



HUMAN  
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## FLAWED JUSTICE

Accountability for ISIS Crimes in Iraq



# **Flawed Justice**

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## Summary

The armed forces of the Iraqi government and the Kurdistan Regional Government (KRG), supported by various international partners, including the United States and Iran, have almost concluded their military campaign against the Islamic State (also known as ISIS) in Iraq. In the course of this campaign, Iraqi government and KRG forces have detained thousands of suspected ISIS fighters and affiliates, including hundreds of children.

The judiciaries of the Iraqi government and the KRG are relying on their respective counterterrorism courts to rapidly prosecute all of these ISIS suspects on charges brought under their counterterrorism laws, primarily and often exclusively on the charge of membership in ISIS, with no distinction made for the severity of the charges brought against suspects and no effort to prioritize the prosecution of the worst offenses. One Iraqi judge at the Nineveh counterterrorism court, which is mandated to prosecute ISIS members captured in Mosul, said that between February and late August 2017, the court had commenced trials against 5,500 ISIS suspects, and convicted and sentenced at least 200.

Human Rights Watch knows of at least 7,374 individuals that the Iraqi and KRG judiciaries are trying or have convicted and in 92 cases already executed since 2014, while recognizing that this represents a fraction of the total number of individuals held as ISIS suspects.

This report focuses on the screening, detention, investigation and prosecution of ISIS suspects in Iraq. At each of these stages, the report finds serious legal shortcomings that undermine efforts to bring ISIS fighters, members, and affiliates to justice.

Most significantly, Human Rights Watch research finds an absence of a national strategy for ISIS prosecutions that will ensure the fulsome and credible prosecution of those responsible for the most serious crimes committed by ISIS, with the meaningful participation of victims and the creation of a thorough judicial record of these crimes. At the same time, the very broad prosecution of all those affiliated with ISIS in any way, no matter how minimal their involvement, will impede future community reconciliation and reintegration and clog up Iraqi courts and prisons for decades to come.

## Screening

The report raises concerns about due process in the screening process by which Iraqi and KRG security and military forces screen those leaving ISIS-controlled areas. Human Rights Watch is concerned that the quality of the incriminating information and the opacity of the process used to identify ISIS suspects, based on wanted lists or accusations by community members with no further evidence, may result in the misidentification and detention of boys and men who are or were not actually affiliated with ISIS. As our research shows, those wrongfully identified in the screening process as ISIS suspects may spend months in mass arbitrary detention during the course of their judicial investigation.

## Conditions of Detention

Conditions in detention and during interrogation are also problematic. Our research found that Iraqi authorities are detaining ISIS suspects in overcrowded and in some cases inhuman conditions; are failing to segregate children from adult detainees; and are systematically violating the due process rights of ISIS suspects. These violations of due process rights include ignoring guarantees in Iraqi law to bring detainees before a judge within 24 hours, to grant access to a lawyer throughout interrogations, and to notify families of their detention and allow families communication with them. Furthermore, numerous detainees have alleged that authorities tortured them to confess to membership in ISIS. When asked about such allegations, Iraqi authorities said they have investigated them but have not provided evidence of any such investigations.

## Prosecutions

The actions of ISIS represented a serious security risk to the Iraqi state. The group has carried out a broad range of attacks, including against civilians, and other criminal acts throughout the country. The Iraqi and KRG authorities are right to prosecute these crimes in order to protect the security of their population and to ensure justice for the victims. However, this report finds a number of shortcomings in the prosecutions of ISIS fighters and affiliates.

### *Lack of a National Strategy*

The report finds that there is no national strategy for ISIS prosecutions and that the charges against ISIS suspects fail to capture the broad range of crimes ISIS has committed.

Iraqi and KRG judges say that the Iraqi and KRG counterterrorism courts are operating in parallel. However, when asked about the overall plan to prosecute ISIS crimes, the judges told Human Rights Watch there is no national strategy to coordinate these prosecutions or to prioritize the prosecution of those responsible for the most serious crimes. Instead, both the Iraqi and the KRG authorities appear to be prosecuting all ISIS suspects under their respective counterterrorism laws primarily for their membership in ISIS, without any distinction or prioritization based on the gravity of the offenses they are accused of committing.

### *Reliance on Counterterrorism Laws*

The counterterrorism laws being used by both Iraqi government and KRG authorities have allowed judges to bring charges against a wide range of individuals, including some who are not implicated in specific violent acts but are deemed to have assisted ISIS, including for example doctors who worked in ISIS-run hospitals or cooks who prepared food for fighters. The counterterrorism laws carry harsh sentences, even for mere membership of ISIS: life in prison or the death penalty.

Charging ISIS suspects with violating the counterterrorism laws, rather than charging them with other offenses under the criminal code, is often easier as an evidentiary matter. In these cases, authorities only have to prove membership in ISIS, or participation in the ISIS bureaucracy or fighting forces, as grounds to prosecute and sentence ISIS suspects as opposed to proving that they committed specific criminal acts – a challenge given that these crimes took place in the chaos of war. But the reliance on counterterrorism laws is problematic from the perspective of prioritizing and punishing the most serious crimes under ISIS.

In addition, while membership in a terrorist organization is criminalized in most countries and there is nothing in international law that would preclude Iraq from prosecuting ISIS members, such wide-ranging prosecutions may not be appropriate in Iraq given the size of the territory and population centers over which ISIS maintained military and civilian control. At the height of its power ISIS relied on tens of thousands of local Iraqis to govern the populations and territory under its control. Prioritizing prosecution of the most serious crimes would allow for the strategic alignment of limited Iraqi resources.



### *Establishing a Judicial Record and Victim Participation*

Prosecution solely under the counterterrorism laws is also problematic from the perspective of establishing a judicial record of the wide body of crimes committed against countless Iraqi citizens and gathering the evidence of these crimes from witnesses and victims. While victims' communities in Iraq have been calling for justice, and trials in Iraq generally allow for victim and witness participation, authorities have made no efforts to solicit victims' participation in the trials, including to attend trials, appear as witnesses, share their testimonies, or submit questions to suspects.

Instead the authorities appear to be relying only on compensation to address victim rights and, with respect to crimes against Yazidis, a special review board to review. But even on these limited initiatives there is little public communication. Some representatives of victims' communities have stated they have no knowledge of the compensation scheme. While authorities in Baghdad have said they established a Judicial Investigation Board for Crimes Against the Yazidis to lead the prosecutions of crimes against Yazidi victims, they said the Board has no budget or location. And while they said the board had interviewed victims and collected criminal complaints, Yazidi community leaders said they have never interacted with the board.

### *Prosecution of Children*

The detention and prosecution of child ISIS suspects also may violate Iraq's human rights obligations governing the treatment of children, which requires considering a child's best interests, detaining them only as a last resort, prioritizing rehabilitation and considering alternatives to detention.

### *The Government of Iraq's Amnesty Law*

ISIS members convicted in government of Iraq courts may be entitled to release under General Amnesty Law passed in August 2016 (no.27/2016), but Iraqi judges are not consistently applying the law. The law offers amnesty to anyone who can demonstrate they joined ISIS or another extremist group against their will and did not commit any serious offense, including possession or use of explosives, maiming, or killing, before August 2016. The law also grants amnesty to individuals charged with a range of other crimes.

The office of the Chief Justice told Human Rights Watch that between August 2016 and October 2017, authorities had released 9,958 detainees under the amnesty law, but did not specify how many of those were facing counterterrorism charges. Judges handling the majority of counterterrorism cases have said they refuse to apply the law. For example, a senior counterterrorism judge in Nineveh said that, in his opinion, those who supported ISIS even with basic functions like cooking, were as culpable as ISIS fighters, and that he had no interest in defendant claims that they joined ISIS against their will. He told Human Rights Watch that he refused to apply the amnesty law because he thought no one who provided any support to ISIS deserved an amnesty. The KRG has not passed any amnesty law for ISIS convicts or suspects and a KRG spokesperson said none was under consideration.

While governments are not obliged to grant amnesties, international humanitarian law encourages authorities at the end of non-international armed conflicts to implement the broadest possible amnesties to those who participated in the conflict, except for the most serious crimes such as war crimes, crimes against humanity or genocide or other international crimes. International humanitarian law also prohibits the prosecution of medical workers for performing medical duties compatible with medical ethics.

## Next steps

### *Iraqi and KRG Authorities*

Human Rights Watch supports efforts to bring to credible justice all perpetrators of serious crimes and recognizes the challenges that the scale and number of these crimes represent to the Iraqi justice system. However, unless the judicial process meets basic due process and fair trial standards, and unless Iraqi and KRG authorities create a national strategy to prioritize the prosecution of the most serious crimes, including passing laws to criminalize war crimes and crimes against humanity, the current process will provide neither judicial documentation of these crimes nor justice for victims.

The Iraqi and KRG authorities should therefore urgently develop and publish a national strategy to prioritize the prosecution of those who committed the most serious crimes by bringing charges for those specific crimes, and with a clear role for victim engagement. For those suspected only of membership in ISIS without evidence of any other serious crime, and especially for children, the authorities should consider alternatives to criminal

prosecution including truth-telling mechanisms; the current prosecutions are clogging the judicial system and prisons while not providing justice for victims or helping Iraq transition towards a more peaceful future.

The authorities should, at a minimum, drop charges against those whose functions under ISIS contributed to the protection of human rights of civilians. However, if authorities insist on pursuing the broadest possible prosecutions, including only for membership in ISIS without any further offense, they should prioritize first and most quickly trying those with the most minimal charges against them and promptly releasing those eligible under the amnesty law. For children in particular authorities should consider alternatives to detention and criminal prosecution, and develop rehabilitation and reintegration programs to aid their return to society.

An approach that prioritizes prosecution for the gravest crimes while proposing alternatives to prosecution for less serious offenses, may create friction in victims' communities that are demanding urgent justice against any and all who may have been involved in ISIS' civil, political, security, and military administration. But authorities can mitigate this by actively seeking victims' participation in ongoing trials against the perpetrators of serious crimes, and communicating publicly and regularly regarding ISIS suspects' trials and convictions. Such measures would not only demonstrate the justice system's accountability but also support the creation of an accurate historical narrative.

The authorities should also develop truth-telling mechanisms with a broad mandate and powers, including the right to subpoena testimony and witnesses, that would address abuses committed by all sides in the conflict.

