her release, dated January 23, 2013, but she was still in prison in February, when Deputy Prime Minister Shahrastani told Human Rights Watch that "there is no longer a single person in prison with a judicial order for release."<sup>86</sup> After being informed that she was in detention, Shahrastani's office intervened and prison authorities released her.

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<sup>85</sup> Human Rights Watch requested a copy of the report from Fatima and her lawyer. The lawyer (name withheld) said the court would not allow anyone to see any of the documents related to her case.

<sup>86</sup> Human Rights Watch interview with Deputy Prime Minister Hussein al-Shahrastani, Baghdad, February 14, 2013.



Fatima has filed complaints against Colonel Ghazi with the Site 4 prison administration, the parliamentary human rights committee, the Interior Ministry, and Deputy Prime Minister al-Shahristani. In November, Fatima told Human Rights Watch that she has not received an official response to these complaints, and that Colonel Ghazi remained at his post until he was killed in July 2013 in a suicide bomb attack in which the attacker approached Ghazi as if to hug him, and then blew himself up, according to Fatima.

### **Israa Salah**

US and Iraqi security forces arrested Israa Salah, 45, and four of her relatives on January 9, 2010, when she was in her cousin's home in Baghdad's Kadhimiyya neighborhood. Security forces took her to the Interior Ministry's Criminal Investigations Department (CID) in Karadda, where they tortured her for nine days until she confessed to terrorism charges. An investigative judge extended her detention pursuant to article 4 of the Anti-Terrorism Law, despite the fact that she had "blood on her face and her body still bore the marks of torture," according to a person who was present at the hearing.<sup>87</sup>

Israa told Human Rights Watch she was visiting a nephew in Baghdad when Iraqi security forces and US soldiers stormed the house at 1 a.m.<sup>88</sup> "They kicked down the door and before I knew it there was a bag over my head," said Israa. Then they held Israa and four of her relatives—her nephew Othman, her aunt Shukreya, her cousin Majida, and Hassan, Majida's husband—in the street outside while they searched the house. "The whole time, the Iraqis were calling me names: bitch, son of a dog, son of a whore," Israa said. They asked Israa only her name and the number of children she had. They did not show her or any of the family members a search or arrest warrant.

At 4 a.m., security forces put all five family members into five separate cars. "We drove for about an hour," Israa said, "and then we reached a place where they fingerprinted me and checked my body for bruises. [There] they were all Americans, and they didn't say a word to me." Israa's nephew Othman told Human Rights Watch that Iraqi and US security forces then took them all to Camp Cropper, a prison under US control at the time, close to the Baghdad airport.<sup>89</sup> They took Israa to the Iraqi-controlled CID, Israa said.

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<sup>87</sup> Human Rights Watch interview with witness (name withheld), Baghdad, February 13, 2013.

<sup>88</sup> Human Rights Watch interview with Israa Salah, Shaaba Khamsa detention facility, Baghdad, March 1, 2013.

<sup>89</sup> Human Rights Watch interview with Othman Nadir, Baghdad, February 11, 2013.

Israa said her torture began at 10 a.m. the next morning in the CID. Iraqi security forces covered her head with a sack, handcuffed her, and took her into a small room. When officials asked her name, Israa heard someone say, “Israa, speak out. Say what you did.” Then he repeatedly call her “bitch,” “slut,” and “daughter of a dog.” Israa said that three men repeatedly beat and tortured her, beginning that morning, lasting for several hours and resuming at around 6 p.m. the same day.

I heard three voices. At first they didn’t ask me anything. One of them immediately beat me on my face, breaking my tooth, and I fainted. They beat the hell out of me, and when I fainted again they took me to solitary confinement. I heard one of them say, “Take her away. We’ll enjoy ourselves with her tonight.”

Later that day, Israa said three men again interrogated her. They again covered her head, handcuffed her, and forced her to kneel, she said.

I heard someone say, “Tell us why you carried out terrorist operations,” and then told me to sign a confession saying I had threatened to kill one of my relatives, who had been in the *sahwa* [Sunni groups that assisted US forces against insurgents during Iraq’s civil war]. When I refused to sign, he said to the other men, “Bring in the wires.” They attached wires to my handcuffs and fingers. When they first put the electricity on me, I gasped; my body went rigid and the bag came off my head. I saw a green machine, the size of a car battery, with wires attached to it.

Israa said the three men tortured her that night and every night for the next nine days.

I was handcuffed behind my back and they pulled my legs up and beat me on my feet. Because they hit me so hard, during the *falaqa*, the force of the beating sent the handcuffs into my back. This happened repeatedly and I still have a scar there. They beat me on my face and broke my jaw. It still hurts, and clicks. They cut my nose open while they were beating me. They didn’t ask me questions, they just said, “Speak out! Confess!” There was a rope hanging from the ceiling. They made me climb a ladder, with my hands

cuffed behind my back, and tied the handcuffs to the rope. Then they kicked the ladder away so that I was hanging like that, from the handcuffs with my arms behind my back.

Israa displayed the scars to a Human Rights Watch researcher. She said throughout her detention in CID officers confined her in a one meter square cell and gave her one piece of bread and a sip of water every day. They did not allow her to go to the bathroom, and she had to urinate in the cell. “I didn’t have to go to the bathroom, luckily, because they gave me so little food,” she said.

Israa said that every evening around 6 p.m. an officer would come to her cell, cover her head, and walk her around for about 30 minutes before taking her to the room where the three men interrogated her until approximately 4 a.m. On the eighth day, she said, she fainted and began bleeding from her nose. “I stopped shouting,” she said, “So I heard one of them say, ‘Check her out—she’s not screaming anymore; the wires might have come off.’” When she failed to revive and continued to bleed from her nose, Israa said, officers took her to a hospital where she was given different pills and an IV, then taken back to the CID the same day.

On the ninth day, Israa said, the men ordered her to sign a large stack of papers, which she refused to do.

The one who had a huge stack of papers used the electrocution on me and said “Talk! Confess!” He was beating me on my back with a black hose while two others were kicking me in my sides.<sup>90</sup> They had this black device that looked like a torch and made a buzzing noise. They used this on my breast. It made a hole in my *dishdasha* [traditional overgarment worn by men and women] and left a mark.<sup>91</sup>

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<sup>90</sup> Israa’s description of this device conforms to other witness testimony of an instrument that security forces call the “donkey” and use to beat detainees. See Ruqaya Abbas Ahmad Jaafari and Safaa Abdelrahim Ahmad, below.

<sup>91</sup> Israa’s description of the device used to electrocute her conforms to other witness testimony about security forces’ procedures for electrocuting detainees. See Ruqaya Abbas Ahmad Jaafari and Safaa Abdelrahim Ahmad; Fatima Hussein, below.

When she did not confess after nine days, the officers sat her down on a chair and brought her tea and water.

“Oh, Israa,” they told me, “You have really tired us out! Just sign these papers and in two days you’ll be out.” But I refused, so [one] said, “What, do you want us to keep electrocuting you?” I begged him to do anything but that. So what he said was even worse. He said, “Do you know what we did in the night? We brought your daughter and husband.”

Officers then told her they had detained her teenage daughter, Farah, in solitary confinement elsewhere in the same facility and would rape her if Israa did not confess.

“They knew everything about her: how she was dressed, who her friends were, and they showed me pictures of her,” Israa said. She then signed and fingerprinted a blank piece of paper, “But it was a trick,” she said. “I didn’t know what specifically I had confessed to until a year later,” when, Israa said, her lawyer told her she was accused of blowing up a house and carrying out other terrorist attacks in her neighborhood of Tarmiyya.

Israa’s lawyer provided Human Rights Watch with several of the documents associated with her case, including photos of what appear to be burn marks on her hands and leg and a copy of a Health Ministry report dated March 11, 2010, that confirms that Israa had “red bruises” on the palms of her hands that looked to be one to two months old.<sup>92</sup> The lawyer also provided four color pictures that he said a female deputy general prosecutor took of Israa on January 14 or 15, about five days after her arrest, showing what appear to be burn marks on her hands and leg. The deputy general prosecutor requested that Israa be taken to a hospital, according to her lawyer, but a judge denied the request.

Israa showed Human Rights Watch marks on her hands, leg, and breast that were consistent with the photos and medical report and her statements. Nearly three years after her torture, Israa showed Human Rights Watch a long scar on her back that she said resulted from where her handcuffs repeatedly drove into her back as officers beat her on her feet.

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<sup>92</sup> Institute of Forensic Medicine, Ministry of Health of Iraq, *Medical report No. 7231 t/a/4/T*, March 11, 2010 (preparing doctor’s name illegible). The report also describes an “infection” on the front of her right leg and says that the doctor cannot date the injury or determine what caused it.

On the night after she signed the confession, at 2 or 3 a.m., officers handcuffed Israa's hands and feet and chained them together, Israa said.

They put me in a car and told me, "Israa, we're taking you to a place you're really going to like." I smelled alcohol on their breath, and when we stopped driving they walked me for a while before taking the bag off of my head. I saw that we were standing on the river bank. The officer pointed a gun at my head and told me, "[T]omorrow you're going to court. We have your daughter and husband and no one else knows where you are. So if you say anything or change your story from what is read on the papers, this is your place, one bullet in your head and you'll be deep in this river and no one will ever discover what happened to you." I told him I would say anything he wanted as long as he let my daughter go.

The next morning, officers took Israa for about three hours to a different, smaller cell, where, she said, "It smelled like hell." Israa said she saw the dead body of a woman in the room and that the officers told her that she would "end up like her" if she didn't cooperate. They then took her to investigative judge Dhiya al-Aboudi in Baghdad's Central Criminal Court. Israa said that the cut on her nose was still bleeding when she was brought into the courtroom, that she had a black eye, and that there were blisters from electric shocks visible on her hands, but the judge never asked her if she'd been physically abused.

Israa said two of the officers who had interrogated her were present in the court room. Al-Aboudi asked Israa her name and whether she had done what was written on the papers, then ordered her detention under article 4 of the Anti-Terrorism Law. She was accused of assisting in carrying out a bombing that killed two Iraqi policemen in Kadhimiyya and of damaging a house of her nephew's neighbor.

When I walked out of the courtroom, one of [the officers who had been interrogating me] said to me proudly, "See what [the] Mahdi Army has done to you?"<sup>93</sup> The other officers [that interrogated me] were also there, laughing and congratulating each other.

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<sup>93</sup> The Mahdi Army is a Shia militia affiliated with cleric Moqtada al-Sadr. Mahdi Army members were active participants in Iraq's civil war, fighting Sunni groups either as members of the militia or under the guise of serving in the Iraqi security forces.

They then brought Israa to the Site 4 detention facility. Prison officials denied her requests to see her lawyers for three months, she said, and she remained detained for three years before she had a trial.

Human Rights Watch reviewed the court documents for Israa's case, which include a July 3, 2012 appeals court dropping charges of killing a man by employing a suicide bomber.<sup>94</sup> The decision confirmed an April 26, 2012 court of first instance decision that cleared her of charges of terrorism for the assassination of Ahmad Khamis Mahmoud. The April 26 decision states that Israa Salahhad recanted her testimony in front of the judges, citing evidence that her confession was coerced under torture, referencing the medical report, that her "confession was not supported by any eyewitness testimony or other evidence."

The decision references "secret information passed on by the Americans about her involvement in the case" but states that on December 26, 2010, the wife of the victim had recanted her accusation against Israa of having committed the murder.<sup>95</sup> The April 26 decision does not order her release because, according to the decision, "her fate is yet to be determined" with regard to other charges pending against her.

In another appellate decision from July 25, 2012, a panel of three, including two of the same judges who heard the original trial, convicted Israa of terrorism and sentenced her to two terms of life imprisonment for allegedly planting two improvised explosive devices (IEDs) that injured an Iraqi soldier and killed two others.<sup>96</sup> The decision stated that her confessions provided enough detail that comported with "other intelligence information provided to the court" to confirm her participation in these terrorist activities. The decision cites no other evidence. The decision also says Israa was the head financial adviser for the Islamic organization [the Islamic State of Iraq] and a member of Al-Qaeda.

Human Rights Watch reviewed documents that appear to be the testimony that a secret informant gave to US-led coalition forces in 2008, alleging that Israa participated in procuring women to carrying out suicide attacks for Al-Qaeda, causing the deaths of two

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<sup>94</sup> Case No. 10647 of 2012, Federal Criminal Appeals Court, First Division, supervising judge Soliman Obeid and secondary judges Jedia Jassem and Obeid Nayil presiding, July 3, 2012.

<sup>95</sup> Case No. 726 (3G) of 2012, Karkh Central Criminal Court, 3rd Division, supervising judge Emad Khudhair al-Jabery and secondary judges Safaa Sadiq Ahmad and Zohair Kadhim Aboud presiding, April 26, 2012.

<sup>96</sup> Case No. 838 (3G) of 2012, Karkh Central Criminal Court, 3rd Division, supervising judge Emad Khudhair al-Jabery and secondary judges Ahmea Hussein Hassan and Zohair Kadhim Aboud presiding, July 25, 2012.

policemen, and that she had assisted in carrying out an attack on her neighbor's home. Israa's lawyer told Human Rights Watch that coalition forces handed the secret informant's testimony over to Iraqi forces when they transferred detainees in their custody to Iraqi custody.<sup>97</sup>

Israa said another court converted her life sentences to death sentences on December 23, 2012. The judge summarily confirmed Israa's death sentence, according to Israa and her lawyer. In a written complaint that Human Rights Watch reviewed, Israa's lawyers name three other individuals who confessed to committing one of the crimes for which Israa was convicted, and reiterated that the owner of the house she is accused of having blown up dropped the charges against her and that her confession was extracted under torture. Israa said that the secret informant who provided testimony in her case also provided testimony that led to the conviction of another death row inmate on different charges. Israa said that the abuse she had suffered from interrogators was compounded at Site 4, where she was initially detained and where she said the warden "treats the inmates with extreme cruelty."

She said that when inspection committees occasionally visited the prison, the warden ordered the women to clean the prison and hid women who could not be trusted to not complain about prison conditions in solitary confinement. Israa said that at Site 4 she met another detainee, Nahida, who was raped by a prison guard while he was transferring her from court to the prison, and had a child as a result, in October 2012. Israa said that when a UNAMI delegation came to the prison, Nahida tried to pass one of the delegates a note telling him what happened, but the warden snatched it from her hand. Human Rights Watch confirmed with another NGO that, on their visit to Site 4, other prisoners pointed to a woman with a child and said, "Ask her where she got that baby," but that the warden prevented them from speaking with her.<sup>98</sup>

Israa said that Site 4's warden used prisoners to inform on other prisoners in exchange for money and privileges, such as better food, phone credit, and clothes.

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<sup>97</sup> Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 11, 2013.

<sup>98</sup> Human Rights Watch interview with representative of international non-governmental organization (name withheld), Baghdad, April 29, 2013.

Israa was transferred to death row in January 2013 and was executed in September 2013, along with 41 men, one of several mass executions the government carried out in 2013.<sup>99</sup>

### **Laila Abd al-Rahim**

Security forces arrested Laila Abd al-Rahim, 25, and her mother, who declined to give her name, from a street in Baghdad's Karrada neighborhood in June 2011. Security officers accused her of killing her husband, who was murdered in February 2011. In December, Human Rights Watch spoke with Laila's father, mother, and aunt, who said that a policeman with the rank of major at the Bab al-Sheikh police station raped her on the second night of her detention. Laila was convicted of murder and sentenced to death on September 18, 2012, in a trial that comprised a single hearing, based solely on her confession. Laila's lawyer and her mother and father told Human Rights Watch that at trial the judge refused to allow Laila's allegations of torture into evidence.<sup>100</sup>

Laila's mother told Human Rights Watch that five police officers, one of whom was Aya's brother-in-law, arrested her and her daughter at 8 a.m. on June 3, 2011, when they were about to enter their workplace at an insurance company close to Tahrir Square in Karrada.<sup>101</sup>

One of the officers grabbed me by the neck and shoved me in the car, and shoved my daughter in the car by her shoulders. They didn't show us any warrant, any IDs, nothing. [One of them was] my daughter's brother-in-law, Lt. [name withheld], and [there were] four other officers, including Maj. [name withheld] and a policeman and a major whose names I don't know. Only Lieutenant [name withheld] was in uniform. The [rest] were dressed in civilian clothes. They beat us with guns on the back of our necks to put our heads down so that we wouldn't be seen at checkpoints.