Further, Iraqi and KRG authorities should increase efforts to ensure that Iraq's existing compensation scheme is available to all victims, and develop the scheme into a broader gender-sensitive reparations program through a transparent and participatory process for all victims of serious human rights and humanitarian law violations committed during the conflict, including sexual violence. Restitution has been relied on in a number of different countries to remedy violations that involved displacement of people from their homes and lands. Such restitution would not only help those displaced by ISIS to regain their homes and lands but also foster broader transitional justice. Local and tribal councils across Iraq

have also advocated for deradicalization or “rehabilitation” programs for ISIS sympathizers, though to date none have been developed.

### *Accountability and Reconciliation*

The impunity of Iraqi and KRG security forces for their own serious abuses is a serious problem for justice and accountability in Iraq and for broader efforts at reconciliation. As far as Human Rights Watch is aware, Iraqi and KRG courts have not convicted Iraqi, Kurdish or anti-ISIS forces for any human rights and laws of war abuses. These well-documented abuses include mass killings, summary executions, disappearances, kidnappings, torture, and widespread home demolitions of Sunni homes in areas retaken from ISIS. Human Rights Watch has requested information from Iraqi and Kurdish authorities on numerous occasions about the outcomes of their investigations of Iraqi or KRG forces’ abuses but has not received any reply. Authorities should urgently act to hold abusive forces accountable, or risk another conflict with communities who have little faith in the fairness and justice of the Iraqi government and the KRG.

### *International Action*

A number of international actors, including the criminal-investigative group: the Commission for International Justice and Accountability (CIJA), third countries, and most recently a UN Security Council mandated investigative team, have attempted to launch various initiatives aimed at seeking justice for some ISIS victims, but have no apparent interaction with the fast-proceeding ISIS prosecutions underway in Iraq; such prosecutions may well be concluded by the time the international initiatives are under way. International actors should support a range of activities to improve detention and prosecution practices and address due process and other violations documented in this report. Such activities should include human rights and trial monitoring at the prisons and courthouses holding ISIS suspects. The partners of the Iraqi government and KRG should work to convince their judiciaries of the need at minimum to document crimes under the criminal code during the investigative process, even if suspects are charged only under counterterrorism laws, and to abolish and/or suspend the death penalty. They should also fund and facilitate the transport of victim families to participate in the trials.

On September 21, 2017, the United Nations Security Council unanimously adopted a resolution that mandates the Secretary General to establish an investigative team to

collect and preserve evidence of serious crimes, including war crimes and crimes against humanity, committed by ISIS in Iraq, for anticipated use in future criminal proceedings in Iraq or possibly in other national courts. However, as long as Iraqi and KRG courts allow for the death penalty for ISIS suspects, the investigative team should not provide them with evidence it collects for use in ongoing ISIS prosecutions, in line with the longstanding United Nations policy of not supporting or assisting processes that could lead to the death penalty. On October 10, United Nations Secretary-General Antonio Guterres said “the death penalty has no place in the 21st century,” describing it as a “barbaric practice.”

Instead, they should urge the Iraqi authorities at minimum to suspend the application of the death penalty in these prosecutions, for which there is recent precedent; the Lebanese government agreed to such a suspension of the death penalty in connection with the proceedings of the Special Tribunal for Lebanon as part of the government's agreement with the United Nations.

### *Foreign Fighters*

The mistreatment and due process violations of ISIS suspects are likely affecting foreign ISIS suspects in Iraq. Researchers have asked KRG and Iraqi government authorities about the number of foreign ISIS suspects they are holding and the number of extradited suspects. Iraqi authorities have not provided details on the number of foreign ISIS suspects they are detaining, but Prime Minister Haider al-Abadi stated on September 17 that authorities were detaining a German girl, as well as citizens from Belgium, France, Syria and Iran. A senior counterterrorism judge told Human Rights Watch about another three foreigners being held for trial. Media reports have referenced a Russian fighter whom Iraqi forces detained, convicted and executed.

A KRG spokesperson cited two individuals extradited by the KRG back to their home countries, but the authorities of the Iraqi government in Baghdad have yet to release any information about extraditions. Four Iraqi commanders told Human Rights Watch that their troops have killed foreign fighters they have encountered on the battlefield, and American, UK and French coalition partners have made comments encouraging the killing of foreign ISIS fighters in particular. Execution of fighters who surrender or are hors de combat is a war crime. Foreign countries whose nationals Iraq is trying as ISIS suspects should work to ensure that their nationals receive a fair trial with due process, including by providing their

nationals consular access and support, assistance in appointing legal representation, monitoring detention conditions and trials, and advocating privately and publicly with the Iraqi government for the abolition of the death penalty and/or its suspension in the trials.

## Methodology

This report is based on information gathered on five trips to Erbil, Nineveh governorate and Baghdad from November 2016 to July 2017, during which four researchers visited two prisons holding 1,200 ISIS suspects on three occasions, as well as a reformatory holding women and children accused of being ISIS members in Erbil. They visited the Nineveh counterterrorism court twice and the Erbil counterterrorism chamber once, interviewing five counterterrorism judges handling cases of ISIS suspects. They also visited courts in Baghdad and Erbil processing counterterrorism cases. Researchers held informational meetings with Iraq's Chief Justice, Minister of Justice, and the Prime Minister's transitional justice advisor. Researchers met with the Kurdistan Regional Government's Head of the Department of Foreign Relations and a justice advisor to the KRG President. Researchers consulted with international nongovernmental organizations working on justice issues in Iraq, as well as local lawyers and other legal experts.

Researchers also interviewed at least 100 families of ISIS suspects, as well as dozens of men, women and children who suffered grave abuses at the hands of ISIS or lost loved ones as a result. Authorities did not allow researchers to interview any ISIS suspects held in detention, invoking security concerns.

Human Rights Watch researchers spoke to almost all the interviewees in person and in Arabic. They conducted some interviews in Erbil in Kurdish with translation. Researchers informed all interviewees about the purpose and voluntary nature of the interviews, the ways in which they would use the information, and obtained consent from all interviewees, who understood they would receive no compensation for their participation. For reasons of personal security, Human Rights Watch has withheld the names and identifying information of some of the interviewees.

On August 31, Human Rights Watch sent Iraqi government and KRG authorities a list of questions, soliciting information regarding the number and kinds of proceedings in Iraqi and KRG courts against ISIS suspects. While the authorities in Baghdad did not respond by the time of publication, the relevant information from the KRG's responses are reflected in this report. Human Rights Watch maintains a dialogue with the Iraqi government and KRG

authorities and is grateful for the cooperation we received to assess the facts presented in this report and any resulting recommendations.



# I. Background

The rise of ISIS and its rapid expansion in Syria and Iraq are grounded in many factors ranging from the US invasion of Iraq in 2003 and its “de-Baathification” policies to sectarian policies by successive Iraqi governments and regional governments facilitating the rise of the extremist movement.<sup>1</sup> The exact weight to be given to any of these factors is a matter of debate among analysts.

ISIS rose from al-Qaeda in Iraq (AQI), a militant Sunni network, active in Iraq after the US-led invasion of 2003, comprising Iraqi and foreign fighters opposed to the US occupation and the Shia-dominated Iraqi government.<sup>2</sup> Starting in 2004, AQI conducted a wave of attacks, often suicide bombings, that targeted security forces, government institutions, and Iraqi civilians.<sup>3</sup>

Sectarian violence in Iraq intensified between 2006 and 2008, particularly after the bombing of the al-Askari Mosque in Samarra: one of the holiest sites in Shia Islam. This set off a wave of Shia reprisals against Sunnis followed by Sunni counterattacks.<sup>4</sup>

Starting in October 2005, a special tribunal called the Iraqi High Tribunal (IHT) tried defendants from former president Saddam Hussein’s government for abuses committed during his time in office.<sup>5</sup> The IHT had special jurisdiction over Iraqis, and non-Iraqis residing in Iraq, accused, among other crimes, of committing genocide, crimes against humanity, and war crimes between July 1968 and May 2003. In its first trial, Saddam Hussein and six other defendants were convicted for committing crimes against humanity;

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<sup>1</sup> Coalition provisional authority order number (1) de-Baathification of Iraqi society, issued by Paul Bremer, US. May 13, 2003. [https://upload.wikimedia.org/wikipedia/commons/5/56/20030516\\_CPAORD\\_1\\_De-Ba\\_athification\\_of\\_Iraqi\\_Society.pdf](https://upload.wikimedia.org/wikipedia/commons/5/56/20030516_CPAORD_1_De-Ba_athification_of_Iraqi_Society.pdf); and Carnegie Endowment for International Peace, “Shia-Centric State Building and Sunni Rejection in Post-2003 Iraq,” January 2016, [http://carnegieendowment.org/files/CP261\\_Haddad\\_Shia\\_Final.pdf](http://carnegieendowment.org/files/CP261_Haddad_Shia_Final.pdf) (accessed on November 2, 2017).

<sup>2</sup> Jessica D. Lewis, “Al-Qaeda in Iraq resurgent. The Breaking The Walls Campaign. Part I,” The Institute for the Study of War, September 2013, [http://www.understandingwar.org/sites/default/files/AQI-Resurgent-10Sept\\_o.pdf](http://www.understandingwar.org/sites/default/files/AQI-Resurgent-10Sept_o.pdf) (accessed on November 5, 2017).

<sup>3</sup> Greg Bruno, “Profile: Al-Qaeda in Iraq (a.k.a. al-Qaeda in Mesopotamia),” *Washington Post*, November 19, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/19/AR2007111900721.html> (accessed on October 27, 2017).

<sup>4</sup> “Bomb explodes at Iraq’s Samarra mosque,” Reuters, January 20, 2007, <https://www.reuters.com/article/us-iraq-samarra-mosque/bomb-explodes-at-iraqs-samarra-mosque-idUSIBO25341320061212> (accessed on October 27, 2017).

<sup>5</sup> Human Rights Watch, “Iraq: Events of 2006,” 2007, <https://www.hrw.org/world-report/2007/country-chapters-6>.

Hussein and two others were sentenced to death by hanging.<sup>6</sup> In a report issued in November 2006, Human Rights Watch concluded that the trial had not respected basic fair trial guarantees.<sup>7</sup>

The government, led from 2006 to 2014 by Nouri al-Maliki, amplified the country's division into warring Sunni and Shia camps that carried out bloody sectarian attacks.<sup>8</sup>

Over the next decade, the government failed to address any of the major grievances of the Sunni community, which complained there had been little meaningful participation of Sunnis in the political process and no real reforms of the punitive, overbroad “de-Baathification” campaign and counterterrorism laws. Sunni grievances were exacerbated by increasingly centralized power in the hands of the prime minister; brutal policing; mass arrests; unfair trials; and endemic torture in Iraqi prisons.<sup>9</sup>

AQI was severely weakened starting in 2007 after Sunni tribes paid by the United States began to form militias known as Awakening Councils to expel AQI from their territories. While diminished, the AQI network continued to operate, including through detainees being held in US-run detention facilities, notably the infamous Camp Bucca, where some of ISIS's future leadership met and networked.<sup>10</sup>

AQI's fortunes changed for the better in 2011, when the group used the conflict in Syria which broke out that year as a training and recruitment ground. In April 2013, Abu Bakr al-Baghdadi, who was head of AQI, highlighted the group's new presence in Syria by

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<sup>6</sup> Kirk Semple, “Saddam Hussein Is Sentenced to Death,” *New York Times*, November 5, 2006, <http://www.nytimes.com/2006/11/05/world/middleeast/05cnd-saddam.html> (accessed on October 5, 2017).

<sup>7</sup> Human Rights Watch, *Judging Dujail. The First Trial before the Iraqi High Tribunal*, November 19, 2006, <https://www.hrw.org/report/2006/11/19/judging-dujail/first-trial-iraqi-high-tribunal>.

<sup>8</sup> Kirk Semple, “Sectarian Attack Is Worst in Baghdad Since Invasion,” *New York Times*, November 24, 2006, <http://www.nytimes.com/2006/11/24/world/middleeast/24iraq.html> (accessed on October 5, 2017).

<sup>9</sup> Stephen Wicken, “Iraq's Sunnis in Crisis,” Middle East Security Report 2, Institute for the Study of War, May 2013, <http://www.understandingwar.org/sites/default/files/Wicken-Sunni-In-Iraq.pdf> (accessed on November 2, 2017); and Harith Hasan Al-Qarawee, “Iraq's Sectarian Crisis: A Legacy of Exclusion,” Carnegie Endowment for International Peace (April 2014), [http://carnegieendowment.org/files/iraq\\_sectarian\\_crisis.pdf](http://carnegieendowment.org/files/iraq_sectarian_crisis.pdf) (accessed on November 2, 2017).

<sup>10</sup> “Q&A: Iraq's Awakening Councils,” *BBC News Online*, July 18, 2010, <http://www.bbc.com/news/world-middle-east-10677623> (accessed on October 27, 2017); and Terrence McCoy, “How the Islamic State evolved in an American prison,” *Washington Post*, November, 2014, [https://www.washingtonpost.com/news/morning-mix/wp/2014/11/04/how-an-american-prison-helped-ignite-the-islamic-state/?utm\\_term=.57928945e4cc](https://www.washingtonpost.com/news/morning-mix/wp/2014/11/04/how-an-american-prison-helped-ignite-the-islamic-state/?utm_term=.57928945e4cc) (accessed on October 27, 2017).

changing the group's name to the Islamic State in Iraq and Syria (ISIS).<sup>11</sup> The Iraqi government's lack of inclusiveness and security failures expedited AQI's return to prominence in Iraq.

When Sunnis in Iraq attempted to peacefully protest their marginalization in 2012-13, they met violent assaults by government security forces.<sup>12</sup>

ISIS first captured territory in Syria, when it took over the city of Raqqa in late 2013. In January 2014, ISIS took control of the city of Fallujah in Iraq and in the summer of 2014, the group continued its offensive in Iraq, capturing Mosul and driving south to control parts of Salah al-Din, Kirkuk, Diyala, and Anbar governorates.<sup>13</sup>

Over the last three years, ISIS has ruled territory in both Iraq and Syria, publicizing its abuses to instill fear and maintain control of a largely Sunni population.<sup>14</sup> In an effort to administer their territory effectively, ISIS kept many local administrators under the Iraqi government in their jobs, for example teachers, hospital staff, and those who worked in municipal roles like garbage collection.<sup>15</sup>

However, Iraqi and Syrian forces, supported by a US-led anti-ISIS coalition, Iran, and Russia (anti-ISIS forces) have hit back hard at the group, and by mid-2017 had stripped away most of its territory.<sup>16</sup> Over the course of the last three years, the fighting has

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<sup>11</sup> Ray Sanchez, "ISIS, ISIL or the Islamic State?" *CNN*, October 25, 2017, <http://www.cnn.com/2014/09/09/world/meast/isis-isil-islamic-state/index.html> (accessed on October 27, 2017).

<sup>12</sup> Associated Press, "2 Wounded as Iraq Protesters Are Dispersed by Security Force," *New York Times*, December 30, 2012, <http://www.nytimes.com/2012/12/31/world/middleeast/2-wounded-as-iraq-protesters-dispersed.html> (accessed on November 1, 2017); and "Iraqi Sunni protest clashes in Hawija leave many dead," *BBC News Online*, April 23, 2013, <http://www.bbc.com/news/world-middle-east-22261422> (accessed on October 27, 2017).

<sup>13</sup> Jessica Lewis Mcfate, "The Isis Defense In Iraq And Syria: Countering An Adaptive Enemy," *The Institute for the Study of War*, May 2015, <http://www.understandingwar.org/sites/default/files/ISIS%20Defense%20in%20Iraq%20and%20Syria%20-%20Standard.pdf> (accessed on November 2, 2017).

<sup>14</sup> "ISIS Fast facts," *CNN*, October 17, 2017, <http://www.cnn.com/2014/08/08/world/isis-fast-facts/index.html> (accessed on October 27, 2017).

<sup>15</sup> Thanassis Cambanis & Rebecca Collard, "How ISIS Runs a City," *Time*, February 26, 2015, <http://time.com/3720063/isis-government-raqqa-mosul/> (accessed on October 27, 2017).

<sup>16</sup> US department of state, Office of the Special Presidential Envoy for the Global Coalition To Counter ISIS, "Update: Global Coalition to Defeat ISIS," August 4, 2017, <https://www.state.gov/r/pa/prs/ps/2017/08/273198.htm> (accessed on November 2, 2017).

displaced over one million civilians in Iraq alone, as well as pushed hundreds of thousands to flee the country and seek asylum abroad.<sup>17</sup>

## Record of Abuses

### *Abuses by ISIS Forces*

Since 2014, ISIS forces in different parts of Iraq have carried out human rights abuses, war crimes, crimes against humanity and what the UN-mandated Independent International Commission of Inquiry (COI) on the Syrian Arab Republic found to be genocide.<sup>18</sup> Most infamously, on August 3, 2014, ISIS launched attacks on villages and towns across Sinjar, targeting the Yezidi population.<sup>19</sup> Its fighters executed at least 2,000 individuals and captured another 6,417.<sup>20</sup> ISIS then imprisoned Yezidis, subjecting Yezidi women and girls to a system of organized rape, sexual assault, sexual slavery, other forms of torture and ill-treatment, forced marriage to ISIS forces, and forced labor.<sup>21</sup> ISIS forces also forced Yezidis to convert, and conscripted Yezidi children.<sup>22</sup> A United Nations report found evidence of the intent of ISIS to destroy the Yezidi population as a group when perpetrating these acts and concluded that “such conduct may amount to genocide.”<sup>23</sup>

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<sup>17</sup> Laura Smith-Spark and Chelsea J. Carter, “More than 1 million Iraqis have fled their homes as ISIS continues armed siege,” *CNN*, June 20, 2014, <http://www.cnn.com/2014/06/20/world/meast/iraq-crisis/index.html> (accessed on October 17, 2017).

<sup>18</sup> Skye Wheeler “‘Unimaginable Horrors’: UN Panel Reports on ISIS Crimes on Yezidis”, Human Rights Watch dispatch, June 21, 2016, <https://www.hrw.org/news/2016/06/21/un-panel-reports-isis-crimes-yezidis>; and “Iraq: ISIS Bombings Are Crimes Against Humanity,” Human Rights Watch news release, January 15, 2017, <https://www.hrw.org/news/2017/01/15/iraq-isis-bombings-are-crimes-against-humanity>.

<sup>19</sup> Skye Wheeler, “‘Unimaginable Horrors’”.

<sup>20</sup> UNHCR, “A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL,” August 2016, [http://www.uniraq.org/index.php?option=com\\_k2&view=item&task=download&id=1910\\_ca5ff308fd2154bb547334082b35290d&Itemid=650&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&task=download&id=1910_ca5ff308fd2154bb547334082b35290d&Itemid=650&lang=en) (accessed on November 2, 2017); and UN Assistance Mission for Iraq, “Statement by Mr. György Busztin, Deputy Special Representative of the Secretary-General at the Commemoration of Attacks against Yezidi Baghdad, 3 August 2017 [EN/AR],” August 3, 2017, <http://reliefweb.int/report/iraq/statement-mr-gy-rgy-busztin-deputy-special-representative-secretary-general> (accessed on October 18, 2017).

<sup>21</sup> Skye Wheeler, “‘Unimaginable Horrors’”; “Iraq: Forced Marriage, Conversion for Yezidis,” Human Rights Watch news release, October 2014, <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>; “Iraq: ISIS Escapees Describe Systematic Rape, Yezidi Survivors in Need of Urgent Care,” Human Rights Watch news release, April 14, 2015, <https://www.hrw.org/news/2015/04/14/iraq-isis-escapees-describe-systematic-rape>; Sarah Margon (Human Rights Watch), “ISIL’s Reign of Terror: Confronting the Growing Humanitarian Crisis in Iraq and Syria” testimony, Senate Foreign Relations Committee, December 9, 2014, <https://www.hrw.org/news/2014/12/09/isils-reign-terror-confronting-growing-humanitarian-crisis-iraq-and-syria-testimony>; “Iraq: Protect Mass Graves, Evidence of Possible ISIS Genocide Endangered,” Human Rights Watch news release January 30, 2016, <https://www.hrw.org/news/2016/01/30/iraq-protect-mass-graves>; and Rothna Begum and Samer Muscati (Human Rights Watch), “Interview: These Yezidi Girls Escaped ISIS. Now What?,” April 15, 2015, <https://www.hrw.org/news/2015/04/15/interview-these-yezidi-girls-escaped-isis-now-what>.

<sup>22</sup> UN News Center, “ISIL may have committed genocide, war crimes in Iraq, says UN human rights report,” March 19, 2015, <http://www.un.org/apps/news/story.asp?NewsID=50369#.Wbwf58gjERm> (accessed on November 2, 2017).