Laila's mother said the officers took them to the Interior Ministry's intelligence police headquarters in Bab al-Sheikh, blindfolded them and refused them food and drink, and separated them. "I heard my daughter screaming," she said. At 6 p.m., officers

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<sup>99</sup> Human Rights Watch correspondence with employee in the Shaaba Khamsa detention facility, Baghdad, October 22, 2013.

<sup>100</sup> Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 21, 2013; Human Rights Watch interview with father and mother of Aya Abd al-Karim, Baghdad, December 17, 2012.

<sup>101</sup> Ibid.



interrogated her and accused her of inducing her daughter to kill her husband for insurance money. Then, she said, they took her and her daughter to a courthouse in Karrada, but presented only Laila to the investigative judge. The judge ordered that Laila be brought to the Rashid police station, where the murder was originally reported, but officers instead returned them to Bab al-Sheikh police station and kept them there overnight, she said. Laila later told her mother that a certain Major raped her that night in the Bab al-Sheikh police station, and warned Laila not to tell her mother, or “we will vanquish your mother from existence.”

The next morning at 10 a.m., officers transferred Laila and her mother to the Rashid police station, where they kept them together in a room without electricity, food, water, or a bathroom for three days. “I paid the guards for water,” said Laila’s mother. On June 6, officers took the women to another investigative judge in Baghdad al-Jadida Court, where Laila told the judge that she had been raped and tortured. According to Laila’s mother, the judge said, “What? Do you want them to pamper you?”

The judge transferred them to the police major crimes division, a detention and interrogation facility. An officer interrogated Laila from 5 p.m. to 3 a.m. while other officers kept her mother in another room. Laila’s mother said she “could hear her screams.”

When they carried her back into the room where I was being kept, even the police officers felt bad for her. Major [name withheld] told me, “If she just confesses it will be easier for her.” Some officers heard that and said, “*Allahuakbar*, when will you stop?” They dressed her in jeans so that the marks on her legs wouldn’t show. She later told me that her interrogator [name withheld] took off his boots and put them in her mouth, that they electrocuted her. I saw the marks on her fingertips—and that huge, heavily built men laid her on the ground and stepped on her back. I saw bruises all over her face that night.

Laila’s mother said that Laila’s brother-in-law was in the police and that she saw him as well as Laila’s other brothers-in-law and father-in-law in the Bab al-Sheikh and Rashid police stations.

The next day, one of the officers brought Laila's mother into a room with her daughter, she said, and told her that Laila "had something to say to me, and not to scream. She told me that when we were in Bab al-Sheikh, her brother-in-law, a lieutenant, told everyone to get out of the room, then [the Major] raped her. When I heard this I had a nervous breakdown and I started beating her."

The next day, she said, they were taken in front of the same interrogation judge in the court in Baghdad al-Jadida, where, she said, "[One of the officers] came into the courtroom to intimidate my daughter so that she wouldn't say anything." Laila's mother was released on June 7, 2011. The judge ordered Laila to be held for further investigation and transferred to the Site 4 detention facility.

Site 4 refused her, though, and sent her to a hospital to get a medical report. They took her to Alweya hospital, near Andalus Square....She told the doctor that she was raped. The doctor said, "That's not my job, I just check to see if you're sick."

Human Rights Watch reviewed YouTube video that Laila's father and mother said three months later appeared on Facebook, which appears to show four men in plain clothes interrogating a blindfolded woman.<sup>102</sup> The men ask Laila how many times someone named Muhammad "fucked" her. They slap her in the face and tell her they will give her a gun for her to kill herself after she says she wants to die. One of the men says, "He was a Sayyid [a descendent of the Prophet Muhammad]. Do you know what that means, a Sayyid? That means his blood won't go in vain." Laila's mother and father said the men were referring to Laila's husband, who they accused her of killing.

Laila's father verified that the woman being interrogated in the video is his daughter and that he could identify two of the men interrogating her as Laila's brother-in-law, and another arresting officer who Laila's mother identified. Laila's father said that the major who Laila says raped her is not visible in the video, but can be heard.

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<sup>102</sup> "Dhab7at rajulha" ["Husband Killer"], YouTube, February 20, 2012, [http://www.youtube.com/watch?v=nWRIN\\_e\\_3Po](http://www.youtube.com/watch?v=nWRIN_e_3Po), (accessed May 18, 2013).

Laila's father told Human Rights Watch that he filed complaints with the Interior Ministry's general inspector on October 4, 2011 and with the Human Rights Ministry.

I said that my daughter was accused of murder and was tortured and raped. The complaint was transferred to Interior Affairs. They went to the prison and interviewed my daughter. She told them everything, in detail, and the complaint went to the court. The Judge of Internal Affairs, at the Second Rusafa Court, sent for us and took our statements, and issued an arrest warrant for the officers in the video on October 27, 2011. [Names withheld] were arrested on July 9, 2012, but not [name withheld]—the one who raped her is still working, still living a normal life. [The two who were arrested] were released on bail on November 19, 2012.

Laila's father said a delegation from the Human Rights Ministry visited Laila in Site 4 on November 22, 2011. The family also filed a complaint with Dr. Ibtihal al-Zaydi, the minister of women's affairs, who wrote to the Human Rights Ministry on behalf of Laila. Nevertheless, said Laila's father, the investigating judge refused to allow her lawyer to introduce the information about her rape case against the officers into evidence at her murder trial. The lawyer filed an appeal that, along with Laila's denial of her confession, was considered by the general prosecution's office, her father said. Laila's mother said that no doctor's report was issued until 10 months later, on April 6, 2012, after the family filed a complaint with the Interior Ministry's inspector general.

On September 18, 2012, a judge convicted Laila and sentenced her to death in a single hearing, based on her confession. The judge refused to allow Laila's allegations of torture into evidence. Despite the General Prosecutor Ghadhanfar Hamoud al-Jassim's written request on February 7 and July 9, 2013, to have Laila's allegations of torture and rape introduced into trial before confirmation of her death sentence, the Federal Court of Appeals confirmed Laila's sentence to death by hanging, on August 27, 2013, without considering the allegations of torture or rape.

At the time of writing, Laila remained in Site 4 pending her transfer to the death row facility. Her father told Human Rights Watch:

The officers stand accused of rape and torture but they are out on bail. I don't know if they are still working. The ministers we have spoken to all told us that the judiciary is independent, outside the sphere of their control, and they can't affect the case.

### **Nesrin Najim Emad and Marwa Qassem Tamim**

Security forces arrested Nesrin Najim Emad, 40, in her home in Baghdad's Zaafaraniya neighborhood on December 7, 2009. Security forces arrested her mother, Marwa Qassem Tamim, in her mid-50s, almost a year later on October 4, 2010 when she went to the headquarters of the Baghdad Operations Command to search for her son, Thamer, who had been detained days earlier. Nesrin and Marwa were tried together on April 17, 2012, convicted of terrorism for kidnapping and murder, and sentenced to death under article 4 of the Anti-Terrorism Law on the basis of confessions they say were coerced under torture. The trial comprised a single hearing. They have been in Shaaba Khamsa since January 2013.

Nesrin told Human Rights Watch that security forces, whom she could not identify, accused her of owning a mobile phone used in a kidnapping and murder.<sup>103</sup> The officers, who did not show her an arrest warrant, took her to the police major crimes division in Adhamiyya and held her in solitary confinement for 10 days. During these 10 days, she said, officials beat and tortured her repeatedly, demanded bribes for her release, and tried to force her to sign a prepared "confession" admitting that she was the owner of the phone in question.

There were nine or ten of them. They held me in a room and beat me. I started to have a seizure, and when I came to, my veil was off of my head. They didn't ask me anything, but one of them said to me, "Say this is your mobile phone and you will go free." They beat me in my face. I have a scar on my eyebrow [shown to a Human Rights Watch researcher] and on the back of my head. One of them named Mouayad sat me down and told me to sign the papers that he had already filled in. I refused, so he told me that if I gave him \$10,000 I would go free. We sold everything we had and I paid it but they didn't release me.

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<sup>103</sup> Human Rights Watch interview with Nesrin Najim Emad, Shaaba Khamsa detention facility, Baghdad, March 1, 2013.

Nesrin said her brother-in-law later told her that Mouayad had also demanded \$6,000 from him in exchange for her release. He paid, but Mouayad did not release her.

Nesrin said that after the 10 days, when she still refused to say the phone was hers, Mouayad transferred her to Site 4 detention facility.

They took me to Site 4 in a blanket and carried me in because I could not walk [after being beaten]. Maysoon was the warden at the time. I begged her to take pictures of what happened to me but she refused. I begged her also not to send me back for interrogation but she made me sign papers saying I returned to interrogation willingly and sent me back.

Nesrin said that three months later her arresting officers brought her to an investigative judge in Qasr al-Adalah. Officer Mouayad was in the courtroom, but she did not have a lawyer. Nesrin said that the judge read aloud from papers that Mouayad had presented that charged her with kidnapping and murder, and then said, “There is no confession and no evidence against her.” Nesrin said that she was then taken to Baghdad Operations Command (Baghdad Brigades), headquartered in the Green Zone, a special security forces unit that answers directly to the prime minister.<sup>104</sup>

Marwa Qassem Tamim told Human Rights Watch that Baghdad Brigades security forces detained her on October 4, 2010, when she visited their headquarters looking for her son, Thamer, who had been detained days earlier on suspicion of terrorism. Marwa said that she went with two other sons, and that guards at the headquarters let them into the building, took their IDs, and then sent Marwa’s sons away, keeping her there.

They told me there was an arrest warrant for me, but I never saw it. An officer closed me in a room, started beating me, and asked me about Ahmad, saying, “What was your role?” They kept me there for 20 days, all the time asking me what I was doing with Thamer and with Nesrin’s brother-in-law.

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<sup>104</sup> “Iraq—Secret Jail Uncovered in Baghdad: Detainees Describe Torture at Another Facility Also Run by Elite Security Forces,” Human Rights Watch news release, February 1, 2011, <http://www.hrw.org/news/2011/02/01/iraq-secret-jail-uncovered-baghdad>.

Marwa said that security officers repeatedly tortured her at Baghdad Brigades headquarters. On about October 20, the authorities transferred Nesrin to the same facility and detained them there together. Nesrin said that officers beat her, used electricity on her, and hung her from the ceiling, dislocating her shoulder.

Security officials took Marwa and Nesrin to a different investigative judge several days after October 20. Marwa said an officer threatened that if she did not confess in front of the judge he would send her back to the headquarters and torture her again. The investigative judge “read out from a piece of paper” that Marwa and Nesrin were accused of kidnapping and murder. “The officer was there in the room and I was intimidated, so I told the judge, ‘Whatever is written on that paper, I did.’”

Marwa said that after she had been at Baghdad Brigades headquarters for about two months, a “human rights delegation,” who she referred to as “the Americans,” visited the brigade headquarters.

They locked us in a room but an American general found us detained there. The major in charge told him they had just brought us there the day before. The next day they transferred us to Site 4 because they were afraid of that general. That was maybe in December 2010.

On April 17, 2012, a court tried Marwa and Nesrin together and convicted them during the same hearing of kidnapping and murder under article 406 of the penal code, they both said, but their charges were converted to terrorism under article 4 for reasons they do not know. Nesrin said:

I tried to tell the judge that I was tortured and my confession was forced. My brother-in-law was in the courtroom and he tried to testify on my behalf, but the Baghdad Brigades tortured him and he has a hard time speaking. All he could get out was “my sister’s mobile...” and the judge pounced. He didn’t let my brother finish talking and ordered that we be detained for terrorism.

Nesrin and Marwa said they were transferred from Site 4 to Shaaba Khamsa in January after they filed a complaint that they had been tortured. They believe the transfer was punitive. “[The warden] sent us here without any of our clothes or things,” Nesrin said. “We don’t have any money or a lawyer... the ones with money can pay [their way out].”

Marwa told Human Rights Watch that her mother, father, and husband are blind and that her children have been “living in the street” since she was detained, because no one is capable of taking care of them. Nesrin said she has not seen her children in four years.

“I just want a lawyer, even a court-appointed lawyer,” said Nesrin. “We don’t even know [the identities of those] who we are accused of kidnapping and killing. The judges just read out the charges against us. Even a special pardon can’t help us, because we don’t know who actually issued the complaint against us.”<sup>105</sup>

### **Duaa Khazal Hamoudi**

Duaa Khazal Hamoudi, on death row since 2009, is one of the longest-serving prisoners in Shaaba Khamsa. Security forces arrested Duaa, 36, and her brother Yassir, 38, during a raid on her brother’s home in Baghdad’s Dora neighborhood. A court convicted Duaa of aiding and abetting her husband in the commission of multiple murders based on a confession that Duaa signed after being held in a secret facility for a month, where she said she was tortured and beaten. Authorities held Duaa in the women’s maximum security facility in Kadhimiyya for four years before transferring her to death row at Shaaba Khamsa.

Duaa told Human Rights Watch that 10 plainclothes men, wearing masks, who she believes were security officials, raided her brother’s home at 6 p.m. on November 28, 2005.<sup>106</sup> Duaa was nursing her infant daughter; her brother, sister-in-law, and their two children were also there. The men kicked down the door, entered and searched the house for around 30 minutes, and asked her about her husband by name. When she answered that she did not know where he was, the men beat her, breaking her nose and a tooth, then dragged her into a car.

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<sup>105</sup> Article 154 of Iraq’s Code of Criminal Procedure allows the prime minister to issue a special pardon of convicted prisoners if the complainant (the victim or victim’s representative) is willing to dismiss charges against the accused person. Where the complainant is “unknown,” as is the case in all cases based on secret informant testimony, accused persons are ineligible for pardon because there is no complainant to officially dismiss the complaint.

<sup>106</sup> Human Rights Watch interview with Duaa Khazal Hamoudi, Shaaba Khamsa detention facility, Baghdad, March 1, 2013.

“They didn’t let me dress or put on my *abaya*,” Duaa said. “They just took me away. But they didn’t take me to a police station or a military facility. They took me to a place that they called a secret investigations unit, but to me it looked like a house.” Duaa said that six of the men kept her and her brother in this facility for 28 days. They tied Duaa to a staircase and repeatedly beat and tortured both her and her brother while interrogating them about five murders that Duaa’s husband, who had formerly been an officer in Saddam Hussein’s Republican Guard, allegedly committed.

“They would only ask me about [my husband], saying ‘Why did he kill so-and-so? Was it for sectarian reasons?’” Duaa said. “They told me, ‘We can slaughter you and we’ll bury you and no one will know.’ Is it my fault I married someone who was an officer in Saddam’s time?”

Duaa recounted how the men summoned her every day at 4 a.m. and tied her to a staircase to interrogate her. “One day they would spit on me, another day they would take a hose, put a stick in it, and beat me on the bottom of my feet. They sprayed water on me when I fainted. I still can’t walk straight from the *falaqa*,” Duaa said.

Duaa said that six men would “take turns” beating her. “They tried to make me stand up and walk straight,” she said, “and when I couldn’t, they beat me more.” Duaa said that at another point, the torturers offered her freedom in exchange for sex: “Eight of them were in the room, and they told me they would give me an apartment in Karrada and set me free” if she would have sex with them, she said. When she refused, they threatened to arrest her other brother and sister, compelling her to fingerprint a prepared confession that Duaa, who is illiterate, could not read.