<sup>23</sup> United Nation Human Rights Council, Report of the Office of the United Nations Human Rights Commissioner on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and

Fighters have also targeted other groups including Shia individuals. In one of the largest massacres, ISIS fighters killed hundreds of Shia army recruits at Camp Speicher, outside of Tikrit, in June 2014.<sup>24</sup> In another mass killing that same month, ISIS fighters killed hundreds of Shia inmates as well as a number of Kurds and Yezidis at Badoush prison, outside of Mosul.<sup>25</sup>

ISIS systematically targeted Iraq's minority communities including Yezidis, Shia Shabaks, Shia Turkmen, and Christians.<sup>26</sup> It ordered Christians in the city of Mosul to convert to Islam, pay a tax as non-Muslims (*jizya*), flee, or face "the sword."<sup>27</sup>

Since 2011, ISIS has deployed its fighters, including children it recruited as soldiers, to undertake hundreds of suicide and car bombing attacks that have killed thousands of civilians.<sup>28</sup> In territory under its control, fighters resorted to ill-treatment, including sexual violence, as well as public beheadings and other grotesque killings and acts of torture as a method of governing through fear.<sup>29</sup> ISIS's Diwan al-Hisba (Moral Policing Administration) subjected its mostly Sunni populated areas with severe restrictions and punishments including executions of allegedly gay men, the stoning of individuals for alleged adultery, and prohibiting the use of cell phones and cigarettes. It imposed severe restrictions on women and girls' clothing and freedom of movement in ISIS-controlled areas.<sup>30</sup> Sunni

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associated groups, March 13, 2015,

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_18\\_AUV.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_18_AUV.doc) (accessed on November 2, 2017).

<sup>24</sup> "Iraq: Islamic State Executions in Tikrit," Human Rights Watch news release, September 2, 2014, <https://www.hrw.org/news/2014/09/02/iraq-islamic-state-executions-tikrit>.

<sup>25</sup> "Iraq: ISIS Executed Hundreds of Prison Inmates," Human Rights Watch news release, October 30, 2014, <https://www.hrw.org/news/2014/10/30/iraq-isis-executed-hundreds-prison-inmates>.

<sup>26</sup> "Iraq: ISIS Abducting, Killing, Expelling Minorities," Human Rights Watch news release, July 19, 2014, <https://www.hrw.org/news/2014/07/19/iraq-isis-abducting-killing-expelling-minorities>.

<sup>27</sup> "Iraq: Forced Marriage, Conversion for Yezidis," Human Rights Watch news release, October 11, 2014, <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>.

<sup>28</sup> "Iraq: Suicide Attacks Targeting Crowds in Baghdad," Human Rights Watch news release, May 30, 2017, <https://www.hrw.org/news/2017/05/30/iraq-suicide-attacks-targeting-crowds-baghdad>; Charlie D'Agata, "How ISIS-trained child soldiers are a ticking time bomb," *CBS News*, July 29, 2017, <http://www.cbsnews.com/news/isis-trained-child-soldiers-cbsn-on-assignment/> (accessed on October 27, 2017); and Samuel Osborne, "'Isis child suicide bomber' stripped of explosive belt before attack in Iraq," *Independent*, August 22, 2016, <http://www.independent.co.uk/news/world/middle-east/isis-child-suicide-bomber-iraq-turkey-attack-bomb-terrorism-terror-bombing-a7203261.html> (accessed on October 27, 2017).

<sup>29</sup> "Iraq: Sunni Women Tell of ISIS Detention, Torture," Human Rights Watch news release, February 20, 2017, <https://www.hrw.org/news/2017/02/20/iraq-sunni-women-tell-isis-detention-torture>.

<sup>30</sup> "Iraq: Women Suffer Under ISIS," Human Rights Watch news release, April 5, 2016, <https://www.hrw.org/news/2016/04/05/iraq-women-suffer-under-isis>; and "Syria: Extremists Restricting Women's Rights,"

women and girls told Human Rights Watch that they were only allowed to leave their houses dressed in a full-face veil (*niqab*) and accompanied by a close male relative. These rules, enforced by beating and fines on male family members, isolated women from family, friends, and public life.<sup>31</sup>

ISIS also taxed families living under its control, confiscated property of those that fled, raided banks, and stole money, gold and other valuables.<sup>32</sup> ISIS destroyed mosques, shrines, churches, statues, tombs, and other religious and archaeological sites throughout areas under its control, and looted and stole valuable cultural artifacts to help finance its operations.<sup>33</sup> These acts represent war crimes.

In their battle against anti-ISIS forces, the group also has carried out chemical attacks and launched ground-fired munitions into civilian populated areas.<sup>34</sup> Fighters have hidden themselves among civilians in places like hospitals, which are protected objects under international humanitarian law, and have used civilians as human shields during operations. ISIS snipers have fired on civilians trying to flee.<sup>35</sup> In the midst of its battles, ISIS has also carried out mass executions of civilians under its control, leaving many mass graves in its wake.<sup>36</sup>

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Human Rights Watch news release, January 13, 2014, <https://www.hrw.org/news/2014/01/13/syria-extremists-restricting-womens-rights>.

<sup>31</sup> "Iraq: Women Suffer Under ISIS," Human Rights Watch news release, April 5, 2016, <https://www.hrw.org/news/2016/04/05/iraq-women-suffer-under-isis>; and "Syria: Extremists Restricting Women's Rights," Human Rights Watch news release, January 13, 2014, <https://www.hrw.org/news/2014/01/13/syria-extremists-restricting-womens-rights>.

<sup>32</sup> Ashley Fantz, "How ISIS makes (and takes) money," *CNN*, February 20, 2015, <http://edition.cnn.com/2015/02/19/world/how-isis-makes-money/index.html> (accessed on October 26, 2017).

<sup>33</sup> David W. Bowker, Laura Goodall, and Rebecca A. Haciski, "Confronting ISIS's War on Cultural Property," *American Society of International Law*, vol. 20, issue. 12 (2016), <https://www.asil.org/insights/volume/20/issue/12/confronting-isis-war-cultural-property> (accessed on November 2, 2017).

<sup>34</sup> "ISIS Accused of Unleashing Chemical Weapons in Mosul," Human Rights Watch news release, March 6, 2017, <https://www.hrw.org/news/2017/03/06/isis-accused-unleashing-chemical-weapons-mosul>; and "Iraq: ISIS Attacking Civilians in Mosul Retreat," Human Rights Watch news release, December 20, 2016, <https://www.hrw.org/news/2016/12/20/iraq-isis-attacking-civilians-mosul-retreat>.

<sup>35</sup> "Iraq: Feared ISIS Use of 'Human Shields,' Executions," Human Rights Watch news release, November 4, 2016, <https://www.hrw.org/news/2016/11/04/iraq-feared-isis-use-human-shields-executions>; "Iraq/Syria: Danger from US White Phosphorous," Human Rights Watch news releases, June 14, 2017, <https://www.hrw.org/news/2017/06/14/iraq/syria-danger-us-white-phosphorus>; and "Iraq: In Mosul Battle ISIS Used Hospital Base," Human Rights Watch news release, February 8, 2017, <https://www.hrw.org/news/2017/02/08/iraq-mosul-battle-isis-used-hospital-base>.

<sup>36</sup> "Iraq: ISIS Executed Civilians in Village Uprising," Human Rights Watch news release, December 27, 2016, <https://www.hrw.org/news/2016/12/27/iraq-isis-executed-civilians-village-uprising>; "Iraq: Islamic State Executions in Tikrit," Human Rights Watch news release, September 2, 2014, <https://www.hrw.org/news/2014/09/02/iraq-islamic-state-executions-tikrit>; "Iraq: ISIS Dumped Hundreds in Mass Grave," Human Rights Watch news release, March 22, 2017,

## *Abuses by Anti-ISIS Forces*

### **Ill-treatment and Executions**

While abuses by various Iraqi and Kurdistan Regional Government (KRG) forces, as well as historically Shia military units now regularized into Iraqi state forces and known as the Popular Mobilization Forces (PMF), have been longstanding, the battle against ISIS has afforded these forces wide latitude to carry out abuses under the guise of fighting terror.

Human Rights Watch has repeatedly documented Iraqi forces' torture and extrajudicial executions of men during the conflict against ISIS. This includes torture and extrajudicial killings during the 2016 operation to retake Fallujah, as well as during the 2016-17 operations to retake Mosul, when they tortured and killed those captured in and around the battle field with complete impunity, sometimes even after posting photos and videos of the abuses on social media sites.<sup>37</sup>

### **Indiscriminate Bombardment**

In the battle against ISIS in Iraq, Iraqi and US-led coalition forces have carried out a bombardment campaign that has targeted civilian objects including homes and hospitals.<sup>38</sup> Forces have fired inaccurate (and therefore inherently indiscriminate) ground-fired munitions including mortars, grad rockets and Improvised Rocket-Assisted Munitions (IRAM), into densely populated civilian areas.<sup>39</sup> In addition, aircraft have dropped

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<https://www.hrw.org/news/2017/03/22/iraq-isis-dumped-hundreds-mass-grave>; and "Iraq: ISIS Executed Hundreds of Prison Inmates," Human Rights Watch news release, October 30, 2014, <https://www.hrw.org/news/2014/10/30/iraq-isis-executed-hundreds-prison-inmates>.

<sup>37</sup> "Iraq: US-Trained Forces Linked to Mosul War-Crimes," Human Rights Watch news release, July 27, 2017, <https://www.hrw.org/news/2017/07/27/iraq-us-trained-forces-linked-mosul-war-crimes>; "Iraq: Execution Site Near Mosul's Old City," Human Rights Watch news release, July 19, 2017, <https://www.hrw.org/news/2017/07/19/iraq-execution-site-near-mosuls-old-city>; "Iraq: Investigate Possible Mosul Abuse," Human Rights Watch news release, July 13, 2017, <https://www.hrw.org/news/2017/07/13/iraq-investigate-possible-mosul-abuse>; "Iraq: New Abuse, Execution Reports of Men Fleeing Mosul," Human Rights Watch news release, June 30, 2017, <https://www.hrw.org/news/2017/06/30/iraq-new-abuse-execution-reports-men-fleeing-mosul>; "Iraq: Fallujah Abuses Inquiry Mired in Secrecy," Human Rights Watch news release, July 7, 2016, <https://www.hrw.org/news/2016/07/07/iraq-fallujah-abuses-inquiry-mired-secrecy>; and "Iraq: Fallujah Abuses Test-Control of Militias," Human Rights Watch news release, June 9, 2016, <https://www.hrw.org/news/2016/06/09/iraq-fallujah-abuses-test-control-militias>.