They would receive a phone call and start writing [the confession]. I told them I didn’t know that my husband had murdered anyone and that it wasn’t my fault, but after 28 days [of abuse], I would have confessed to slaughtering my own family. I told them, “Okay, I killed the whole world!”

After the men tortured her in front of her brother, he signed a confession, and was later also sentenced to death for participating in the murders, but his sentence was later reduced to five years in prison for reasons Duaa did not know.



Duaa said that the officers then took her to an investigative judge in Baghdad's Central Criminal Court.

Before they took me to the judge's room, they told me, "We will get your brother, your whole family, and especially remember you have sisters." Just before we went to the court, the one named Alaa Abu Safa told me, "I will get you executed. And if I don't, I'm not an officer."

One of the officers who had interrogated her and a court-appointed lawyer she had not seen before were present at the hearing. A judge issued an order renewing her detention, she said.

The officials then took her back to the place they had been holding her. Two days later, she said, "A colonel named Khalid came, and when he saw me there, got furious, demanding that they take me out of there." On December 28, 2005, they transferred her to Baghdad's central prison for women, which at the time was in Kadhimiyya. At her trial hearing, on June 31, 2006 Duaa, her brother, and her brother-in-law were all convicted of aiding murder under articles 47, 48, and 49 of the penal code and sentenced to death in a single sitting that lasted no more than 10 minutes, according to Duaa. Duaa remembered the articles of the penal code, but Human Rights Watch was unable to obtain a copy of the verdict.

Her lawyer tried to speak at the trial, she said, but the judge told him to "shut up." When the judge read out her confession, Duaa learned that she had "confessed" to acting as a lookout for her husband as he murdered five people and helping him to carry and bury bodies, although no evidence was presented at her trial other than this confession.

Her brother and brother-in-law both testified at trial that Duaa "stayed at home all the time" and had no involvement with any crime her husband may have committed. Duaa claims investigators found no evidence linking her, her brother, or her brother-in-law to any crime, and that they were convicted based on confessions coerced under torture. In 2007, when Duaa was still detained in Kadhimiyya, then-Vice-President Tariq al-Hashimi visited her in prison and filmed her making a statement about the irregularities of her case.

Four months after her trial, an appellate judge in Baghdad’s central criminal court confirmed her sentence. She did not have a lawyer at this or subsequent appeals, she said. Duaa said that she has been to 10 court hearings since her initial detention, but was unsure of each of the hearings’ significance. In each one, she said, the judge read out her name, her conviction and her sentence, and then the hearing ended. She did not have the opportunity to speak and has not had a lawyer at any of these subsequent proceedings. She was transferred to death row on June 10, 2009.

“For the past nine years I have been in prison,” Duaa said.

My son doesn’t recognize me and my daughter won’t come see me. My father was in a wheelchair and died shortly after they arrested me. They ruined my reputation and the reputation of my family, because I married a man who was an officer in Saddam’s time.

Duaa said that her family was forced to sell their house and possessions to pay for her lawyer, but that “a lawyer in Iraq is helpless—every time they try to speak they get shut up.” She said the officers who originally detained her repeatedly asked her mother for bribes to exact her release. She filed a complaint with the Human Rights Ministry, she said, and a woman named Amal Mustafa from the ministry came to visit her to record her complaint, but she was not aware of any result. After that, she said, other detainees warned her not to file further complaints because it could trigger “resentment” and accelerate her execution. “Even my lawyer told me to stop filing complaints,” she said, “He said it was dangerous. If you complain against a captain, he becomes a general—so what’s the use?”

Duaa said that 40 days prior to her interview with Human Rights Watch, a “judges’ committee” visited the death row facility, took the prisoners’ names, and asked them whether they had been tortured in detention. “After eight years they’re asking me for marks of torture?” said Duaa.

Of course they will not find marks and of course nothing will be proved. All I want now is to speak out. Why, when someone does something bad, does

the wife get punished? With this government we are powerless. All we have is our tears.

Duaa said she did not know why her sentence had not yet been carried out, while other women had been executed during her time on death row.

### **Safaa Abdelrahim Ahmad and Ruqaya Abbas Ahmad Jaafari**

On December 28, 2008, about 30 security forces from a police regiment in Najaf arrested Safaa Abdelrahim Ahmad, 29, from her home in Mahmoodeya, a large town on the southern edge of Baghdad province that was an epicenter of sectarian warfare in 2006 - 2008. The security forces detained Safaa in her home overnight with her four young children and questioned her about the whereabouts of her sister's fiancé, Hossam.

They then took her to the regiment's Najaf headquarters about 130 kilometers south of Baghdad where security forces blindfolded her and kept her alone in a room in her "underclothes" from 5 a.m. until 1 p.m., when they brought her into a room full of officers who tied her hands and feet "so tight they were turning blue," took her gold jewelry, and beat her. According to Safaa, an officer said, "She is beautiful, who wants to take her home?"

When Safaa's mother, Ruqaya Jaafari, 51, came to Najaf to secure her release, security forces arrested Ruqaya and two of Safaa's sisters, Sabah and Nebraz, and detained them together with Safaa for three months and seven days without allowing them to see a lawyer. Police accused all of them of participating in a kidnapping and murder that Safaa's sister's fiancé Hossam allegedly committed, despite the fact that the victim's wife told police that Safaa and her family did not commit the crime, Safaa said.

Ruqaya said she offered to try to help the police locate Hossam if they released Safaa and the rest of her family. "The officer told me, 'I have nothing against you or your family. Just bring me 11 daftar (\$110,000) and I'll set you free. If you can't pay, I'll charge you with terrorism...and you'll get death sentences,'" said Ruqaya.

During the three-month period, security forces held Ruqaya, Safaa, Sabah, and Nebraz; they beat and sexually assaulted them, according to Safaa and Ruqaya. "They beat me on my feet, beat me with a chain on my arm, and hit me on my face with a ring," Ruqaya said. "I tried to stop him from [raping] my daughters and he shoved my head against a wall."

Safaa said that officers sexually abused her during interrogation.

They used a thick black tube they called the “donkey.” They beat me with it and inserted it into my vagina. They chained me to a bed and threatened to rape me with their dogs. They asked me how I had sex with my husband and made me dance with them.

On January 21, 2009, officers forced Safaa and Ruqaya, who are both illiterate, to sign papers that they could not read. “We didn’t know what was written on them,” said Ruqaya, “but the officer said that if we signed them he would let us go.” On January 28, 2009, officers brought the women an investigative judge in Najaf. One of their interrogators was present in the courtroom, and they did not have a lawyer, they said.

“The judge read out some fabricated charges, and then [charged us],” said Ruqaya. Officers then took the women back to the regiment headquarters in Najaf. On April 7, 2009, they were transferred to Karbala prison, while Sabah was transferred to the juvenile facility in Baghdad and Nebraz was transferred to the Baghdad women’s facility. The next court hearing that they attended was held in Karbala on October 21, 2009, when a judge convicted all four women of four counts of murder under article 406 of the penal code, on the basis of confessions that they signed.

The court sentenced Safaa and Ruqaya to death, and handed down life sentences to Sabah and Nebraz. On appeal, the charges against all four women were converted to terrorism under article 4. Safaa and Ruqaya have been detained on death row since November 7, 2009. Nebraz remains in Site 4, and Sabah remains in the juvenile detention facility in Karrada.

The women were represented by a lawyer, but he “was working for them, not us. We paid him 13 million Iraqi dinars [\$11,300] but he said nothing at trial,” Ruqaya recalled.

Safaa and Ruqaya said that a prison guard raped Nebraz, Ruqaya’s younger daughter, in prison in Karbala and that officers took Sabah and Nebraz for blood tests on December 18, 2009, which showed that Nebraz was pregnant. They filed a complaint with internal affairs in prison in Karbala, they said. A judge came to the prison to investigate the complaint, and when he learned her last name was the name of a large Sunni tribe—he said “Oh, so

you're a terrorist." The women say they no longer have a lawyer because they cannot afford one. "God is our lawyer now," said Ruqaya.

### **Noura Hadi Karim**

Intelligence officers detained Noura Hadi Karim, 51, in 2009 on the basis of testimony provided by a secret informant, who accused her of kidnapping and selling children, which she believed was retribution for a personal dispute.

Noura said that police officers from the Salheya police station arrested her while she was walking in the street and did not show her a warrant.<sup>107</sup> Over the next several days, they questioned her from midnight to 6 a.m., repeatedly asking her if she kidnapped children or helped another woman to sell children. Noura said that officers tortured her every night for four days.

Every night they would take me, electrocute and beat me. They even ripped my nails from my toes. I have blood clots in my legs from the beatings and I still have scars on my head [shown to a Human Rights Watch researcher].

Noura said that one of the officers interrogating her demanded US \$40,000 for her release.

He told me, "As soon as you give us this, we'll get you out. If you don't pay, you'll hang." He told me that he had my daughter and that they were "doing what they wanted" with her, so I told him to write whatever he wanted and I'd sign it.

Officers "wrote up papers" and forced her to fingerprint them on each of the 12 days that they detained her, said Noura, who is illiterate. She understood that the papers, comprising "many, many sheets of paper full of writing," were a confession, but said that officers did not explain or read it to her. On the 12th day of her detention, officers took Noura to an investigative judge in the Central Criminal Court. Noura said she never actually saw the judge. Officers gave her "confession" to the judge, and she does not know what happened during the hearing, but security officials told her that a judge charged her with

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<sup>107</sup> Human Rights Watch interview with Noura Hadi Karim, Site 4 detention facility, Baghdad, February 28, 2013.

kidnapping under article 421 of the penal code, apparently on the basis of the secret informant testimony and her coerced confession, she said.

Noura said that officers took her to Alweya hospital before taking her to prison, where a female doctor gave her a pregnancy test.

I told her my husband was dead, but [officers] told her to check and see if I was pregnant. I told her they tortured me, but she just gave me a pregnancy test and then they took me here.

Security officials then transferred her from the hospital to the Site 4 detention facility, where she remains in detention. “They had to carry me in [to Site 4] on a blanket” because she was unable to walk due to the abuse she sustained during interrogations, she said.

In 2010, Noura said, officers charged her with having a false ID, but the charge was dismissed when the judge saw that the ID she was accused of falsifying was dated 2010, one year after she had already been in detention. When Human Rights Watch spoke with her she was not aware of the progress of the case against her for her alleged participation in kidnapping, or when she should next appear in court. She said she has never met with a lawyer.

## **Iraqi Law Prohibiting Torture**

Iraq’s Constitution, under article 37 (c), prohibits “all forms of psychological and physical torture and inhumane treatment.”<sup>108</sup> Article 37 also states, “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.”

Article 127 of Iraq’s Code of Criminal Procedure bans the use of “any illegal methods to influence the accused and extract a confession” and states that “mistreatment, threatening to harm, inducement, threats, menace, psychological influence, and the use of narcotics, intoxicants and drugs are all considered illegal means.”<sup>109</sup>

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<sup>108</sup> Constitution of Iraq, Jan. 30, 2005, <http://gjpi.org/wp-content/uploads/2009/01/agreed-final-english-translation-of-constitution-25-jan-2006.doc> (accessed August 21, 2013).

<sup>109</sup> Iraq Code of Criminal Procedure, Law 23 of 1971, article 127, <http://gjpi.org/2009/04/25/criminal-procedure-code-23-of-1971/> (accessed June 29, 2013).

Article 333 of the Penal Code criminalizes the actions of any public official or agent who tortures or orders the torture of a person accused of a crime, witness, or informant in order to compel a confession and provides for criminal liability for torture or other instances of abuse in custody, stating that “any employee or public servant who tortures, or orders the torture of an accused, witness, or expert in order to compel that person to confess to committing a crime, to give a statement or information, to hide certain matters, or to give a specific opinion will be punished by imprisonment or detention. The use of force or threats is considered to be torture.”<sup>110</sup>

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<sup>110</sup> Iraq Penal Code, Law 111 of 1969, article 333, <http://gjpi.org/2009/04/12/penal-code-111-of-1969/> (accessed June 29, 2013).

## IV. Substandard Conditions in Women's Prisons

### Overcrowding

Reports issued by UNAMI, the parliamentary Human Rights Committee, and the Ministry of Human Rights all note that overcrowding is a major problem in Iraq's prisons generally.<sup>111</sup> Deputy Prime Minister Hussein al-Shahristani told Human Rights Watch that prior to December 2012, large numbers of male and female suspects were illegally held for prolonged periods in facilities run by the Interior and Defense ministries due to overcrowding in prisons administered by the Justice Ministry.<sup>112</sup>

All 14 women we interviewed in the Rusafa complex (Site 4) in Baghdad's Central Prison for Women said the facility was extremely overcrowded. "When they took me into the prison, all the women started shouting, 'No, not another one! There's no room!'" said Sabeha Ezz al-Din, who was detained in Site 4 for two months on suspicion of terrorism charges.<sup>113</sup> The warden at Site 4 told Human Rights Watch that 350 women were detained at the facility, but did not provide numbers disaggregated by charge and by the number of women convicted versus those pending trial.<sup>114</sup>

Women inside Site 4 gave estimates of between 500 and 800 women detained in the facility, which was built to hold 250 prisoners.<sup>115</sup> Five former Site 4 detainees, three of whom were transferred to Shaaba Khamsa two weeks prior to our February 2013 visit,

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<sup>111</sup> UNAMI Report on Human Rights in Iraq: July – December 2012, June 2013, [http://www.ohchr.org/Documents/Countries/IQ/HRO\\_July-December2012Report.pdf](http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2012Report.pdf), pp. 6 – 7 (stating: "The MoJ has embarked on a reorganization of its prisons throughout Iraq...Despite these improvements, some prisons visited by UNAMI under the authority of the MoJ remain overcrowded and suffer from poor infrastructure"); "Report on Women Prisoners and the Violations to which They are Exposed," Human Rights Committee of the Iraqi Council of Representatives [Parliament] Report No. LH652, December 3, 2012; Iraq Ministry of Human Rights, "Annual Report on Conditions in Prisons and Detention Facilities, 2012," <http://www.humanrights.gov.iq/PageViewer.aspx?id=159> (accessed May 23, 2013).

<sup>112</sup> Human Rights Watch interview with Deputy Prime Minister Hussein al-Shahristani, Baghdad, February 14, 2013. Shahristani said that his committee, tasked with responding to protestors' demands, "realized this was happening, and we told the officials in those ministries, no, it's better to have them in overcrowded prisons than held illegally, and so we transferred them."

<sup>113</sup> Human Rights Watch interview with Sabeha Ezz al-Din, Baghdad, February 14, 2013.

<sup>114</sup> Human Rights Watch interview with Ibtihal, warden of Site 4 detention facility, Baghdad, February 28, 2013. A parliamentary Human Rights Committee report states that the facility was designed to hold 350 detainees. Human Rights Committee of the Iraqi Council of Representatives [Parliament] Report No. LH652, December 3, 2012.

<sup>115</sup> Dr. Saad Maan Ibrahim al-Mousawwi, "*Al-Television wa Thaqafat Huquq al-Insan fi al-Sujun al-Iraqiyya* [Television and the Culture of Human Rights in Iraqi Prisons]," p. 109, Anaas Printing and Publishing 2012. Dr. General Saad Maan is the spokesperson for Iraq's Interior Ministry.



estimated 600-700 women were detained in Site 4.<sup>116</sup> Human Rights Watch was unable to determine the prisoner census at the time of our visit.

Fatima Hussein said she was shocked by how many women were detained at the facility.

When they first brought me in, I thought, this is not bad, compared to what I had been through. But when I got in discovered a whole city of women inside. I said to the women there, are you kidding me?<sup>117</sup>

Women's testimonies indicated that the overcrowding in the prison was due in part to women being detained for long periods without trial, or not being released after they had served their sentences. Fatima said some women she met in Site 4 had been there for as many as 10 months without trial.

I met one woman, called Um Muhammad Sawareekh ["rockets"] because she was charged with firing a missile. She had a release order dated years prior and still hadn't been released.<sup>118</sup>

Women at the Shaaba Khamsa death row facility, housed in the Camp Justice compound in Kadhimiyya, also complained of overcrowding. Nour, the warden at Shaaba Khamsa, said that while the facility's maximum capacity was 25 women, there were currently 36 women detained there, plus children detained with their mothers.<sup>119</sup>

## Lack of Adequate Health Care

The state has not properly allocated resources to provide adequate physical and psychological health care to women in detention. All of the women we interviewed said that they had never seen a mental health professional in prison. The warden told Human Rights Watch that the facility has an obstetrician/gynecologist on site, but only two of the

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<sup>116</sup> Human Rights Watch interview with Fatima Hussein, Baghdad, February 13, 2013; Human Rights Watch interview with Sabeha Ezz al-Din, Baghdad, February 14, 2013; Human Rights Watch interviews with Israa Salah, Nesrin Najim Emad and Marwa Qassem Tamim, Shaaba Khamsa detention facility, Baghdad, March 1, 2013.

<sup>117</sup> Human Rights Watch interview with Fatima Hussein, Baghdad, February 13, 2013.

<sup>118</sup> Ibid.

<sup>119</sup> Human Rights Watch interview with Nour, Shaaba Khamsa detention facility, Baghdad, March 1, 2013. The warden of the male death row facility the overcrowding problem had reached overwhelming proportions. A staff member of a foreign embassy, who requested anonymity because he does not have authority to speak on the subject said that he had visited the facility and that, while there was officially space for 300 prisoners, the death row currently held 730 prisoners.

women detainees whom we interviewed said they been examined by an obstetrician/gynecologist in Site 4.<sup>120</sup> Some women detained there said they believed that an obstetrician/gynecologist visited Site 4, but that they were not notified when she was at the prison and had not had an opportunity to see her.<sup>121</sup>

Of the seven women we interviewed at Shaaba Khamsa, none had seen an obstetrician/gynecologist. Girls sentenced to death are held in the Karrada juvenile detention facility until they turn 18, the minimum age under Iraqi law for execution, then transferred to death row. Children under the age of four are kept with their mothers in prison—including in the death row facility—and once they turn four are transferred to state care.<sup>122</sup>

Two of the women we interviewed said they depended on their relatives to bring them food and medicine they needed for long-standing illnesses.<sup>123</sup> Ibtihal Ahmad, 70, said. “I have to get my family to bring in special food and medicine because the prison can't or won't provide it, I don't know which.” Some detainees said the prison administration at Site 4 had refused to allow their families to bring food, medicines, clothes, and feminine hygiene products.<sup>124</sup>

Four women said that although prisons have scheduled doctor visits, detainees were rarely treated inside the hospital and could not see doctors for follow-up care.<sup>125</sup> Several women in Site 4 and in Shaaba Khamsa complained that they had difficulty seeing a doctor because the prison administration adhered to a strict schedule alternating visits between the patients, regardless of their medical condition. One woman in Site 4, Hanan al-Fadl, said, “Even if you are dying, if it's not your turn you can't see a doctor.”<sup>126</sup>

Nadia Ali Abdullah said that she was treated for her cancer in 2010 in India, but she was unable to return there for a follow-up visit in 2012 due to her incarceration.<sup>127</sup> In prison, her family brings her special food and the medicine she needs to treat her cancer—prescribed

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<sup>120</sup> Human Rights Watch interview with Ibtihal, warden of Site 4 detention facility, Baghdad, February 28, 2013; Human Rights Watch interviews with Hanan al-Fadl, Site 4 detention facility, Baghdad, February 28, 2013; Human Rights Watch interview with Sabeha Ezz al-Din, Baghdad, February 14, 2013.

<sup>121</sup> Human Rights Watch interview with Israa Salah, Shaba Khamsa detention facility, March 1, 2013; Human Rights Watch interview with Fatima Hussein, Baghdad, February 13, 2013.

<sup>122</sup> Human Rights Watch interview with Nour, Shaaba Khamsa detention facility, Baghdad, March 1, 2013.

<sup>123</sup> Human Rights Watch interviews with Ibtihal Ahmad and Nadia Ali Abdullah, Site 4 detention facility, Baghdad, February 28, 2013.

<sup>124</sup> Human Rights Watch interviews with five detainees, Site 4 detention facility, Baghdad, February 28, 2013.

<sup>125</sup> Human Rights Watch interviews with four detainees, Site 4 detention facility, Baghdad, February 28, 2013.

<sup>126</sup> Human Rights Watch interview with Hanan al-Fadl, Site 4 detention facility, Baghdad, February 28, 2013.

<sup>127</sup> Human Rights Watch interview with Nadia Ali Abdullah, Site 4 detention facility, Baghdad, February 28, 2013.

in India, it costs 500,000 Iraqi Dinar (\$435) every 15 days, she said. Nadia insisted that she has not been taken to a hospital since being jailed and did not have access to specialist medical treatment. “I have seen a doctor here but I haven’t seen an oncologist since I’ve been in prison and no doctor has ever done a [test] to determine how my cancer is,” she said.<sup>128</sup>

Israa Salah told Human Rights Watch that doctors, including a gynecologist, had started visiting Site 4 more regularly after demonstrations protesting security forces abuses and ill-treatment of women in prison started in December 2012 and before her transfer in mid-February 2013, but she was not able to confirm whether such visits were ongoing. “Here [at Shaaba Khamsa], the only medical treatment we receive is paracetamol,” said Israa, referring to a mild analgesic.<sup>129</sup>

Hanan al-Fadl, in Site 4, said in February 2013 that she had been treated for cancer years prior and was in remission. She sent a text message to an Iraqi human rights activist on May 3, 2013, saying that wardens had put her in solitary confinement and were denying her food, and begged the activist to send her food with women in their *abayas*. “I feel I am going to die from hunger,” she said, “and you all know my health situation.”<sup>130</sup>

Um Aqil, an employee at Shaaba Khamsa, told Human Rights Watch in December that there had not been a kitchen at the facility for six months, and that as a result food was scarce and what food was available was “inedible.”<sup>131</sup>

## Impact of Executions on Detainees

The worst aspect of the Shaaba Khamsa facility, Um Aqil said, was that the hall where women and their children are kept is in earshot of the location where prisoners are hanged. “They are right next to this hall, so they hear the clicking of the trap door when someone is hanged,” she said. Men and women are executed in the same location, and men are usually executed first on the days when the executions take place, so the women in the hall know that on that day “someone’s turn has come, but they do not know who,” she said. “They give them no advance notice, just take them two or three at a time and kill them. They wait their turn in the room—[the other inmates] see it happen.”

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<sup>128</sup> Ibid.

<sup>129</sup> Human Rights Watch interview with Israa Salah, Shaba Khamsa detention facility, Baghdad, March 1, 2013.

<sup>130</sup> Text message correspondence from Hanan al-Fadl to local rights activist, viewed by Human Rights Watch, Baghdad, May 3, 2013.

<sup>131</sup> Human Rights Watch interview with Um Aqil, Baghdad, December 16, 2012.

Um Aqil said that of the 31 women detained in Shaaba Khamsa in December 2012, 16 still had appeals pending. Some women remained on death row for upwards of six years, while others were executed immediately, she said. “Some of the victims’ families are always asking about when [the prisoner will be executed],” she said. “If the victim’s family has *wasta* (connections), the prisoner is executed at once. If not, they’ll be on death row for years.” Both she and Nour, the warden in Shaaba Khamsa, said that the Prime Minister’s Office sends orders for who is to be executed at a particular time.<sup>132</sup>

Um Aqil told Human Rights Watch that the opacity and unpredictability of executions and the proximity of women’s living quarters to the gallows have devastating effects on inmates’ psychological health.<sup>133</sup> Several women in Shaaba Khamsa said the uncertainty around when they will be executed and the proximity of their living quarters to the gallows heightened the atmosphere of fear and hopelessness in the facility.

Nesrin Najim Emad, detained in Shaaba Khamsa since January 2013, said that she had become depressed and suicidal since she was transferred to Shaaba Khamsa.<sup>134</sup> “Every time an execution takes place we can hear it, and it’s making us crazy,” she said. “We don’t have doctors here to help us.” She does not have access to psychiatric care, she said. “Now that my brother is dead, no one comes to visit me on visiting day,” said Nesrin. “Why are they keeping us here like this? They should just kill us.”

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<sup>132</sup> Human Rights Watch interview with Um Aqil, Baghdad, December 16, 2012; Human Rights Watch interview with Nour, Shaaba Khamsa detention facility, Baghdad, March 1, 2013. Nour, the warden of Shaaba Khamsa, said she receives the directives from the prime minister’s office.

<sup>133</sup> Human Rights Watch interview with Um Aqil, Baghdad, December 16, 2012.

<sup>134</sup> Human Rights Watch interview with Nesrin Najim Emad, Shaaba Khamsa detention facility, Baghdad, March 1, 2013.

## V. Government Responses to Allegations of Abuse

In December 2012, two months after a local NGO reported that security forces regularly mistreat women during arrest, interrogation, and detention, Iraq's parliament held a special session to discuss alleged abuses of women in prison. Parliamentarians called on the government to investigate, as did other government officials.<sup>135</sup> In late December, anger in Sunni areas over government security forces' arrest of 10 bodyguards of Finance Minister Rafi al-Essawi and the mistreatment of detainees, particularly women, spread to the streets. On December 25, demonstrations began throughout Sunni-majority provinces, calling on the government, as a chief demand, to release female prisoners and apologize for abuses against them.

In response, Prime Minister al-Maliki announced on January 8, 2013 that he had established a committee to investigate allegations of abuse against female detainees ("Committee of the Wise"), and that other committees would address protesters' other demands, including illegal and prolonged detentions, the disproportionate use of the Anti-Terrorism Law against Sunnis, and other criminal justice issues.

Government officials heading these committees pledged that all detainees would be brought before investigating judges within 24 hours of arrest as Iraqi law requires; that the government would end the use of testimony by secret informants as the sole basis for convictions; and that authorities would transfer female detainees, many of whom were detained too far from their families to receive visits, to their home provinces to serve their sentences.

On February 3, Deputy Prime Minister Hussein al-Shahristani, whom Maliki tasked to negotiate with protestors, announced the government had released over 3,000 detainees, including some women, and made an unprecedented apology to those who had remained in detention despite having never been charged or having received judicial release orders years earlier.<sup>136</sup>

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<sup>135</sup> Human Rights Watch interview with Salim al-Jibbouri, head of parliamentary Human Rights Committee, Baghdad, December 14, 2012; Human Rights Watch interview with Hamid al-Mutlak, member of parliamentary Security and Defense Committee, Baghdad, December 17, 2012.

<sup>136</sup> Middle East Online, "Iraq protesters win first demand: Release of 3,000 prisoners," February 3, 2013, <http://www.middle-east-online.com/english/?id=56773> (accessed May 24, 2013).

Government officials and others gave conflicting statements to Human Rights Watch about how many detainees had been released and under which procedures. Human Rights Watch could only confirm that at most the government released 50 women who had been detained illegally, in some cases despite judicial orders for their release, Maliki issued a pardon for some detainees and governmental ad-hoc committees facilitated the release of a small number of others. As far as Human Rights Watch is aware, Maliki has not ordered investigations into allegations that women were illegally detained or abused in interrogation. Numerous officials, including the human rights and justice ministers, the Interior Ministry spokesperson, and the prime minister himself, have denied claims of serious and systematic abuses against women.

### **Government Responses to Claims of Illegal Arrests and Torture**

Iraqi officials who spoke to Human Rights Watch all dismissed claims of torture and abuse as exceptional or denied them altogether. Some stated that such instances were not the fault of the current government but carry-over practices from Saddam Hussein's time. Iraq is still in a "transition from dictatorship," one parliamentarian said.<sup>137</sup> Other officials characterized women detainees who alleged they were tortured as liars.<sup>138</sup>

Some officials justified circumvention of Iraqi laws and detention procedures because of Iraq's instability. "We have a terrorism problem, which requires the government to take harsh measures," said Sami al-Askari, a parliamentarian and member of Maliki's Dawa party. "National security law is different from normal laws. That's why the majority of people detained are not people who have already been convicted."<sup>139</sup>

General Muhammad, head of the Interior Ministry's human rights directorate, told Human Rights Watch the ministry was "making efforts" to move most investigation procedures from security officers to investigative judges, as required by Iraq's Code of Criminal Procedure.<sup>140</sup> These changes were intended to combat the occurrence "individual

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<sup>137</sup> Human Rights Watch interview with Hanan Fatlawy, parliamentarian, Baghdad, February 20, 2013; Human Rights Watch interview with Sami al-Askari, Baghdad, May 11, 2013; Human Rights Watch interviews with General Muhammad and Saad Maan, Interior Ministry, Baghdad, February 24, 2013 (calling any instances of security forces abuses "exceptional" and blaming holdovers from Saddam Hussein's regime).

<sup>138</sup> Human Rights Watch interview with Ibtihal, Site 4 Warden, Baghdad, February 28, 2013; Human Rights Watch interview with Mohamed Shia Sudani, Human Rights Minister, Baghdad, February 18, 2013; Human Rights Watch interview with Justice Minister Hassan al-Shimmari, Baghdad, February 14, 2013.

<sup>139</sup> Human Rights Watch interview with Sami al-Askari, Baghdad, May 11, 2013.

<sup>140</sup> Human Rights Watch interview with General Muhammad, Interior Ministry human rights directorate, Baghdad, February 24, 2013.

instances” of abuse of detainees, he said. “If mass arrests happen, they are performed highly professionally and with respect, and when this happens, it happens only for a few hours, and only those who carry guns, and eyewitnesses.... We don’t arrest just anybody.”<sup>141</sup> He and others denied that abuse of women detainees is widespread.

Aqil Tarahy, inspector general of the Interior Ministry, told Human Rights Watch that instances of abuse of detainees were “only limited, individual cases, not systematic.”<sup>142</sup> He said, “We need time to progress from where we were before, which was a total absence of human rights culture—a lot of people don’t understand what that means. Saddam created monsters, and some of these monsters still work in our ministries.”<sup>143</sup>

General Muhammad and the ministry’s spokesperson, General Saad Maan, insisted that the ministry investigates allegations of torture. They said that if the incident is proven, the implicated officer is “submitted to the judicial system.”<sup>144</sup> The Interior Ministry’s human rights directorate, they said, probes whether every detainee has a detention warrant that was extended and renewed properly, whether the detainee was able to make contact with his family, knew the charges against him or her, has seen a judge, or has complained of being tortured. Inspectors also examine the quality of detainees’ food and their access to sufficient sunlight, medical care, and family visits, they said.

Interior Ministry officials could not provide documentation of any case of an official who had been prosecuted and convicted of torturing a detainee. Inspector General Tarahy told Human Rights Watch that “about 19 officers and policemen have been sent to the courts” for abuses against detainees in 2012, but that “whether or not they have been convicted is up to the courts.”<sup>145</sup> General Muhammad said he did not know the last time an officer had been prosecuted for human rights violations.<sup>146</sup>

General Muhammad said in one case a detainee told an inspector in November 2012 that an officer had tortured him, and that the human rights directorate was still waiting for the

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<sup>141</sup> Ibid.

<sup>142</sup> Human Rights Watch interview with Aqil Tarahy, Inspector General of the Interior Ministry, Baghdad, February 21, 2013.

<sup>143</sup> Ibid.

<sup>144</sup> Human Rights Watch interviews with General Muhammad and Saad Maan, Interior Ministry, Baghdad, February 24, 2013.