<sup>38</sup> "Iraq: Airstrike Hits Clinic, 8 Civilians Died," Human Rights Watch news release, November 29, 2016, <https://www.hrw.org/news/2016/11/29/iraq-airstrike-hits-clinic-8-civilians-died>; and "Iraq: Airstrike Vetting Changes Raise Concerns," Human Rights Watch news release, March 28, <https://www.hrw.org/news/2017/03/28/iraq-airstrike-vetting-changes-raise-concerns>.

<sup>39</sup> "Iraq/US-Led Coalition: Weapons Choice Endangers Mosul Civilians," Human Rights Watch news release, June 8, 2017, <https://www.hrw.org/news/2017/06/08/iraq/us-led-coalition-weapons-choice-endangers-mosul-civilians>.

explosive weapons with wide-area effects on the same areas.<sup>40</sup> No accurate estimates of civilian casualties are available, including for the largest urban battles against ISIS in Fallujah and Mosul, but they are likely in the many thousands.<sup>41</sup> By the coalition's own admission, its aircraft have unintentionally killed at least 624 civilians.<sup>42</sup> In another statement, Prime Minister al-Abadi said that between 970 and 1,260 civilians were killed during the battle for Mosul but provided no details on how those numbers were reached.<sup>43</sup>

### Home Demolitions and Forced Displacement

Since 2014, units of the KRG and within the Iraqi Popular Mobilization Forces have carried out mass destruction of civilian property in areas recaptured from ISIS. For example, in late August 2014, PMF units raided and destroyed several dozen Sunni villages neighboring Amerli after capturing the city from ISIS.<sup>44</sup> After recapturing Tikrit in March 2015, PMF units torched and blew up hundreds of buildings and destroyed large sections of neighboring al-Dur, al-Bu 'Ajil, and southern al-Alam.<sup>45</sup> Human Rights Watch has also documented KRG forces committing unlawful destruction of Arab homes and sometimes of entire Arab villages, in tandem with the deportation of residents, in at least 21 villages in the areas of Kirkuk and Nineveh governorates.<sup>46</sup> KRG authorities have not allowed internally displaced people to freely move in the Kurdish Region of Iraq and the disputed territories, requiring internally displaced people to stay in camps with severe restrictions on their movement.<sup>47</sup>

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<sup>40</sup> "Iraq: Airstrike Vetting Changes Raise Concerns," Human Rights Watch news release, March 28, 2017, <https://www.hrw.org/news/2017/03/28/iraq-airstrike-vetting-changes-raise-concerns>.

<sup>41</sup> Bethan McKernan, "Mosul: Amnesty International calls for investigation into civilian deaths after Isis defeat," *Independent*, July 11, 2017, <http://www.independent.co.uk/news/world/middle-east/mosul-latest-news-amnesty-international-civilian-deaths-isis-defeat-iraq-coalition-forces-us-air-a7835831.html> (accessed on October 27, 2017).

<sup>42</sup> US Central Command. "Combined Joint Task Force – Operation Inherent Resolve Monthly Civilian Casualty Report," August 4, 2017,

<http://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/1267466/combined-joint-task-force-operation-inherent-resolve-monthly-civilian-casualty/> (accessed on November 2, 2017).

<sup>43</sup> "The Latest: Iraq PM says Mosul abuses not systematic," *Associated Press*, September 16, 2017. <https://www.apnews.com/a4848bo7448b4ced9do6a2d17a5073af> (accessed on November 2, 2017).

<sup>44</sup> Human Rights Watch, *After Liberation Came Destruction: Iraqi Militias and the Aftermath of Amerli*, March 18, 2015, <https://www.hrw.org/report/2015/03/18/after-liberation-came-destruction/iraqi-militias-and-aftermath-amerli> p. 14.

<sup>45</sup> Human Rights Watch, *Ruinous Aftermath Militia Abuses Following Iraq's Recapture of Tikrit*, September 20, 2015, <https://www.hrw.org/report/2015/09/20/ruinous-aftermath/militias-abuses-following-iraqs-recapture-tikrit>.

<sup>46</sup> Human Rights Watch, *Marked With An "X": Iraqi Kurdish Forces' Destruction of Villages, Homes in Conflict with ISIS*, November 13, 2016, <https://www.hrw.org/report/2016/11/13/marked-x/iraqi-kurdish-forces-destruction-villages-homes-conflict-isis> p. 18.

<sup>47</sup> "Iraq/KRG: Displaced People Can't Move Freely," Human Rights Watch news release, October 21, 2017, <https://www.hrw.org/news/2016/10/21/iraq/krq-displaced-people-cant-move-freely>.



Some anti-ISIS forces including both Shia and Sunni PMF units also recruited and used children in combat.<sup>48</sup>

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<sup>48</sup> Christoph Wilcke (Human Rights Watch), "No Child's Play: Kids Fighting One Another in Iraq Conflict," commentary, *Huffington Post*, October 30, 2015, <https://www.hrw.org/news/2015/10/30/no-childs-play-kids-fighting-one-another-iraq-conflict>; and "Iraq: Militias Recruiting Children," Human Rights Watch news release, August 30, 2016, <https://www.hrw.org/news/2016/08/30/iraq-militias-recruiting-children>.

## II. Prosecution of ISIS Fighters, Members and Affiliates

While the battle against ISIS forces in Iraq continues, Iraqi and Kurdistan Regional Government authorities simultaneously have commenced prosecutions of thousands of detainees, including hundreds of children, for crimes tied to their affiliation with ISIS. Human Rights Watch is concerned that government forces have detained some with little real evidence or grounds, in some cases relying only on their identification as ISIS members by community members without further investigation, or because an individual happens to have the same name as a suspect.

The sheer scope of the undertaking by Iraqi and KRG judicial authorities is massive, with authorities holding ISIS suspects in conditions that are overcrowded, in some cases inhuman and leading to deaths in custody. While the counterterrorism law does not suspend any aspects of the criminal procedure code, authorities handling cases are unable or unwilling to uphold procedural rules requiring that a suspect be detained only after a court-issued arrest warrant, see a judge within 24 hours of their detention, and have a lawyer present throughout the investigative process. There is widespread arbitrary detention of ISIS suspects, numerous allegations of torture in the course of security forces' interrogations, which appear primarily designed to extract confessions, and no sign that judges are intervening to dismiss these confessions.

Despite this, investigations and trials are underway against thousands of ISIS suspects in proceedings that are too rushed to guarantee due process. Charges are based primarily on confessions that may have been extracted under duress and written witness testimony. The defense often has no meaningful opportunity to challenge evidence. And many proceedings are ending in death sentences.

Judicial authorities are charging ISIS suspects under counterterrorism legislation for membership in or providing support to ISIS, and killing and other acts identified in the counterterrorism laws. According to judges handling the cases, they are not charging suspects of crimes they may have committed under other criminal laws, such as rape or kidnapping. Serious international crimes such as crimes against humanity, war crimes, or genocide are not criminalized under Iraqi law.

It is certainly easier as an evidentiary matter to rely on counterterrorism laws, as authorities would only have to prove membership in ISIS, or participation in the ISIS bureaucracy or fighting forces as grounds to prosecute ISIS suspects. But this approach makes it less likely that the process will establish a more comprehensive judicial record of the crimes committed, and gather the evidence of these crimes from witnesses and victims. The overreliance on counterterrorism laws also makes it less likely that the process will prioritize and punish the most serious offenses committed by ISIS.

The judicial system in Iraq has evolved differently in the Kurdish Regional of Iraq and in the rest of the country. In the former, the KRG, which has jurisdiction in the governorates of Dohuk, Erbil, and Sulaimaniya, has passed and applied its own distinct laws since 1992. The court system in both parts of the country contains specialized criminal courts or chambers that handle counterterrorism cases under their respective counterterrorism laws, including those involving ISIS suspects. The courts and judges within each system sit under the authority of the Higher Judicial Council and the Kurdish Judicial Council respectively, the bodies that manage and supervise the affairs of the judiciary. Both have judges specialized in handling cases of juveniles facing counterterrorism charges.

According to judges handling these cases on both sides, the two systems are operating in parallel, but with limited coordination over such cases. According to senior officials on both sides, there is no national strategy or plan to coordinate the prosecution of ISIS suspects or to prioritize those responsible for the most serious crimes. As a result, the prosecutions of ISIS suspects to date are proceeding against ISIS suspects primarily for their membership in ISIS, without any distinction or prioritization based on the gravity of the offenses they may have committed. A government of Iraq Amnesty Law permits judges to grant ISIS suspects amnesty if they can show they joined ISIS against their will and did not carry out other violent criminal acts. The KRG has no amnesty law in place, and a KRG spokesperson said none was under consideration.<sup>49</sup>

While victims' communities in Iraq have been calling for justice, the ongoing trials grant victims no meaningful opportunities to participate, including to attend, testify, or submit

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<sup>49</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Human Rights Watch, September 6, 2017.

questions to suspects. As far as Human Rights Watch is aware, no national or international organizations are carrying out trial monitoring activities.

## Overbroad Arrests and Detentions

ISIS forces represent a serious security risk to the state and its civilians, carrying out a range of attacks and other criminal acts throughout the country, which authorities are right to prosecute in order to protect the security of their population and to ensure justice for the victims. As part of their campaign to defeat ISIS, Iraqi and KRG security and military forces screen people leaving ISIS-controlled areas in order to detain those identified as ISIS suspects; while some of these people include civilians with no ties to ISIS fleeing the conflict in the ISIS-held areas, others may well include ISIS fighters or persons affiliated with ISIS and responsible for abuses. Indeed, many ISIS fighters have managed to cross into Iraqi and KRG-controlled territory and have carried out hundreds of deadly attacks against military forces and civilians. Nevertheless, Human Rights Watch is concerned that the vague process of identifying persons as ISIS-related, based on wanted lists or a denunciation by an individual community member with no further evidence, may result in the misidentification and detention of boys and men who are not actually affiliated with ISIS, or at most unwillingly carried out civilian activities that supported the group.