<sup>145</sup> Human Rights Watch interview with Aqil Tarahy, Inspector General of the Interior Ministry, Baghdad, February 21, 2013.

<sup>146</sup> Human Rights Watch interview with General Muhammad, Interior Ministry human rights directorate, Baghdad, February 24, 2013.

medical report in February 2013.<sup>147</sup> In the meantime, he said, the officer against whom the complaint was issued had been transferred to another facility. In general, he said, if a detainee complains of his or her treatment, “the tortured person submits evidence and the accused person submits evidence, and they should both have lawyers, and the inspector general will investigate. If a person can prove this in front of the investigative judge, then we will start an investigation in this office.”<sup>148</sup>

Tarahy told Human Rights Watch that the Interior Ministry has an “open door policy, with hotlines to file complaints with the director of internal affairs and the inspector general,” and that the ministry conducts “field visits to police stations and in the field to ask questions of citizens.”<sup>149</sup> In February, Human Rights Watch submitted a formal request to the general inspector’s office for statistics on these investigations and the results but has not received a response.

The warden at Site 4 told Human Rights Watch that numerous accountability measures were in place to identify women who were abused before their transfer to prison, that violators are held accountable and that she and the rest of the prison staff strictly adhere to intake measures:

When women come here, there should be an arrest warrant, a copy of the original judicial decision, an ID and the inmate’s information sheet and family history. The detaining agency sends all this information to the *hassaba* department [the Justice Ministry department that maintains a register of admissions and releases] and to general admission and a picture is taken to ensure the inmate is identifiable.<sup>150</sup>

The warden emphasized that the state is required to carry out medical procedures before she admits a woman to the prison.

The patrol that brings the woman here must take her to the hospital first, then bring her medical report with her here. It must be from a government

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<sup>147</sup> Human Rights Watch interview with General Muhammad, Interior Ministry human rights directorate, Baghdad, February 24, 2013.

<sup>148</sup> Ibid.

<sup>149</sup> Human Rights Watch interview with Aqil Tarahy, Inspector General of the Interior Ministry, Baghdad, February 21, 2013.

<sup>150</sup> Human Rights Watch interview with Ibtihal, Site 4 detention facility, Baghdad, February 28, 2013.



hospital and it must be from the day of admission. If the medical report is dated two days ago I won't accept her. The report should say whether she is pregnant, was tortured, or had an operation. The girl should see a gynecologist and have an ultrasound to clarify whether she is pregnant. That way she can't later claim she was raped by the prison administration and try to frame the prison.<sup>151</sup>

The warden claimed that she herself "personally physically inspected" every woman upon admission to ensure she had not been abused prior to arriving.

If the inmate claims she has been raped or tortured, I file a complaint to the Attorney General and the judiciary. I check women's bodies for torture marks. No one has ever said that they were raped or tortured when I admitted them. Sometimes, six or seven months after they've been here, they start talking. But even then I don't hear it from her, I hear it from whatever human rights organization she's been talking to. Then I file a complaint.<sup>152</sup>

According to the warden, the complaints she forwarded on behalf of prisoners were usually heard by an investigative committee from either the Supreme Judicial Council or the Interior or Defense ministries. She was unclear about which situations would give rise to each of these bodies' conducting an inspection. The warden said that most inmates' claims of abuse were lies.<sup>153</sup>

Former employees in the Defense Ministry told Human Rights Watch that inspectors general in the Interior and Defense ministries acted as an independent check on security forces' behavior, but that these institutions are now aligned with the government and the agenda of the prime minister's office.<sup>154</sup> Two former employees described how the prime

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<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Human Rights Watch interview with (name withheld), former government employee, Baghdad, February 18, 2013. See also "Iraq: Detainees Describe Torture in Secret Jail," Human Rights Watch news release, April 27, 2010, <http://www.hrw.org/news/2010/04/27/iraq-detainees-describe-torture-secret-jail> (accessed May 20, 2013); "Iraq: Secret Jail Uncovered in Baghdad," February 1, 2011, <http://www.hrw.org/news/2011/02/01/iraq-secret-jail-uncovered-baghdad>; Ned Parker, "The Iraq We Left Behind: Welcome to the World's Next Failed State," *Foreign Affairs* Vol. 91 No. 2 March/April 2012, at 11 ("any investigator from the Human Rights Ministry or any official from any other government office who is brave

minister took control of Iraq's Human Rights Ministry in 2010 after the ministry exposed abuses at the Sur Ninewa (Muthanna airport) prison compound and probed the existence of a secret prison at Camp Honor in Baghdad's Green Zone.<sup>155</sup> Prime Minister Maliki appointed Dawa party member Muhammad Shia Sudani to head the Human Rights Ministry and the institution promptly stopped its aggressive probes into governmental conduct, they said. Several human rights inspectors who had been associated with the ministry's investigations into security organizations close to Maliki fled the country fearing reprisals.<sup>156</sup>

Human Rights Watch requested manuals that officials said governed the training of officers, interrogation procedures, a list of detention facilities and security forces, and investigation results from the Interior and Defense Ministries, but at time of writing had not received a response.

## Prisoner Releases

In February 2013, Deputy Prime Minister al-Shahristani acknowledged to Human Rights Watch that authorities had held detainees in prison after judges issued orders for their release.<sup>157</sup> He and the warden at the women's facility at Site 4 told Human Rights Watch that some detainees with judicial release orders have remained in prison for months or years because they lacked the necessary Interior Ministry approval to be released.<sup>158</sup>

Human Rights Watch was unable to confirm a single case in which the government compensated detainees for arbitrary detention, as required by international law.<sup>159</sup> He blamed the problem on administrative delays and said the waiting period procedure had been "cancelled," enabling the government to release thousands of detainees previously caught in an administrative black hole. Shahristani claimed that "there is no longer a single person in detention who has a judicial order for release."<sup>160</sup> Human Rights

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enough to try to probe the jails would face immediate persecution. Three investigators have already fled the country, and those remaining are terrified. One former Iraqi official who worked on human rights issues and left the country last year because he was afraid for his safety told me that Maliki and the Dawa Party were essentially free to carry out whatever they liked in their jails.").

<sup>155</sup> Human Rights Watch interview with (name withheld), former government employee, Baghdad, February 18, 2013; Human Rights Watch telephone interview with (name withheld), former government employee, Baghdad, July 13, 2013.

<sup>156</sup> Ibid.

<sup>157</sup> Human Rights Watch interview with Deputy Prime Minister Hussein al-Shahristani, Baghdad, February 13, 2013.

<sup>158</sup> Ibid; Human Rights Watch interview with Ibtihal, Site 4 detention facility, February 28, 2013.

<sup>159</sup> ICCPR art. 9(5) (stating: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.").

<sup>160</sup> Human Rights Watch interview with Deputy Prime Minister Hussein al-Shahristani, Baghdad, February 13, 2013.

Watch documented that at least three women were in prison at the time despite having judicial orders for their release.<sup>161</sup>

A number of the officials, community leaders, and lawyers working with the government committees tasked with overseeing prisoner releases expressed uncertainty as to the actual number of women released from prison after the prime minister's promised reforms, and gave widely varying accounts of the procedures by which the releases took place.

Amer Khuzaie, Minister of State for National Reconciliation, said in February that 37 women had been released.<sup>162</sup> That same week, a lawyer working with the “committee of the wise” on the release of women detainees said the number was “no more than 20.”<sup>163</sup> The warden for the Site 4 detention facility told Human Rights Watch on February 28:

[M]ost of the girls being held for article 4 [terrorism charges] are being released, if they haven't been a party to an explosion or killing. Until now more than 40 girls accused of article 4 have been released, and in total there have been about 90 releases from all over Iraq.<sup>164</sup>

On February 21, a lawyer working with the “Committee of the Wise” said that the committee had released 80 women, 30 of whom were charged with terrorism; all were Sunni, he said.<sup>165</sup> A legal adviser for the “Committee of the Wise” told Human Rights Watch that “90 per cent of female detainees have no legal basis for their arrest.”<sup>166</sup>

A parliamentarian from Anbar, one of the protest areas, said he did not know of anyone from Anbar who has been released. He added that “the women who are released are released on certain conditions: they don't talk about what happened to them in detention, especially bad treatment, torture, or rape. They are all too afraid of being arrested again to talk anyway—they all know they could be re-arrested at any moment.”<sup>167</sup>

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<sup>161</sup> Human Rights Watch interview with Sabah Hassan Hussein, Baghdad, February 14, 2013; Human Rights Watch interviews with (name withheld) and Zainab Hassan, Site 4 detention facility, Baghdad, February 28, 2013.

<sup>162</sup> Human Rights Watch interview with Minister of State for National Reconciliation Amer Khuzaie, Baghdad, February 26, 2013.

<sup>163</sup> Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 28, 2013.

<sup>164</sup> Human Rights Watch interview with Ibtihal, Site 4 detention facility, Baghdad, February 28, 2013. The warden referred to the detainees as “girls,” but all detainees in Site 4 are women over the age of 18.

<sup>165</sup> Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 21, 2013.

<sup>166</sup> Human Rights Watch interview with legal adviser [name withheld], Baghdad, February 18, 2013.

<sup>167</sup> Human Rights Watch interview with parliamentarian Jaber al-Jaberi, Baghdad, May 9, 2013.

In the same week that Shahrستاني said the waiting period procedure had been canceled, the warden of the Site 4 women’s detention facility told Human Rights Watch that “someone from high up” informed her there were new procedures for administering the waiting period procedure and that the background check to determine whether there were outstanding warrants for detainees should now start upon the detainee’s transfer into prison, rather than after they have obtained a judicial release order.<sup>168</sup> She stated unequivocally that the prison no longer held women beyond their sentences or beyond the time when they were granted a release order. On the same day, Human Rights Watch interviewed women in the prison who said that they had judicial orders for release but that security officers refused to release them until they or their family members paid bribes.

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<sup>168</sup> Human Rights Watch interview with Ibtihal, warden of Site 4 detention facility, Baghdad, February 28, 2013.

## VI. Shortcomings of the Legal System

Iraq's judiciary, rather than a site of accountability and justice, is instead a locus of further abuse. Like their military and police counterparts, judges selectively apply Saddam Hussein-era laws, and the penal and criminal procedure codes provide judges wide leeway in sentencing, allowing them to shield security forces from accountability. Human Rights Watch interviewed judges, Iraqi rights advocates, lawyers and government officials familiar with how Iraq's criminal justice system fails to protect citizens from abuses, particularly in terrorism-related cases.

Defense lawyers complained that judges ignore visible signs of physical abuse on women. Many women prisoners told Human Rights Watch that judges sentenced them on the basis of confessions obtained under torture, including sexual violence. "A women detainee cannot tell an investigative judge that she has been tortured," said one lawyer, who said that security officers threaten women with retaliation if they complain of abuse, and that judges are under pressure to hand down convictions.<sup>169</sup>

Executive interference, legal obstacles, corruption, and judges' reliance on coerced confessions and the testimony of secret informants when issuing arrest warrants and convictions are some of the key shortcomings those interviewed by Human Rights Watch raised.

### Executive Interference

The Maliki government gained de facto control over government bodies originally conceived to be independent, like the Integrity Commission (the government body charged with investigating governmental corruption and referring cases of corruption involving public officials to the judiciary) and the Supreme Court.<sup>170</sup>

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<sup>169</sup> Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 21, 2013.

<sup>170</sup> See Zaid al-Ali, "Iraq: Ten Years of Hubris and Incompetence," *Open Democracy*, March 22, 2013, <http://www.opendemocracy.net/zaid-al-ali/iraq-ten-years-of-hubris-and-incompetence> (accessed June 27, 2013); Toby Dodge, "Iraq's Road Back to Dictatorship," *Surviva*/vol. 54 no. 3, June–July 2012, pp. 147–168; Marisa Sullivan, "Maliki's Authoritarian Regime," *Middle East Security Report 10*, <http://www.understandingwar.org/report/malikis-authoritarian-regime> (accessed May 24, 2013).

The concentration of authority by the prime minister has created an environment in which powerful individuals exploit the judiciary to serve personal interests, rather than the judiciary acting as a locus of accountability.<sup>171</sup>

“The judiciary started to collapse in the middle of the last regime, when [Saddam Hussein implemented] the condition that you must be a Ba’ath party member to be a judge,” a former judge told Human Rights Watch.<sup>172</sup>

After the regime change, there emerged a new generation of judges based on political consensus between the parties, not qualifications. In addition, the formation of new courts, in particular the central criminal courts that specialize in trying people charged with terrorism, contributed to the problem.

Recently-appointed judges are not politically independent, he said. Other judges and lawyers told Human Rights Watch that certain judges, particularly investigative judges in Baghdad’s central criminal court, regularly violate suspects’ right to a fair trial because they are “politicized.”

One judge referred to a speech that Maliki gave at a Lawyers’ Syndicate conference on October 5, 2012.<sup>173</sup>

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<sup>171</sup> Joost Hiltermann, “Iraq: What Remains,” Middle East Report No. 266, <http://www.merip.org/mer/mer266/iraq-what-remains> (accessed July 13, 2013) (stating: “Among the relics of the occupation one would be hard put, however, to find strong evidence of the democratic system the Bush administration vowed to install. Institutions bearing names suggestive of transparency and accountability -- the Council of Representatives, the Integrity Commission, the Supreme Court, inspectors general -- exist but whatever independent powers they once were invested with appear to be draining away, leaving behind empty shells with operations strong on procedure but devoid of meaningful outcomes.... Maliki has adroitly used his almost seven years in power, but especially the past two years, to gut nascent independent institutions of their powers and bring them under his direct control.”); “Failing Oversight: Iraq’s Unchecked Government,” International Crisis Group, Middle East Report No. 113, September 26, 2011, <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/iraq/113-failing-oversight-iraqs-unchecked-government.aspx> (accessed Jul. 13, 2013) (stating: “One of the major causes of [Iraq’s] depressing state of affairs is the state’s failing oversight framework, which has allowed successive governments to operate unchecked. The 2005 constitution and the existing legal framework require a number of institutions – the Board of Supreme Audit, the Integrity Commission, the Inspectors General, parliament and the courts – to monitor government operations. Yet, none of these institutions has been able to assert itself in the face of government interference, intransigence and manipulation, a deficient legal framework and ongoing threats of violence.”).

<sup>172</sup> Human Rights Watch interview with former judge [name withheld], Baghdad, February 24, 2013.

<sup>173</sup> YouTube video of Maliki’s speech at Lawyer’s Syndicate Conference, October 5, 2012, [http://www.youtube.com/watch?feature=player\\_embedded&v=vUgAgd3OmZs](http://www.youtube.com/watch?feature=player_embedded&v=vUgAgd3OmZs) (accessed July 14, 2013), captioned “Maliki threatens any lawyer who represents someone accused of terrorism.” In the video Prime Minister Nuri al-Maliki states: “I praise and congratulate the lawyers who take a firm stand and refuse to represent terrorists, criminals and murderers. But

[Maliki] was angry, and said, “Why do you take cases of terrorists?” I could not believe it, because this is the most basic concept of criminal law, that a suspect is innocent until proven guilty. Many of us just looked at each other in surprise. [Federal Supreme Court Head] Medhat Mahmoud was there, [Chief Prosecutor] Judge Ghadhanfar was there, and many others, and none of them said anything. As judges, when we hear such things, we wonder if anyone in the government has any understanding of the concept of a state of law.<sup>174</sup>

Human Rights Watch interviewed several judges who have tried numerous terrorism cases; each alleged that some investigative judges commit serious violations of suspects’ due process rights because of their collusion with security officers and because of the considerable influence Maliki exerts over the judiciary.<sup>175</sup> One told Human Rights Watch:

We have judges who are completely outside legal procedure and are following political projects. There are four in particular, the most infamous, and their backing by the executive branch makes them almost invulnerable. It is not about the law, it is about people who dictate the rules, and what their moods dictate. These people are supported by a very powerful side, are feared by even the legal system, and work closely with the security forces. They will sign arrest warrants after the arrests have been made. Sometimes, when the security forces find it difficult to have judges issue arrest warrants after arrests, and fraudulently pre-dated, they have started to bring judges from Baghdad to investigate cases. They use different excuses for this—that judges in this province cannot function well, for example—but it is clear what is happening.<sup>176</sup>

Two other criminal judges present in the interview confirmed this account.<sup>177</sup>

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sadly, there are still some lawyers remaining who will stand in front of a judge and represent a murderer or criminal, as happened in the case of the Iraqi dictator Saddam Hussein.”

<sup>174</sup> Human Rights Watch interview with judges (names withheld), Erbil, May 24, 2013.

<sup>175</sup> Human Rights Watch interview with judges names withheld), Erbil, May 24, 2013. See also Stephen Wicken, “Maliki Eyes Third Term: 2013 Iraq Update #34,” Institute for the Study of War, August 28, 2013, [iswiraq.blogspot.com](http://iswiraq.blogspot.com) (accessed October 9, 2013).

<sup>176</sup> Human Rights Watch interview with judge (name withheld), Erbil, May 24, 2013.

<sup>177</sup> Human Rights Watch interview with judges (names withheld), Erbil, May 24, 2013.

A government official who works closely with the prime minister's office told Human Rights Watch that some investigative judges regularly collude with security officers to prolong detentions illegally and to extract bribes from detainees.<sup>178</sup>

"[Some] judges give [officers] a blank check; they'll give them a piece of paper signed and stamped," he said.<sup>179</sup> He said that while lawyers could in theory object to the results of an investigation because of investigative judges' abuses, they were afraid of possible repercussions. "I know of one lawyer who objected to the investigative judges' decision," he said. "He was arrested two days later and put in prison for years."<sup>180</sup>

A lawyer described a similar relationship between lawyers and investigative judges.

Court-appointed lawyers have agreements with investigative judges. The agreement is that the appointed lawyer will not speak, will not do anything other than sign for what is presented. I've seen court-appointed lawyers try to speak on behalf of their client, and the judge answered, "Shut up. Don't talk." If a lawyer won't sign for a deposition because the detainee was tortured, the judge will say, "Okay, we have other lawyers." And the lawyers need the job.<sup>181</sup>

Collusion between investigative judges, lawyers and security forces would leave abused suspects no opportunities for accountability. The departments responsible for investigating security forces' abuses ultimately rely on investigative judges to follow through with investigations and trials of alleged abusers.<sup>182</sup>

Officials in the Human Rights Ministry and in the Defense and Interior ministries' human rights directorates told Human Rights Watch that, regardless of the measures they take to investigate detention facilities and detainees' claims of abuse, responsibility for

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<sup>178</sup> Human Rights Watch interview with government official in prime minister's office (name withheld), Baghdad, February 21, 2013.

<sup>179</sup> Ibid. This official gave specific examples to Human Rights Watch about each of these judges' violations: "[Name withheld] tells the Baghdad Brigade, Military Intelligence Department, and special operations commands to go arrest whoever they want. [Name withheld] relies on secret informants. He lets officers arrest people based on vague suspicion and looks into the matter after the fact – if the original charge can't be substantiated, he'll fabricate another reason," he said. "[Name withheld] [issues orders for] arrests based purely on sectarianism. All of the judges in the investigation committee accept bribes."

<sup>180</sup> Ibid.

<sup>181</sup> Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 21, 2013.

<sup>182</sup> Human Rights Watch interviews with General Muhammad and Saad Maan, Interior Ministry, Baghdad, February 24, 2013.



investigating these claims and conducting criminal trials against alleged abuses rests with the judiciary.<sup>183</sup> Executive interference has hobbled the oversight capability of the judiciary, as well as that of the various inspectors-general and human rights directorates tasked with investigating abuses.<sup>184</sup>

While some judges are complicit with the violations of suspects' due process rights, others have credible fears for their physical safety if they reported abuses. "We know there are threats and pressure on the judges from the security forces," a former judge said.<sup>185</sup>

## Legal Obstacles

Two laws require that judges seek permission from "interested ministers" before investigating officers in their chain of command. Article 136 (b) of Iraq's Code of Criminal Procedure stipulates that the "responsible minister" must give permission for transfer of an accused person for trial for an "offense committed during the performance of an official duty."<sup>186</sup> Article 136(b) is a major obstacle to prosecuting government officials who have engaged in or authorized abuse of detainees. According to a CPA memorandum from 2003 referring to article 136 (b):

Anecdotal evidence suggests that [the] law [which allows a minister to block implementation of an arrest warrant if the suspect is carrying out official duties], has had a considerable effect on the number of investigations brought against government officials, because it is presumed that they will be protected by their ministers and therefore that energies expended in investigating them will be wasted.<sup>187</sup>

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<sup>183</sup> Ibid.

<sup>184</sup> These include, among others, human rights ministry monitoring inspectors, regular investigations and reports; offices of the Inspector General and human rights directorates in the Interior, Defense, and Justice ministries; and the Supreme Judicial Council Investigations Committee. Human Rights Watch interview with inspector in human rights directorate of security ministry (name withheld), Baghdad, February 23, 2013 (stating that in the course of his inspections of detention facilities, he has "documented many terrible things" but that they would "never go anywhere" because of obstruction by his superiors or because of judges' failure to hear the cases or to issue judgments against those cases they do hear); Human Rights Watch interview with by Aqil Tarahy, Inspector General of the Interior Ministry, Baghdad, February 21, 2013; Human Rights Watch interviews with Human Rights Minister Muhammad Shia Sudani, Baghdad, December 20, 2012 and February 18, 2013.

<sup>185</sup> Human Rights Watch interview with former criminal court judge (name withheld), Baghdad, May 13, 2013.

<sup>186</sup> "The Many Lives of Article 136(b) Criminal Procedure Code, Law 23 of 1971," Global Justice Project: Iraq, May 23, 2009, <http://gjpi.org/2009/05/23/the-many-lives-of-article-136b-criminal-procedure-code-23-of-1971/> (accessed May 23, 2013).

<sup>187</sup> Global Justice Project: Iraq, "The Many Lives of Article 136 (b) Criminal Procedure Code 23 of 1971," May 23, 2009, <http://gjpi.org/2009/05/23/the-many-lives-of-article-136b-criminal-procedure-code-23-of-1971/> (citing CPA Memorandum No. 3 of June 18, 2003, section (4) (s), and stating that "Anecdotal evidence suggests that [the] law, [which allows a minister

Security ministers and Maliki himself have invoked article 136 (b) to shield officers suspected of crimes including torture. Iraq's parliament and cabinet have repeatedly attempted to amend Article 136 (b), which previous parliaments overturned and reinstated several times.<sup>188</sup> Parliament passed a law on April 18, 2011 repealing article 136(b), but judges told Human Rights Watch that executive officials continued to invoke the article to prevent prosecutions of abusive security officers.<sup>189</sup> Another judge told Human Rights Watch that Article 111 of the Code of Criminal Procedure of the Internal Security Forces, the regulations that govern prosecution of security forces, prevents investigative judges from initiating any legal procedures against Interior Ministry employees without the approval of the minister of interior himself.<sup>190</sup> This law has been a major obstacle to courts holding security officers accountable for abuses, the judge said.<sup>191</sup>

Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) requires states parties to ensure an “effective remedy” for persons whose rights have been violated.<sup>192</sup> Article 9(5) of the covenant provides a right to compensation for any victim of unlawful arrest or detention.<sup>193</sup>

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to block implementation of an arrest warrant if the suspect is carrying out official duties] has had a considerable effect on the number of investigations brought against government officials, because it is presumed that they will be protected by their ministers and therefore that energies expended in investigating them will be wasted.”) (accessed July 9, 2013).

<sup>188</sup> Global Justice Project: Iraq, “Criminal Procedure Code 23 of 1971,” April 25, 2009, <http://gjpi.org/2009/04/25/criminal-procedure-code-23-of-1971/> (accessed June 29, 2013) (citing CPA Memorandum No. 3 of June 18, 2003, section (4) (d), suspending the criminal procedure code's paragraph 136, and stating: “Subsequently, Interim Prime Minister Allawi reinstated 136(b). Transitional Prime Minister Jaffari suspended it again when he came to office, but then reinstated it once more. The Council of Representatives passed a law on 18 September 2007 amending 136(b) and another law on 8 October 2007 revoking 136(b) but these laws have never been published in the Official Gazette and therefore 136(b) remains in force. It was reported in May 2009 that the Prime Minister had suspended the operation of the law in part.”).

<sup>189</sup> Human Rights Watch interview with three currently serving criminal court judges (names withheld), Erbil, May 24, 2013. See also “Cable 07Baghdad1593: Maliki reshapes the national security system,” WikiLeaks, <http://wikileaks.org/cable/2007/05/07BAGHDAD1593.html> (accessed July 9, 2013). In the cable, the US ambassador to Iraq at that time, Ryan Crocker, states that Maliki blocked the arrest of an abusive federal police commander by invoking Section 136(b) of the Iraqi Criminal Code. Instead of being prosecuted, the commander was made a senior adviser in the Interior Ministry and subsequently appointed to head the federal police 3rd Division. See also “Iraq: Abusive Commander Linked to Mosul Killings,” Human Rights Watch news release, June 11, 2013, <http://www.hrw.org/news/2013/06/11/iraq-abusive-commander-linked-mosul-killings>.

<sup>190</sup> Iraq Criminal Procedure Code for Internal Security Services, Law no. 17 of 2008, article 13, article 111, available at <http://wiki.dorar-aliraq.net/iraqilaws/law/21067.html> (accessed January 20, 2014); Human Rights Watch interview with former judge (name withheld), Erbil, November 26, 2013.

<sup>191</sup> Ibid.

<sup>192</sup> The Human Rights Committee, in its General Comment on Article 2, states there is a “general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies” and that “failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.” The Committee also stated that where such investigations “reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of

Another article of the Code of Criminal Procedure of the Internal Security Forces grants security forces for whom security officers work the sole authority to arrest an officer accused of a crime, shielding officers from arrest by any authority other than the branch of the security forces that employs them.<sup>194</sup>

A judge described how laws undermine accountability:

If a detainee was exposed to torture, and the judge notices marks on the body, the judge should send the detainee to forensics to be examined, and a medical report should be produced. Normally, the investigative judge should do this. If the detainee is found to have been tortured or abused, Iraqi law should punish the interrogator, and the suspect can sue them. In reality, however, these procedures are not very effective, because when we initiate legal proceedings against an interrogator, it goes to those in charge of the security forces of which they are a member. The security forces refuse to respond to us. No approval will be given from the security forces for any procedures against their own members. Instead, the judge will be accused of collaborating with terrorists. If I wanted to request investigation of an interrogator, for example, the Ministry of Interior or Defense usually does not respond. No legal procedures can be made by a court unless approved by the interior or defense minister.<sup>195</sup>

The laws mean that “interrogators are really always safe from prosecution or even reprimand,” one judge noted.<sup>196</sup>

While some judges are complicit in violations of suspects’ due process rights, others, as noted, have credible fears for their physical safety if they reported abuses.

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such violations could in and of itself give rise to a separate breach of the Covenant.” It added that the obligations to investigate and prosecute “arise notably in respect of those violations recognized as criminal under either domestic or international law, such... as torture and summary and arbitrary killing.”

<sup>193</sup> ICCPR art. 9(5).

<sup>194</sup> Iraq Criminal Procedure Code for Internal Security Services, Law no. 17 of 2008, article 13.

<sup>195</sup> Human Rights Watch interview with criminal court judge (name withheld), Erbil, May 24, 2013. The judge was interviewed in the presence of two other judges at his request for security reasons.

<sup>196</sup> Ibid.

## Corruption and Collusion between Judges and Security Officers

Officials, lawyers, activists, and detainees said that corruption between lawyers, security officers, and judges is so institutionalized that the outcome of particular cases almost always depends on the defendant's ability to pay bribes.<sup>197</sup> Even then, payment of a bribe does not guarantee release. In several instances, the families of women paid sums demanded to secure their release, and they remained in detention.

Fourteen people told Human Rights Watch that investigating officers demanded money for release of their family members, and that the officers passed a portion of this money to judges, who thus had an incentive to refuse to release women whose families have not paid, even women against whom there is no evidence and who have not confessed.<sup>198</sup>

The husband and children of a woman who had been unlawfully detained approached Human Rights Watch in December 2012 with information about her case, but asked Human Rights Watch not to report it until the end of negotiations between their lawyer and the detaining officers, who had demanded \$5000 for her release. The detained woman's husband said, "The shortest and easiest way to get her back is through a bribe."<sup>199</sup> After the family paid part of the amount demanded, the "Committee of the Wise" intervened and facilitated authorities' release of the woman, who authorities never formally charged.

In 13 cases documented in this report, security officials waited far longer than the time mandated by the Code of Criminal Procedure to bring women before investigative judges.<sup>200</sup> According to the testimony provided by these women and by lawyers representing women, once detained women are taken before investigative judges, judges do not provide the protections afforded under Iraq's Code of Criminal Procedure or constitution.

A majority of the women detainees whom Human Rights Watch interviewed said that investigative judges ordered their prolonged detention or charged them either without evidence or solely on the basis of coerced confessions. Several women reported that

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<sup>197</sup> Human Rights Watch interviews with women detainees in Site 4 and Shaaba Khamsa detention facilities, February 28 and May 1, 2013; Human Rights Watch interviews with five criminal defense lawyers (names withheld), Baghdad, February and May 2013; Human Rights Watch interview with adviser in the prime minister's office (name withheld), Baghdad, February 24, 2013.

<sup>198</sup> Human Rights Watch interviews with women detainees and family members, Baghdad, Dec. 2012 and February and May 2013.

<sup>199</sup> Human Rights Watch interview with husband of detainee in Site 4 detention facility (name withheld), Baghdad, December 19, 2012.

<sup>200</sup> Human Rights Watch interviews with women detainees and family members, Baghdad, Dec. 2012 and February and May 2013.

investigative judges ignored their complaints of abuse during interrogation and evidence that they confessed under torture.

One former judge told Human Rights Watch that investigative judges regularly pre-dated arrest warrants: “I recently saw a judge standing at his desk signing warrant after warrant without even looking at them—there must have been hundreds of warrants. Another investigative judge signed a warrant that was dated a week before. The basis of detention was article 4, but the specific charge was [that the person to be arrested was a] ‘son of a dog.’”<sup>201</sup>

Another former judge told Human Rights Watch that judges frequently ignore evidence of torture by security forces.

I knew of a case where [the detainee had] a medical report saying there was “75 percent chance he was tortured” and there was no evidence against the detainee whatsoever [for the charges], but he was convicted. One investigator in Karkh told me, “I like to torture.”<sup>202</sup>

Government officials, parliamentarians, lawyers, and judges told Human Rights Watch that investigative judges had accepted bribes from security officers to prolong women’s detentions or the conditions of their release.

## Secret Informant Testimony

Deputy Prime Minister Hussein al-Shahristani and Justice Minister Hassan al-Shimmari told Human Rights Watch that the use of secret informant testimony is essential to fight terrorism while protecting informants’ identities from retribution.<sup>203</sup>

The Iraqi Code of Criminal Procedure allows for the use of secret informant testimony as a basis for arrest warrants and convictions.<sup>204</sup> The vagueness of the provisions provide detainees and their lawyers no basis to challenge secret informant testimony.<sup>205</sup>

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<sup>201</sup> Human Rights Watch interview with former judge who worked in the Integrity Commission (name withheld), Baghdad, April 30, 2013.

<sup>202</sup> Human Rights Watch interview with lawyer and former judge (name withheld), Baghdad, February 25, 2012.