Human Rights Watch researchers received numerous allegations from families of detained ISIS suspects that neighbors or other individuals had proposed the addition of individuals to one of the “wanted lists” simply because of tribal, familial, land, or personal disputes.<sup>50</sup>

To screen incoming persons from ISIS-held areas or those present in areas taken over by ISIS, KRG and Iraqi forces have checked their names against various “wanted lists” of ISIS suspects they have developed since 2014. They have relied on a variety of sources to create these lists, including for example public information about ISIS members, some published by ISIS itself. But they have primarily relied on people who left ISIS areas to provide the names of ISIS suspects in their communities.<sup>51</sup> People screened while in or

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<sup>50</sup> "Iraq: Displacement, Detention of Suspected "ISIS families", Human Rights Watch news release, March 5, 2017, <https://www.hrw.org/news/2017/03/05/iraq-displacement-detention-suspected-isis-families>.

<sup>51</sup> "Iraq: Dozens Found Handcuffed, Executed in, around Mosul," Human Rights Watch news release, June 4, 2017, <https://www.hrw.org/news/2017/06/05/iraq-dozens-found-handcuffed-executed-around-mosul>.

leaving ISIS areas found to be on a “wanted list” face detention while officials investigate the allegation of their ISIS-affiliation.

From November 2016 to June 2017, Human Rights Watch observed Iraqi forces at checkpoints checking the identity cards of men and boys leaving ISIS territory and detaining those whose name appears on a wanted list. According to dozens of displaced individuals, various security and military forces screen people using multiple wanted lists at different checkpoints and at camps for the internally displaced persons (IDPs) before clearing them and allowing them to settle in the camps.

According to a KRG spokesperson, to assess the credibility of statements by “informants,” he said security forces require them “to take an oath on the Quran to tell the truth.”<sup>52</sup> After they do so, security forces present the statements to a judge to obtain an arrest warrant in order to detain and interrogate an individual.

On August 6, 2017, the Minister of Interior requested all government of Iraq security services to submit their “wanted lists” to the Ministry of Interior’s Directorate of Criminal Evidence so they could centralize them.<sup>53</sup>

Human Rights Watch subsequently observed authorities detaining men at checkpoints or from IDP camps on grounds that camp residents or individuals from their neighborhoods who were traveling with them denounced them as being affiliated to ISIS, even though their name did not appear on a wanted list. In some instances, displaced individuals who had been screened said that authorities brought “masked informants” to the checkpoints to identify whether individuals were ISIS suspects, and detain those so identified.<sup>54</sup>

Human Rights Watch has raised concerns about the number of different actors it has witnessed participating in screening and detention of ISIS suspects, including the army, and military intelligence; the Counterterrorism Service; the National Security Service; the

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<sup>52</sup> Dr. Dindar Zebari, chairman of the KRG’s High Committee to Evaluate International Organizations’ Reports, email message to Human Rights Watch, September 6, 2017.

<sup>53</sup> “الاسماء تشابه” بشأن الداخلية مقترحات على يوافق العبادي”, *NRT TV*, August 6, 2017, <http://www.nrttv.com/AR/Detail.aspx?jicare=54366> (accessed October 27, 2017).

<sup>54</sup> “Kurdistan Region of Iraq: New Detentions of Fleeing Men, Boys,” Human Rights Watch news release, June 3, 2017, <https://www.hrw.org/news/2017/06/03/kurdistan-region-iraq-new-detentions-fleeing-men-boys>.

Emergency Response Division; the Federal Police; the intelligence branch of the Ministry of Interior; the Popular Mobilization Forces; Asayish (KRG security forces); and the Peshmerga (KRG military forces).<sup>55</sup>

KRG forces have stopped hundreds of families fleeing ISIS-controlled areas including Hawija, 60 kilometers south of Mosul, and Tal Afar, 55 kilometers west of Mosul, for weeks or even months at a time at checkpoints, including on the front lines, citing security concerns about ISIS fighters present among them or their affiliation with ISIS, in many cases preventing their access to humanitarian assistance.<sup>56</sup>

Under Iraqi criminal procedure, which remains in force in full because the government has not invoked a state of emergency, police may detain suspects only after a court-issued arrest warrant and must bring suspects before a judge within 24 hours in order to mandate their continued detention.<sup>57</sup> In practice, the government has required that Iraqi forces who detain ISIS suspects while engaged in conflict should hand them over to the Ministry of Interior's intelligence branch. From what Human Rights Watch has observed, security forces are often detaining individuals without a court-issued arrest warrant, not necessarily handing them over to the mandated forces or to formal detention facilities, and are not bringing prisoners before a judge within 24 hours. During a trip to Nineveh in July 2017, Human Rights Watch also documented the continued detention for periods of at least four months of at least a dozen ISIS suspects without warrant and without notification to family members.

In apparent recognition of this, Iraqi authorities have issued two orders reminding authorities of the need to obtain warrants prior to arrest. On July 13, the Minister of Interior issued an order reminding its forces only to detain individuals in line with the criminal procedure code requiring a warrant for arrest.<sup>58</sup> On August 6, Prime Minister al-Abadi

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<sup>55</sup> Belkis Wille (Human Rights Watch), "Where are Mosul's Detainees Going?," commentary, *al-Alam*, March 19, 2017, <https://www.hrw.org/news/2017/03/19/where-are-mosuls-detainees-going>.

<sup>56</sup> "Kurdistan Region of Iraq: Thousands Fleeing Kept waiting Near Front Line," Human Rights Watch news release, June 21, 2017, <https://www.hrw.org/news/2017/06/21/kurdistan-region-iraq-thousands-fleeing-kept-waiting-near-front-line>.

<sup>57</sup> Invoking a state of emergency would allow authorities to curtail certain rights temporarily.

<sup>58</sup> The Iraqi Ministry of Interior, "حرصاً على معالجة مشكلة تشابه الاسماء.. وزير الداخلية يصدّق اعاماً على توابع الوزّارة باعتماد المعلومات الكاملة والدقيقة لتنفيذ مذكرات القاء القبض," June 1, 2017, <http://www.moi.gov.iq/index.php?name=News&file=article&sid=2604> (accessed October 17, 2017).

endorsed the order, stating that intelligence officials should dismiss detention orders or arrest warrants that do not comply with the criminal procedure code's criteria.<sup>59</sup>

As per Iraq's criminal procedure code, as amended by the KRG in 2010, authorities in the KRG also must bring detainees before a judge within the first 24 hours of detention, after which a judge can order their continued detention for renewable periods of up to six months.<sup>60</sup> Asayish forces may hold and interrogate individuals during that time to build a case to present before the investigative judge. After six months the case must proceed to trial.<sup>61</sup> Because of a lack of access to detainees, Human Rights Watch has not been able to determine to what extent KRG authorities are abiding by these procedures. However, a KRG spokesperson acknowledged that there have been delays in the legal procedures in "a few cases" because of the large number of displaced people arriving in the Kurdish Region of Iraq.<sup>62</sup>

Five senior judges and a KRG spokesperson told Human Rights Watch that though not written into domestic law, authorities are also under an obligation to notify families when their loved ones are detained and allow detainees to communicate with their loved ones, as per Iraq's international human rights obligations.<sup>63</sup> However, at least 100 families of detained ISIS suspects told Human Rights Watch that they never received any notification from Iraqi and KRG authorities about where they were holding the suspects.<sup>64</sup> In addition, a lawyer handling dozens of cases of juveniles detained said that in every case he had come across from Nineveh, the parents of those detained had no idea of their child's whereabouts. He said that all authorities also have an obligation to register those they

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<sup>59</sup> "الأسماء تشابه" بشأن الداخلية مقترحات على يوافق العبادي" *NRT TV*, August 6, 2017, <http://www.nrttv.com/AR/Detail.aspx?Jimare=54366> (accessed October 27, 2017).

<sup>60</sup> Global Justice Project: Iraq, "Criminal Procedure Code 23 of 1971, Kurdistan region of Iraq (as amended to 14 February 2010)," <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-kurdish-v2.doc>, art. 109 and art. 123.

<sup>61</sup> *Ibid.* art. 109.

<sup>62</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Human Rights Watch, October 25, 2016, [https://www.hrw.org/sites/default/files/supporting\\_resources/request\\_for\\_government\\_comment.pdf](https://www.hrw.org/sites/default/files/supporting_resources/request_for_government_comment.pdf).

<sup>63</sup> *Ibid.* Standard Minimum Rules for the Treatment of Prisoners, Geneva, 1955. United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Rule 58, rule 68, [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf); Human Rights Watch interview with Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017; Interview with a judge who requested anonymity, Hamdaniya, July 6, 2017; and interview with Judge Fadhal Abbas and Judge Masoud al-Sinjari, Erbil, July 5, 2017, [https://www.hrw.org/sites/default/files/supporting\\_resources/request\\_for\\_government\\_comment.pdf](https://www.hrw.org/sites/default/files/supporting_resources/request_for_government_comment.pdf).

<sup>64</sup> "Iraq/Kurdistan Region: Men, Boys who Fled ISIS Detained," Human Rights Watch new release, February 26, 2017, <https://www.hrw.org/news/2017/02/26/iraq/kurdistan-region-men-boys-who-fled-isis-detained>.

detain in a central database but that in numerous cases, he has found individuals in detention, without their names being registered in the database, making it even harder for their families to locate them.<sup>65</sup>

While the ongoing armed conflict, as well as the sheer number of detainees, represents a significant challenge to meeting detainees' rights, authorities should do all in their power to ensure that detentions are carried out by legally-mandated forces in line with the criminal procedural code and Iraq's international human rights obligations, and that families of detainees are notified of their detention, including by relying on local police, camp management or other interlocutors if necessary.

## Flawed Trials in Iraqi Courts

According to judges handling these cases, Iraqi authorities are relying on one provision of Iraq's counterterrorism law (no. 13/2005) to prosecute all ISIS suspects, without bringing separate charges for any crimes under the criminal code. The prosecution is charging individuals for membership in ISIS, including those who are not alleged to have committed any other crime, without any seeming strategy on how to prioritize cases.

### *Flawed Prosecutions; Lack of Strategy or Prioritization for ISIS Prosecutions*

As described earlier, ISIS forces have been responsible for a wide variety of crimes in Iraq, including crimes such as murder, torture, kidnapping, rape as well as serious crimes under international law including war crimes and crimes against humanity. However, Iraqi courts are prosecuting ISIS suspects only for offenses under the counterterrorism law, with no prosecution for other crimes under the Iraqi criminal code, such as slavery, torture and rape. Iraqi judicial authorities are also unable to prosecute international crimes such as war crimes, crimes against humanity and genocide because they are not enshrined in national law. Further, from what Human Rights Watch researchers have been able to observe in trials, Iraqi courts appear to be prosecuting a random assortment of ISIS suspects for affiliation with ISIS, with no prioritization of those responsible for the most serious crimes. It appears that the authorities are even targeting for prosecution those whose only role was participation in running basic services such as electricity or providing medical care to the sick under the ISIS administration.