<sup>203</sup> Human Rights Watch interview with Deputy Prime Minister Hussein al-Shahristani, Baghdad, February 13, 2013 and Apr. 29, 2013; Human Rights Watch interview with Justice Minister Hassan al-Shimmari, Baghdad, February 14, 2013.

<sup>204</sup> Iraq Code of Criminal Procedure, Law no. 23 of 1971, articles 109 and 213.

<sup>205</sup> Ibid.

The use of secret informant testimony is especially prevalent in cases where detainees are accused of terrorism under article 4 of the Anti-Terrorism Law, according to detainees and their lawyers.

A person who works closely with the prime minister's office and has intimate knowledge of the judicial process told Human Rights Watch that the use of secret informants was "institutionalized."<sup>206</sup> He described four kinds of secret informants: those who participate in crimes, such as members of armed groups who want to avoid a jail term and from whom a judge requests "something in return"; those who provide testimony against someone in a tribal dispute; those who provide information against others of a different sect; and those who genuinely have information about a crime. Frequently, he said, informants are themselves implicated in crimes and investigative judges blackmail them to provide needed testimony.

In February 2013, Shahrستاني told Human Rights Watch that "even before the protests started," courts no longer accepted secret informant testimony without supporting evidence.<sup>207</sup> He said that the government was taking steps to provide accountability for informants who had provided false testimony, and gave Human Rights Watch a list of 20 persons he said had been convicted of providing false testimony as secret informants. He was unable to say whether the cases of persons these informants provided testimony against had been overturned.

On April 7, 2013, the cabinet announced it had approved amendments to laws governing the use of secret informants, which then needed parliamentary approval to become law. As of late December 2013 parliament had not approved the amendments. In May, a parliamentarian told Human Rights Watch that the amendments were not on the parliamentary schedule and that he believed the "percent chance of the amendments getting passed is zero."<sup>208</sup> Another parliamentarian from Maliki's Dawa party told Human Rights Watch that "these amendments will stay in the drawer."<sup>209</sup>

In April, Shahrستاني dismissed the importance of parliament's passing proposed amendments to Iraq's Code of Criminal Procedure that would limit use of secret

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<sup>206</sup> Human Rights Watch interview with official in prime minister's office (name withheld), Baghdad, February 24, 2013.

<sup>207</sup> Human Rights Watch interview with Deputy Prime Minister Hussein al-Shahrستاني, Baghdad, February 13, 2013.

<sup>208</sup> Human Rights Watch interview with parliamentarian Jabr al-Jabberi, Baghdad, May 9, 2013.

<sup>209</sup> Human Rights Watch interview with parliamentarian Sami al-Askari, Baghdad, May 11, 2013.

informants, denying that the proposed amendments were a response to “the judiciary not carrying out its duty.”<sup>210</sup>

Judges insist they have never sentenced anyone based on a secret informant. They tell us they have never convicted anyone based on confessions alone. These amendments are not an acknowledgment that sentences have been passed on the basis of false evidence by a secret informant, or confessions based on torture. When he suggested these amendments, [Justice Minister] Shimmari just said since judges already are acting this way, why not amend the law so that no judge can deviate from it in the future.<sup>211</sup>

Sources told Human Rights Watch that security forces continue to use secret informants to make new arrests.<sup>212</sup> A high-level government official told Human Rights Watch in February that security forces still have a \$1 million budget for secret informants, and that only secret informants who could “cause a political crisis” had been deactivated, meaning those implicated in the arrests in December 2011 of high-profile Sunni politicians Tariq al-Hashimi and of bodyguards of Rafi Essawi in December 2012.<sup>213</sup>

On May 8, Shahrastani’s office gave Human Rights Watch the text of amendments to articles 109 and 213 of Iraq’s Code of Criminal Procedure governing security forces’ and courts’ use of secret informant testimony to detain and convict. The amendments would require the release of a suspect whose detention was based on the testimony of an informant whose identity is not known, or whose detention is based on secret informant testimony without further supporting evidence (article 109).<sup>214</sup> The amendments make no mention of penalties for judges or security officials who ignore the provisions, nor provide detainees a right to sue if courts or security officials violate their rights under the amendment.<sup>215</sup>

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<sup>210</sup> Human Rights Watch interview with Deputy Prime Minister Hussein al-Shahrastani, Baghdad, April 29, 2013.

<sup>211</sup> Ibid.

<sup>212</sup> A parliamentarian and four judges said judges still regularly use secret informant testimony as basis of arrests and courts continue to rely on secret informants to issue arrest warrants and convictions. See Human Rights Watch interview with parliamentarian Jabber al-Jaberi, Baghdad, May 9, 2013; Human Rights Watch interview with former judge who worked in the Integrity Commission (name withheld), Baghdad, April 30, 2013; Human Rights Watch interviews with three criminal court judges (names withheld), Erbil, May 24, 2013.

<sup>213</sup> Human Rights Watch interview with official in prime minister’s office (name withheld), Baghdad, February 24, 2013.

<sup>214</sup> “Law no. () of 2013, Amendment to the Code of Criminal Procedure, Law No. 23 of 1971,” copy provided to Human Rights Watch on May 8, 2013 via email by Ahmed Aljoofy, Public Relations Department of the Office of the Deputy Prime Minister for Energy. The law has no number because parliament did not pass it.

<sup>215</sup> Ibid.

Even if the parliament passes the amendments into law, their application will be difficult. “The number of terrorism [detainees] in Iraq now is huge,” said a former judge who now serves on parliament’s legal committee and is a member of the parliamentary “Committee of Five,” appointed by Maliki to receive protesters’ demands and negotiate between protesters, parliament and ministers.<sup>216</sup> “Ninety percent of terrorism cases are based on secret informant testimony,” he said. “Our committee right now is looking for ways to get people out, but the problem is that we really don’t know who is innocent and who is guilty because there is no evidence—we have nothing against them but secret informant testimony or a confession.”<sup>217</sup>

Because the Code of Criminal Procedure allows the use of secret informant testimony, it is available to judges issuing warrants or convictions in any criminal case.<sup>218</sup> A high-ranking member of the Ahrar party, the Sadrist political wing, told Human Rights Watch that half of the 4,000 detainees who follow Muqtada al-Sadr, an Islamic political leader and head of the Mehdi Army, a Shia militia that Sadr has said is no longer militarily active, are detained on the basis of secret informant testimony, and claimed that “we have informants in court who give us the names and identification numbers of secret informants. We had insiders investigate the identities of the secret informants and found they do not exist—their names and identity numbers are made up.”<sup>219</sup>

## Coerced Confessions

In 2012, Human Rights Watch documented security forces’ practice of conducting abusive interrogations in facilities outside the authority of the Justice Ministry to obtain coerced confessions.<sup>220</sup> Detainees and their families told Human Rights Watch that security forces threaten detainees that if they refuse to confess to crimes or to pay bribes, or if they speak publicly about abuse, they will “make sure” that the detainee ends up on death row.<sup>221</sup>

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<sup>216</sup> Human Rights Watch interview with Mohsen Saadoun, parliamentarian and member of parliamentary legal committee, Baghdad, February 25, 2013. The other members of the Committee of Five are Ibrahim al-Jaafari, Khalid al-Ataya, Hamid Mutlak, and Hadi al-Ameri.

<sup>217</sup> Ibid.

<sup>218</sup> Human Rights Watch interview with criminal defense lawyer (name withheld), Baghdad, February 21, 2013; Human Rights Watch interviews with Salim al-Jibbouri, Baghdad, Dec. 14, 2012 and February 16, 2013.

<sup>219</sup> Human Rights Watch interview with senior member of al-Ahrar party (name withheld), Baghdad, February 18, 2013.

<sup>220</sup> “Iraq: Mass Arrests, Incommunicado Detentions: Notorious Prison in Use a Year After Government Said It Was Shut Down,” Human Rights Watch news release, May 15, 2012, <http://www.hrw.org/news/2012/05/15/iraq-mass-arrests-incommunicado-detentions> (accessed May 13, 2013).

<sup>221</sup> See, e.g., Human Rights Watch interview with Ruqaya Abbas Ahmad Jaafari and Safaa Abdelrahim Ahmad, Shaaba Khamsa detention facility, March 1, 2013.



On April 22, ambassadors in Baghdad of European Union member states expressed their alarm that despite the Iraqi government's stated intention to "review the sentences of many convicted prisoners ... executions have continued at the same time," despite "an excessive reliance on confessions to secure convictions, and...evidence that those confessions are sometimes given under duress."<sup>222</sup>

As the statements detailed above describe, security officers threaten and torture women in order to induce them to sign or fingerprint prepared confessions that in some cases they cannot read because they are illiterate or because officers do not give them opportunity to do so. In nine cases, women told Human Rights Watch they were forced to sign or fingerprint blank pieces of paper. Five women said that interrogating officers forced them to sign or fingerprint what they described as "stacks" or "piles" of papers, often forcing them to sign several days in a row.

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<sup>222</sup> Public letter signed by all European Union ambassadors in Baghdad on April 22, 2013. Letter on file with Human Rights Watch.

## VII. International Legal Protections for Detainees

### International Standards on Women's Detention

International human rights laws provide protections to female prisoners even where these rights are not guaranteed under Iraqi law. Iraq ratified the principal international treaty that protects the human rights of prisoners, the International Covenant on Civil and Political Rights (ICCPR), in 1971;<sup>223</sup> and acceded to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment (Convention against Torture) in 2011.<sup>224</sup> In addition, the United Nations Standard Minimum Rules for the Treatment of Prisoners,<sup>225</sup> the Basic Principles for the Treatment of Prisoners,<sup>226</sup> and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide authoritative guidance for interpreting the more general rules of the ICCPR and Convention against Torture.<sup>227</sup>

These laws contain protections that clearly apply to custodial abuse. Under the ICCPR and the Convention against Torture, state parties are obligated to ensure that no one is subjected to torture or to cruel, inhuman or degrading punishment and treatment. These treaties and the Standard Minimum Rules for the Treatment of Prisoners further require states to ensure that those who engage in such abuse are appropriately punished and that individuals seeking to complain about such ill-treatment are provided with an effective

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<sup>223</sup> International Covenant on Civil and Political Rights (ICCPR), adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1996), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Iraq on January 25, 1971. See United Nations Treaty Collection, Chapter IV: Human Rights, 4. International Covenant on Civil and Political Rights, New York, December 16, 1966, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en) (accessed August 21, 2013).

<sup>224</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, acceded to by Iraq on July 7, 2011. See United Nations Treaty Collection, Chapter IV: Human Rights, 9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, Dec. 10, 1984, [http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-9&chapter=4&lang=en) (accessed August 21, 2013).

<sup>225</sup> United Nations, "Standard Minimum Rules for the Treatment of Prisoners," August 30, 1955, <http://www.refworld.org/docid/3ae6b36e8.html> (accessed Aug. 21, 2013), reprinted in "United Nations, A Compilation of International Instruments: Volume 1 (first part) Universal Instruments" (New York: United Nations, 1993), E.93.XIV.I, pp. 243-62.

<sup>226</sup> UN General Assembly, "Basic Principles for the Treatment of Prisoners: Resolution / adopted by the General Assembly," Mar. 28, 1991, A/RES/45/111, <http://www.refworld.org/docid/48abd5740.html> (accessed Aug. 21, 2013); reprinted in "A Compilation of International Instruments," pp. 263-264.

<sup>227</sup> United Nations General Assembly, "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment," A/RES/43/173, 76th plenary meeting, December 9, 1988, <http://www.un.org/documents/ga/res/43/a43r173.htm> (accessed August 21, 2013); reprinted in "A Compilation of International Instruments," pp. 265-274.

remedy. Article 17 of the ICCPR protects all individuals against arbitrary interference with their privacy, and the Standard Minimum Rules specify that the privacy of female prisoners should be respected by male corrections staff.

Article 13 of the Convention against Torture requires Iraq to ensure that a person alleging she was tortured or ill-treated has the right to complain,<sup>228</sup> as does Article 3 of the ICCPR, which requires an effective remedy for all rights contained in the convention. As noted above, the authoritative Standard Minimum Rules provide a more detailed structure to protect this right and to ensure that prisoners are able to gain access to a complaint mechanism.<sup>229</sup>

The ICCPR and torture convention obligate Iraq to provide and ensure that certain remedies are available to those prisoners alleging acts of torture or cruel, inhuman or degrading treatment or punishment. The Human Rights Committee, the body of international experts charged with interpreting the ICCPR, has ruled that the prohibition on torture and cruel, inhuman, or degrading treatment or punishment in article 7 carries with it a positive obligation for state parties to investigate complaints of ill-treatment effectively, punish those found guilty, and provide remedies to the victim, including monetary compensation and “holistic” rehabilitation, including “medical and psychological care as well as legal and social services.”<sup>230</sup>

Article 13 of the Convention against Torture requires that steps be taken to protect the complainant and her witnesses from all ill-treatment or intimidation in retaliation for filing a complaint or providing information.<sup>231</sup>

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<sup>228</sup> Article 13 of the Convention against Torture must be read together with Article 16 regarding allegations of cruel, inhuman or degrading treatment or punishment.

<sup>229</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners, August 30, 1955, <http://www.refworld.org/docid/3ae6b36e8.html> (accessed August 21, 2013).

<sup>230</sup> Human Rights Committee, Sixteenth session (1982), General comment No. 7: Article 7 (Prohibition of torture or cruel, inhuman or degrading treatment or punishment) [General comment No. 7 has been replaced by general comment No. 20]. HRI/GEN/1/Rev.9 (Vol. I), May 27, 2008; Human Rights Committee, General comment No. 3 (Implementation of article 14 by States parties), December 13, 2012, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=11) (accessed November 21, 2013).

<sup>231</sup> Convention against Torture, art. 7.

## **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

Although CEDAW does not specifically address the rights of women in prison, the CEDAW committee has interpreted its provisions widely to apply to detained women.<sup>232</sup> Women in prison enjoy the same rights not to be subjected to gender-based discrimination as other women.

The Human Rights Committee has affirmed that: “Persons deprived of their liberty enjoy all the rights set forth in [CEDAW], subject to the restrictions that are unavoidable in a closed environment.”<sup>233</sup> Articles 2 and 3 of CEDAW require states to eliminate gender-based violence, as detailed in the Committee on the Elimination of Discrimination Against Women’s General Recommendation 193.

The CEDAW Committee has interpreted the convention to incorporate standards from the Standard Minimum Rules for the Treatment of Prisoners.<sup>234</sup> The Committee stated that CEDAW’s article 3, which requires states to eliminate gender-based violence, includes gender-based violence against detained women.<sup>235</sup> Accordingly, the Committee stated that “women prisoners should be attended and supervised by women officers.”<sup>236</sup>

## **Standard Minimum Rules for the Treatment of Prisoners**

The UN Standard Minimum Rules for the Treatment of Prisoners establish standards to which all UN member states should adhere in protecting the rights of women in detention.<sup>237</sup> Principle 6 (1) requires that the standards be applied impartially, without “discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;” principle 8 (a) requires that men and women “be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;” and principle 53 states that “(1) In an institution for both men and women, the

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<sup>232</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981, <http://www.un.org/documents/ga/res/34/a34res180.pdf>.

<sup>233</sup> Inga Abramova v. Belarus, Communication No. 23/2009, UN Doc. CEDAW/C/49/D/20/2008 (Aug. 29, 2011), <http://www.hrlc.org.au/inga-abramova-v-belarus-communication-no-232009-un-doc-cedawc49d202008-29-august-2011> (accessed Aug. 21, 2013), para. 6.

<sup>234</sup> *Ibid.*

<sup>235</sup> *Ibid.*, para. 7 (b).

<sup>236</sup> *Ibid.*, para. 6.