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<sup>65</sup> Human Rights Watch interview with an Iraqi lawyer who requested anonymity, Baghdad, September 19, 2017.



Currently, most cases against ISIS suspects in courts under the authority of the Baghdad government are taking place in Nineveh governorate, where Mosul is located. Large numbers of ISIS suspects captured during the hostilities are being detained there. Nineveh's counterterrorism court, which was located in Mosul until 2014, currently functions in the town of Tal Kayf, 10 kilometers north of Mosul. On July 6, Human Rights Watch visited the Nineveh counterterrorism courthouse, which at the time was operating out of an abandoned home in the town of Hamdaniya, and observed two trials. Other governorates have their own counterterrorism courts, with the Baghdad counterterrorism chamber sitting within the Central Criminal Court.

At the time of writing, the court had eleven sitting judges, all with previous expertise adjudicating counterterrorism cases, ruling on cases against ISIS suspects within the jurisdiction of Nineveh.<sup>66</sup> According to the official procedure, when security forces capture ISIS suspects they turn them over to the Ministry of Interior's intelligence forces, who detain and interrogate them, develop a case file on them, and then bring them before one of the eleven judges for an investigative hearing. At the hearing, all the suspects have a private or state-appointed lawyer present. If the judges deem that there is enough evidence, the detainee returns for trial. Despite the legal requirement for an arrest warrant, judicial authorities told Human Rights Watch researchers they do not always observe the use of court-issued arrest warrants.

From February to September 2017, a senior court judge told Human Rights Watch, the court had carried out individual investigative hearings into all 5,500 ISIS suspects in Nineveh and had moved onto the sentencing hearings.<sup>67</sup> He told Human Rights Watch on September 27 that they had already handed down around 200 death sentences. He was unable to supply the number of ISIS suspects released without charge but said that the court was dismissing less than five percent of the cases they were hearing. Most of the cases dismissed involved individuals who had been detained for having the same name as an ISIS suspect on a "wanted" list, he said. He said that because of the initial limited capacity of his court, for the first few months of the Iraqi military operation to retake Mosul, judges from the Nineveh court would transfer detainees after their investigative

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<sup>66</sup> Human Rights Watch interview with Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017; interview with a judge who requested anonymity, Hamdaniya, July 6, 2017; and interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017; and interview with Justice Minister Haidar al-Zamili, Baghdad, February 2, 2017.

<sup>67</sup> Human Rights Watch interview with a judge who requested anonymity, Tal Kayf, September 27, 2017.

hearing to Baghdad for the trials but since February 2017, they had increased the number of interrogators and judges in Nineveh, had stopped transfers, and were sentencing ISIS suspects themselves.<sup>68</sup>

The most well-known trial of ISIS suspects occurred in July 2015. This was the trial of 40 men accused of ISIS membership and participation in the massacre of hundreds of Shia cadets from Camp Speicher in Tikrit in June 2014, under provision 4 of the counterterrorism law.<sup>69</sup> The trial concluded in February 2016 with death sentences for 36 men convicted. It fell seriously short of fair trial standards.<sup>70</sup> Nevertheless, the Federal Cassation Court ratified the death sentences on August 7, 2016, and officials carried out the executions on August 21, 2016.<sup>71</sup> On August 8, 2017, in a second set of trials, the Central Criminal Court sentenced to death another 27 men under the counterterrorism law for their involvement in the massacre.<sup>72</sup>

According to Justice Minister Haidar al-Zamili, Iraq's Chief Justice, Faiq Zaidan, and three senior counterterrorism judges, authorities are bringing charges against ISIS suspects only under Iraq's counterterrorism law (no. 13/2005). The law covers a wide variety of crimes including membership or support for a terrorist organization, as well as the specific crimes of possession or use of explosives, torture, maiming, kidnapping, unlawfully detaining, or killing while affiliated with a terrorist organization.<sup>73</sup> It does not however include rape, sexual slavery, and other serious crimes such as war crimes, crimes against humanity or genocide. Provision 4 of the law stipulates the death penalty for anyone who committed, incited, planned, financed, or assisted in a terrorist act. The same provision calls for a life

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<sup>68</sup> Human Rights Watch interview with Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017; interview with a judge who requested anonymity, Hamdaniya, July 6, 2017; interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017; and interview with Justice Minister Haidar al-Zamili, Baghdad, February 2, 2017.

<sup>69</sup> "Iraq: Islamic State Executions in Tikrit," Human Rights Watch news release, September 2, 2014, <https://www.hrw.org/news/2014/09/02/iraq-islamic-state-executions-tikrit>.

<sup>70</sup> "Iraq: Set Aside Verdict in Massacre of Cadets," Human Rights Watch news release, July 16, 2015, <https://www.hrw.org/news/2015/07/16/iraq-set-aside-verdict-massacre-cadets>.

<sup>71</sup> Higher Judicial Council, Republic of Iraq, "محكمة التمييز: إرسال أحكام الإعدام القطعية بحق مدائي جريمة سبايكر إلى رئاسة الجمهورية," August 7, 2016, <http://iraqja.iq/view.3415/> (accessed on August 7, 2017) and "Iraq hangs 36 men for Camp Speicher massacre," *BBC News Online*, August 21, 2016, <http://www.bbc.com/news/world-middle-east-37148060> (accessed on October 27, 2017).

<sup>72</sup> "Iraq to hang 27 for IS Camp Speicher massacre," *BBC News Online*, August 8, 2017, <http://www.bbc.com/news/world-middle-east-40866081> (accessed on October 27, 2017) and Karzan Sulaivany, "Iraqi court sentences 27 IS members to death for Speicher massacre," *Kurdistan 24*, August 8, 2017, <http://www.kurdistan24.net/en/news/f2339973-907e-42ce-a2db-016f39dd026e> (accessed on October 27, 2017).

<sup>73</sup> Iraqi Counterterrorism Law, No. 13 of 2005, arts. 2 and 3.

prison sentence for anyone who covers up such an act or harbors those who participated.<sup>74</sup> Chief Justice Zaidan stated that while the law only stipulates two penalties, life in prison or death, judicial discretion allows judges to hand down lower sentences. He did not specify what the lowest sentence could be.<sup>75</sup>

While counterterrorism judges said that individuals could be tried separately for other crimes, Human Rights Watch is unaware of a single case of an ISIS suspect tried for any crimes under the criminal code, even in cases where the suspect confesses to committing crimes such as rape to an investigative judge.<sup>76</sup>

Moreover, Iraqi courts appear to be prosecuting a wide variety of ISIS suspects, with no apparent prioritization of those responsible for the most serious crimes, and including those whose only role may have been providing basic services such as healthcare or utility services as part of the ISIS administration. According to Chief Justice Zaidan and three senior counterterrorism judges, Iraqi courts are currently charging ISIS suspects who may have supported the group against their will, or in a civilian or civil service capacity.<sup>77</sup> For example, in September a senior counterterrorism judge said he had recently brought charges against a man who had been a cook for ISIS fighters, recommending the death penalty for him. He said the court was considering charges against a plastic surgeon who had worked in an ISIS-run hospital.<sup>78</sup> International humanitarian law prohibits the prosecution of medical workers for performing medical duties compatible with medical ethics.

When Human Rights Watch raised concerns that the prosecutors are not charging suspects with crimes under the criminal code, judicial authorities said there was no need to pursue

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<sup>74</sup> Art. 4 reads, "1. Any one who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator; 2. Any one, who intentionally covers up any terrorist act or harbors a terrorist with the purpose of concealment, shall be sentenced to life imprisonment."

<sup>75</sup> Human Rights Watch int. with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017.

<sup>76</sup> Josie Ensor, "I got four Yazidi virgins as part of my Isis salary and had sex with a different one every night," *Daily Telegraph*, July 31, 2017, <http://www.telegraph.co.uk/news/2017/07/31/quivering-isis-suspects-face-investigations-court-mosul-atrocities/> (accessed on August 7, 2017).

<sup>77</sup> Human Rights Watch interviews with Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017; interview with a judge who requested anonymity, Hamdaniya, July 6, 2017; and interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017.

<sup>78</sup> Human Rights Watch interview with a judge who requested anonymity, Tal Kayf, September 27, 2017.

further charges because the counterterrorism law allow for maximum criminal sentences.<sup>79</sup> One counterterrorism judge said, “Genocide and terrorism are the same crime, so why would we need a separate charge for genocide?”<sup>80</sup>

In addition, war crimes, crimes against humanity, and genocide are not crimes under Iraqi or KRG law so the system does not allow prosecution for these offenses. While some officials stated that there are efforts to incorporate these crimes into law, at the time of writing there was no bill before parliament on the topic.

Prosecution of ISIS suspects under counterterrorism laws is more expedient and faster than prosecutions in ordinary criminal courts on charges under the criminal law. But the counterterrorism law allows authorities to use specialized counterterrorism courts that in practice are limiting due process protections. Judges can speedily convict ISIS suspects on their mere admission of membership in ISIS, without the need to gather evidence of the full range of crimes committed. In addition, as three counterterrorism judges told Human Rights Watch, the cases rely heavily on confessions and written witness testimony of an ISIS suspect’s affiliation, gathered by intelligence officers. Thus, the investigative judge has limited opportunity to question witnesses. Only in a handful of cases has the court called in witnesses to testify in ISIS related cases.

This approach is inadequate to the task of providing a real accounting of the crimes that ISIS committed – which Iraqis deserve – and fails the test of fairness and justice by equating the acts of individuals whose roles in ISIS may have been very different. By failing to investigate, document and prosecute the serious offenses under the criminal law that ISIS suspects committed, the approach currently being adopted fails to provide judicial documentation of these crimes and provide remedies for the victims of these crimes. The absence of victim participation in these prosecutions is detailed below. The approach also fails to allow the judiciary to prioritize the prosecution of those responsible for the most serious crimes under ISIS.

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<sup>79</sup> Human Rights Watch interview with Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017; interview with a judge who requested anonymity, Hamdaniya, July 6, 2017; interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017; and interview with Justice Minister Haidar al-Zamili, Baghdad, February 2, 2017.