<sup>237</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners, August 30, 1955, <http://www.refworld.org/docid/3ae6b36e8.html> (accessed August 21, 2013).

part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution, (2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer, (3) Women prisoners shall be attended and supervised only by women officers.”<sup>238</sup>

### **The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**

The United Nations General Assembly’s principles on protection of detained persons explicitly requires that all principles be applied “without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status” (principle 5 (1)).<sup>239</sup>

### **Comments by the Special Rapporteur on Violence Against Women**

In a report on custodial violence, the special rapporteur on violence against women identified custodial violence against women as “a particularly egregious violation of a woman’s human rights” and concluded “the State, when it assumes responsibility for an individual, whether such responsibility is undertaken for punitive or rehabilitative reasons, has heightened responsibility for the individual within its custody.”<sup>240</sup>

### **International Standards on Children in Detention Facilities**

The Convention on the Rights of the Child (CRC), which Iraq ratified in 1989, provides protections for children who are incarcerated with their mothers. Article 9 (1) requires states to “ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”<sup>241</sup> Where children are separated from their parents due to detention or imprisonment of the parent, states are required to “provide the parents, the

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<sup>238</sup> Ibid.

<sup>239</sup> United Nations General Assembly, “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,” A/RES/43/173, 76th plenary meeting, December 9 1988, <http://www.un.org/documents/ga/res/43/a43r173.htm> (accessed August 21, 2013).

<sup>240</sup> UN Commission on Human Rights, “Report of the Special Rapporteur on Violence against Women,” E/CN.4/1998/54, January 26, 1998, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.1998.54.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.1998.54.En?Opendocument) (accessed December 29, 2013).

<sup>241</sup> UN General Assembly, Convention on the Rights of the Child, November 20, 1989, United Nations Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38fo.html> (accessed August 21, 2013).

child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child” and to “ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned” (article 9 [4]).

The CRC’s article 37 prohibits subjecting children to torture or other cruel, inhuman or degrading treatment or punishment; prohibits deprivation of a child’s liberty “unlawfully or arbitrarily,” and requires the separation of children deprived of liberty from adults “unless it is considered in the child's best interest not to do so, and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.”<sup>242</sup>

### **International Standards Prohibiting Arbitrary Arrest and Detention**

The ICCPR prohibits arbitrary arrest and detention and requires that a detained person must be brought promptly before a judge or other independent and impartial judicial officer (article 9).<sup>243</sup> Article 17 of the ICCPR protects all individuals against arbitrary interference with their privacy, and the Standard Minimum Rules for the Treatment of Prisoners specify that the privacy of female prisoners should be respected by male corrections staff.<sup>244</sup>

Iraq became party to the International Convention for the Protection of All Persons from Enforced Disappearance in November 2010. Under Article 17 of the convention, “No one shall be held in secret detention.” The convention mandates that “any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.” Human Rights Watch interviewed three girls and seven women who were detained in their homes or other officially unrecognized places of detention.<sup>245</sup>

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<sup>242</sup> Ibid.

<sup>243</sup> UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations Treaty Series, vol. 999, p. 171, <http://www.refworld.org/docid/3ae6b3aao.html> (accessed August 21, 2013), art. 9.

<sup>244</sup> Ibid.

<sup>245</sup> Human Rights Watch interviews with detainees in Site 4 and Shaaba Khamsa detention facility, February 28 and March 1, 2013.

## International Standards Prohibiting Torture

The prohibition against torture and other mistreatment is a longstanding and fundamental norm of customary international law.

The ICCPR requires that detainees be treated with respect for their “inherent dignity,” and article 7 mandates that detainees shall “not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>246</sup>

Similar prohibitions are found in the Convention against Torture, which specifically prohibits using as evidence in any proceeding “any statement which is established to have been made as a result of torture.”<sup>247</sup>

The Committee Against Torture expressed “great concern at the reported practice of holding relatives of alleged criminals, including children and the elderly, as hostages, sometimes for years at a time, to compel the alleged criminals to surrender themselves to the police,” emphasizing that “such practice is a violation of the Convention.”<sup>248</sup>

## International Standards on Accountability for Torture

Article 2(3) of the ICCPR requires states parties to ensure an “effective remedy” for persons whose Covenant rights have been violated. The Human Rights Committee, in its authoritative General Comment on article 2, states there is a “general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies” and that “failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the

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<sup>246</sup> UN General Assembly, International Covenant on Civil and Political Rights, December 16, 1966, United Nations Treaty Series, vol. 999, p. 171, <http://www.refworld.org/docid/3ae6b3aa0.html> (accessed August 21, 2013).

<sup>247</sup> UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations Treaty Series, vol. 1465, p. 85, <http://www.refworld.org/docid/3ae6b3a94.html> (accessed August 21, 2013)

<sup>248</sup> In its “Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observation of the Committee against torture on Yemen,” the Committee expressed “great concern at the reported practice of holding relatives of alleged criminals, including children and the elderly, as hostages, sometimes for years at a time, to compel the alleged criminals to surrender themselves to the police,” emphasizing that “such practice is a violation of the Convention.” Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observation of the Committee against torture on Yemen, CAT/C/YEM/CO/2/Rev.1 (May 25, 2010), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhso%2bCDq8S6uUO99X32yb4DTJnUG77byQeQPdatJbyhuVfYS8SD9aq2Ky%2bM4Ou2PDaYtGdh7sTgwufgIDgaLz1iMqXDBkRWkv3W5kvrGvkrZbBw1RJMRob63AzdS8zl1Touw%3d%3d>.

Covenant.”<sup>249</sup> The Committee also stated that where such investigations “reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant.” It added that the obligations to investigate and prosecute “arise notably in respect of those violations recognized as criminal under either domestic or international law, such...as torture and summary and arbitrary killing.”<sup>250</sup>

Article 12 of the Convention against Torture requires states parties to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

Article 12 of the Convention against Torture requires states parties to “ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction” and requires criminalization of complicity or participation in torture (art 4).<sup>251</sup> Iraq’s Penal Code provides a punishment of “imprisonment or penal servitude” “[a]ny public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence or to withhold information.”<sup>252</sup>

### **International Standards on Fair Trials and the Right to Counsel**

The presumption of innocence constitutes a basic principle of fair trial standards and is guaranteed in the Iraqi Constitution (article 19) and in international law (ICCPR, article 14[2]).

The United Nations Basic Principles on the Role of Lawyers requires giving defendants prompt access to a lawyer no later than 48 hours after arrest.<sup>253</sup> The Basic Principles state

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<sup>249</sup> General Comment No. 31 [80], “Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” CCPR/C/21/Rev.1/Add.13, May 26, 2004, <http://www.unhchr.ch/tbs/doc.nsf/o/58f5d4646e861359c1256ff600533f5f> (accessed August 21, 2013).

<sup>250</sup> Ibid.

<sup>251</sup> Convention against Torture, arts. 4, 12.

<sup>252</sup> Iraq Penal Code No. 111 of 1969, <http://gjpi.org/wp-content/uploads/gjpi-pc-1969-v1-eng.doc> (accessed November 21, 2013).

<sup>253</sup> Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), <http://www1.umn.edu/humanrts/instreet/i3bprl.htm> (accessed August 21, 2013).



that detainees shall have “adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”<sup>254</sup>

### **International Standards on Prisoners’ Rights in Detention**

The UN Standard Minimum Rules for the Treatment of Prisoners (1955) requires that the accused be allowed to inform his or her family of his detention immediately, and given reasonable facilities to communicate with her family (article 92). The UN Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) affirms the right of the detainee to receive family visits and communicate with the outside world (principle 19).

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<sup>254</sup> Ibid.

## Recommendations

### To the Government of Iraq

#### *To the Justice, Interior, and Health Ministries*

- Acknowledge that the practice of charging women with *al-tasattur*, or “covering up” for husbands’ alleged crimes, is a form of arbitrary or collective punishment;
- Ensure that female officers are present at all times during arrest, transfer, and interrogation of women detainees; and that supervision is carried out by appropriately trained female staff in all facilities where women detainees and prisoners are held;
- Fulfill plans to modernize women’s detention facilities, in order to: relieve overcrowding; provide suitable access to light and air, hygiene, food, medical services, and child care;
- Train corrections officials charged with guarding women in custody, including by providing information concerning the impact of previous sexual abuse and train corrections officers working in women’s prisons on the obligation to refrain from sexual contact, verbal degradation, or privacy violations;
- Provide detainees and prisoners with written regulations governing their treatment and authorized methods of seeking information and making complaints. If the prisoner is illiterate, provide such information orally;
- Ensure the protection of the dignity and privacy as well as the physical and psychological safety of women detainees, including adequate accommodation and materials required to meet women’s specific hygiene needs;
- Ensure access to gender-specific health care for women detainees;
- Provide safeguards to protect women detainees from all forms of abuse, including gender-specific abuse, and ensure that women detainees are searched and supervised by properly trained women staff;
- Provide sexual assault screenings and provide women access to reproductive health care, post-rape care; and proper treatment of women who are pregnant; and
- Implement proper forensic examinations of women prior to admission to any detention facility. If evidence of rape is found, provide immediate treatment and accountability for the perpetrator.
- Investigate allegations by women detainees about discriminatory, cruel, inhuman or degrading treatment and prosecute perpetrators.

*To the Prime Minister's Office, Interior Ministry, Justice Ministry, and Defense Ministry*

- Acknowledge the scope of the problem of security force abuses in Iraq, including illegal and mass arrests, torture and ill-treatment against women;
- End the practice of targeting of suspects' female family members;
- Implement a policy of zero tolerance for all forms of torture and inhuman or degrading treatment, especially sexual abuse;
- Issue and publicize directives stating that the government will not tolerate illegal arrests, torture, and other ill-treatment by law enforcement officials, will promptly investigate reports of illegal arrests, torture and ill-treatment, and will hold accountable those responsible;
- Ensure that security services conduct arrests only with warrants or to prevent ongoing or imminent crimes;
- Direct the Office of the General Prosecutor to investigate all torture allegations against law enforcement officials, regardless of rank or superior officer approval, and whether or not the victim or family has formally filed a complaint;
- Initiate public-outreach campaigns to inform Iraqis of their rights during arrest and detention, and ensure they address the particular needs of women;
- Make public the location of all detention facilities, including those operated by the Defense Ministry and irregular detention facilities, and the number of women detained in each;
- Close all secret detention facilities; ensure that forces of the interior and defense ministries, and forces that answer directly to the prime minister, only detain individuals in regular recognized detention facilities;
- Investigate all allegations of sexual abuse, torture and ill-treatment, and institute disciplinary measures or criminal prosecution, as appropriate, against officials at all levels who are responsible for perpetrating or condoning the abuse of detainees;
- Amend articles 109 and 213 of Iraq's Code of Criminal Procedure to eliminate the use of secret informant testimony entirely; provide penalties for judges or security officials who continue to use secret informant testimony; and provide detainees a right to sue if courts or security officials use secret informant testimony against them;

- Modernize the Justice Ministry’s record-keeping and make records of prisoners, their locations, sentences and time served public;
- Conduct prompt medical examinations of detainees who allege abuse in detention;
- Finalize ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and ratify the Optional Protocol; and
- Invite the special rapporteur on torture to visit all detention facilities.

### *To the Supreme Judicial Council*

- Provide effective remedies for prisoners to raise complaints of ill-treatment, investigate such complaints promptly, punish abusers, and protect complainants from retaliation;
- Inform prisoners about available grievance mechanisms;
- Allow defendants to pursue a meaningful defense and challenge evidence against them;
- Direct all judges and security ministries that evidence, and not confessions, is the primary basis for all criminal convictions, including where suspects are charged with terrorism;
- Announce a zero tolerance policy for corruption including soliciting bribes from detainees to be released;
- Investigate judges’ complaints of harassment by government officials and outside parties and provide judges and lawyers security protection;
- Charge or order the release of all detainees, and ensure that release orders are executed;
- Cease the waiting period (*aadem matloubeyya*) procedure (the requirement that the Interior Ministry conduct a search for outstanding warrants against individuals ordered released); and
- Allow trial observations by local and international NGOs.

### **To the International Donor Community**

- Condition the provision of aid, especially arms and training to Iraqi security forces, on Iraq’s fulfillment of its obligations under humanitarian treaties it has signed;
- Cease assistance to Iraq’s police, intelligence and other security forces, and counterterrorism assistance until Iraq demonstrates meaningful progress toward

compliance with international human rights standards in the criminal justice system and security forces; and

- Provide on-site human rights training as an integral component of all capacity-building and training programs involving the criminal justice system, police, and intelligence agencies.

## **To the United States Government**

- Provide detailed information about prisoners the US transferred to Iraqi custody, including women and children, including to Iraqi forces and detention centers where the US knew or should have known they could be at risk of torture;
- Cease cooperation by the CIA and other US or US-affiliated intelligence and security personnel with Iraqi security forces about which there are credible allegations of abuse, especially the Counterterrorism Service (CTS), the Baghdad Brigade, and other police and army brigades that circumvent normal chain of command and answer directly to the prime minister.

## Acknowledgments

Erin Evers, researcher in the Middle East and North Africa (MENA) Division of Human Rights Watch, authored this report.

The report was reviewed and edited by Joe Stork, deputy director of the MENA division, Bill van Esveld, acting deputy director in the MENA Division. Samer Muscati, researcher in the Women's Rights Division, and Priyanka Motaparthi, researcher in the Children's Rights Division, provided specialist review. Clive Baldwin, senior legal advisor, and Tom Porteous, program director, and Danielle Haas, senior editor, provided legal and program reviews. Human Rights Watch wishes to thank the people who were instrumental in organizing the mission and conducting follow-up research in Iraq, and who provided essential logistical support, without which it would have been impossible to complete this research.

MENA associates Jillian Slutzker and Sandy Elkhoury prepared this report for publication. Additional production assistance was provided by Grace Choi, publications director, Kathy Mills, Pierre Bairin, multimedia manager, Emma Daly, communications director, and Fitzroy Hepkins, administrative manager.

Human Rights watch also thanks the civil society organizations who provided essential support; former employees in the Human Rights and Defense ministries; the staff of the Justice, Defense, Interior and Human Rights ministries for their assistance in facilitating Human Rights Watch's research missions; and the numerous lawyers, judges, officials and, most importantly, detainees and prisoners who spoke to Human Rights Watch despite the significant risks they incurred to do so.

# NO ONE IS SAFE

## Abuses of Women in Iraq's Criminal Justice System

Between 1,000 and 1,500 women are currently held in Iraq's jails and detention facilities. Many allege serious abuse. *No One Is Safe* documents how Iraq's criminal justice system subjects many women to abuses at virtually every step, from arrest to trial to imprisonment.

The report documents cases where security forces arrest women illegally and subject them to torture and sexual abuse with near impunity. These abusive practices violate Iraqi as well as international laws, but there is virtually no accountability for violators. The report documents cases in which the judiciary is complicit in security forces' abuses of women detainees and in which Iraqi courts base convictions on coerced confessions and secret informant testimony. In numerous cases in the report, security forces target women against whom there is no evidence in order to intimidate or harass male family members wanted for alleged terrorist offenses. The abuses affect women in custody of all religious denominations and ages.

Prime Minister Nuri Al-Maliki's government has not fulfilled promises to investigate allegations of abuses of women in detention, particularly sexual abuse, a key demand of anti-government protests of the past year. The government's failure has contributed to the perpetuation of abuses and to escalating sectarian violence in the country. Insurgent groups have exploited the government's failure to address these allegations.

The Iraqi government should take immediate steps to address the abuses that women suffer in the criminal justice system by undertaking reforms to the security forces and judiciary. Iraq's future as a society based on rule of law depends on establishing a credible criminal justice system embodying international standards of fairness and accountability for officials responsible for serious crimes such as torture.



*Women incarcerated in the Kadhimiyya women's prison in 2006. Prior to 2009, Kadhimiyya was the only place in Baghdad where women charged with crimes were incarcerated. Security forces now detain women in prisons and other detention facilities across the country; many remain in detention for months and even years without trial.*

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