<sup>80</sup> Human Rights Watch interview with Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017.

In addition, the prosecution of ISIS suspects whose only role was providing civil support to the ISIS administration is problematic and overbroad. During its peak control of territories, ISIS operated as a state with millions of residents, and employed thousands of teachers, doctors, tax inspectors, and various other civil administrators.<sup>81</sup> Under Iraq's counterterrorism law, these civil employees affiliated with ISIS are subject to prosecution for their role in aiding or providing support to a terrorist organization. While there is no doubt the voluntary participants in ISIS civil administration enabled it to maintain its control of territories, there appears little to be gained by prosecuting such a wide array of people if they did not commit nor were complicit in serious crimes beyond membership in or support for the group.

Authorities should prioritize the prosecutions of ISIS suspects responsible for the most serious crimes by bringing charges for those specific crimes, and consider dropping prosecutions of those suspected only of membership in ISIS without evidence of any other serious crime, particularly in the case of children. They should instead consider alternatives to criminal prosecution including truth-telling mechanisms. They should at minimum drop charges against those whose functions under ISIS contributed to the protection of human rights of civilians or otherwise the wellbeing of the population.

If authorities insist on pursuing the broadest possible prosecutions, including only for membership in ISIS without any further offense, they should prioritize first and most quickly trying those with the most minimal charges against them and promptly releasing those eligible under the amnesty law (see below). Such an approach would help to address the mass overcrowding of prisons. The authorities should consider granting amnesty in all cases where individuals are not implicated in any serious crimes beyond membership in ISIS, dropping the need for a defendant to show they joined the group against his will.

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<sup>81</sup> Matthew Rosenberg, Nicholas Kulish and Steven Lee Myers, "Predatory Islamic State Wrings Money From Those It Rules," *New York Times*, November 29, 2015, [https://www.nytimes.com/2015/11/30/world/middleeast/predatory-islamic-state-wrings-money-from-those-it-rules.html?\\_r=0](https://www.nytimes.com/2015/11/30/world/middleeast/predatory-islamic-state-wrings-money-from-those-it-rules.html?_r=0) (accessed on October 17, 2017); Vogel L., "Why are doctors joining ISIS?," *CMAJ/Canadian Medical Association Journal*, vol. 188(3), February 16, 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4754176/> (accessed on November 2, 2017); and Charles C. Caris & Samuel Reynolds, "ISIS Governance in Syria," Middle East Security Report 22, Institute for the Study of War, July 2014, [http://www.understandingwar.org/sites/default/files/ISIS\\_Governance.pdf](http://www.understandingwar.org/sites/default/files/ISIS_Governance.pdf) (accessed on November 2, 2017).

Iraqi authorities need only look to their own recent history in support of such a policy. After the US invasion of Iraq in 2003, the US-led Coalition Provisional Authority introduced a sweeping “de-Baathification” campaign to purge the Iraqi civil and military services of thousands of Baath-party members.<sup>82</sup> This process led to the dismissal of thousands of individuals because of their membership in the Baath party, rather than because of specific criminal acts committed. These dismissals, combined with a lack of due process, undermined Iraq's government, fuelling grievances among the individuals dismissed as well as their families, friends and broader communities. The process became a significant contributing factor to Iraq’s widespread social and political conflict.<sup>83</sup> The campaign was not one of criminal prosecutions but had the impact of marginalizing a segment of the population and sowing new grievances.

Finally, the reliance on the counterterrorism laws raises the risk that the summary judicial processes will deprive ISIS suspects of the due process protections they would otherwise be afforded and to which they are entitled under Iraqi and international laws.

### *Amnesty Provisions*

Detained ISIS suspects may be entitled to release under the General Amnesty Law passed in August 2016 (no.27/2016).<sup>84</sup> Provision 4(2) offers amnesty to anyone who can demonstrate they joined ISIS or another extremist group against their will, and did not commit terrorist offenses that resulted in killing, maiming, attacking state institutions or Iraqi Security Forces before August 2016. Provision 4 separately stipulates that those convicted of other offenses, including kidnapping, rape, and human trafficking, cannot benefit from the law.

The head of the Iraqi parliament’s legal committee, Mohsen al-Karkari, told Human Rights Watch that the law aimed to address charges against different groups of detainees, including those facing the wide-reaching scope of charges in the counterterrorism law and

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<sup>82</sup> Coalition provisional authority order number (1) de-Baathification of Iraqi society, issued by Paul Bremer, US. May 13, 2003, [https://upload.wikimedia.org/wikipedia/commons/5/56/20030516\\_CPAORD\\_1\\_De-Ba\\_athification\\_of\\_Iraqi\\_Society.pdf](https://upload.wikimedia.org/wikipedia/commons/5/56/20030516_CPAORD_1_De-Ba_athification_of_Iraqi_Society.pdf) (accessed on November 6, 2017).

<sup>83</sup> Miranda Sissons & Abdulrazzaq Al-Saiedi, “Iraq’s de-Baathification still haunts the country”, *Al Jazeera*, March 12, 2013, <http://www.aljazeera.com/indepth/opinion/2013/03/201331055338463426.html> (accessed on October 27, 2017).

<sup>84</sup> General Amnesty Law, August 2016 (no.27/2016), [http://www.iraq-ig-law.org/ar/webfm\\_send/1629](http://www.iraq-ig-law.org/ar/webfm_send/1629), art. 4 (accessed on November 6, 2017).

to generate the release of thousands of suspects detained on lesser offenses.<sup>85</sup> Chief Justice Zaidan and a member of parliament's legal committee, Zana Rostay, said that judges are well-placed to assess whether defendants meet the law's criteria and should be released.<sup>86</sup> They said that the government and parliament were discussing amendments, including extending the period the law covers to June 2017.<sup>87</sup> The office of the Chief Justice told Human Rights Watch that between August 2016 and October 2017, authorities had released 9,958 detainees under the amnesty law, but did not specify the number facing counterterrorism charges.

The law obliges the investigative, trial, and appeals all judges to consider applying the amnesty law for each defendant, either pre or post-conviction.<sup>88</sup> If the judges have chosen not to, the defendant can request that their case be transmitted to the Amnesty Committee within the High Judicial Council, either to request application of the amnesty, or to request a retrial. Several judges on the committee review the casefile and come to a decision, without allowing the defendant to participate in the review in any form, including to try to demonstrate they joined against their will and did not carry out any of the crimes specified for exemption by the relevant provision of the law.

There is a risk of ISIS members who committed rape, human trafficking or kidnap being released under the amnesty law, because no judges are currently bringing charges for crimes beyond provision 4 of the counterterrorism law.<sup>89</sup> If the judge has charged an individual under the counterterrorism law and has not noted down in the casefile any allegations of rape, human trafficking or other crimes exempted from the benefit of the law under separate provisions, it is possible that a defendant who has raped for example can be released by the committee after stating that they joined the group against their will and did not kill, maim, or attack state institutions or security forces.

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<sup>85</sup> Mushraq Abbas, "Iraq's Anti-Terrorism Law Criticized," *Al Monitor*, April 13, 2013, <http://www.al-monitor.com/pulse/originals/2013/04/iraq-terrorism-law-executions-controversy.html> (accessed on August 7, 2017).

<sup>86</sup> Human Rights Watch interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017 and Member of Parliament Zana Rostany, legal committee, Erbil, July 10, 2017.

<sup>87</sup> Ibid. Human Rights Watch interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017.

<sup>88</sup> General Amnesty Law, August 2016 (no.27/2016), [http://www.iraq-ig-law.org/ar/webfm\\_send/1629](http://www.iraq-ig-law.org/ar/webfm_send/1629), art. 7.

<sup>89</sup> Human Rights Watch interview with Judge Ahma al-Amiri, member of one of the Amnesty Committee in Al-Rasafa Federal Court of Appeals, Baghdad, October 4, 2017.

It is unclear to what extent Iraqi counterterrorism judges are abiding by the provisions of the amnesty law. A Nineveh judge said that in his opinion those who supported ISIS even with the simplest actions, like cooking, were as culpable as the fighters, and that he had no interest in claims from defendants that they joined the group against their will.<sup>90</sup> He told Human Rights Watch that he refused to apply the amnesty law because he thought no one who provided any support to ISIS deserved an amnesty. He also told Human Rights Watch that in his view, the reason for the advent of ISIS was the release of prisoners held on previous counterterrorism charges in the early 2000s. “If we had killed all the prisoners the Americans held in Camp Bucca, we never would have had this problem,” he said.<sup>91</sup>

Authorities should prioritize the prosecutions of ISIS suspects responsible for the most serious crimes, and consider alternatives for those suspected only of membership in ISIS without evidence of any other serious crime. They should at minimum drop charges against those whose functions under ISIS contributed to the protection of human rights of civilians.

There are a range of alternatives to prosecution in such cases, including a truth-telling process. Iraqi authorities have launched a project supported by the United Nations Development Programme to create local “peace committees” and a separate project to establish a citizens’ archive, both of which could provide fora for communities to collect and discuss information on atrocities and violations committed against citizens during the conflict.<sup>92</sup> However, as far as Human Rights Watch is aware, these truth-telling initiatives do not have any clear links to the ongoing judicial prosecutions, nor would the peace committees have access to ISIS suspects in order to allow those ISIS suspects not implicated in serious crimes to use the mechanism to secure their release, subsequent to their participation in truth-telling.

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<sup>90</sup> Human Rights Watch interview with a judge who requested anonymity, Hamdaniya, July 6, 2017.

<sup>91</sup> Ibid. Human Rights Watch interview with a judge who requested anonymity, Hamdaniya, July 6, 2017. He told Human Rights Watch because he foresaw all those convicted of ISIS affiliation spending their lives in prison or being executed, there was no need for detention facilities to engage in rehabilitation projects to counter extremism among ISIS convicts. “Iraq: Mass Arrests, Incommunicado Detentions,” Human Rights Watch news release, May 15, 2012, <https://www.hrw.org/news/2012/05/15/iraq-mass-arrests-incommunicado-detentions>.

<sup>92</sup> United Nations Development Programme, “The Iraqi Government and UNDP sign a flagship agreement to promote reconciliation at the community level,” August 4, 2017, <http://www.iq.undp.org/content/iraq/en/home/presscenter/pressreleases/2017/08/04/the-iraqi-government-and-undp-sign-a-flagship-agreement-to-promote-reconciliation-at-the-community-level.html> (accessed on November 2, 2017).



Truth commissions as an integrated part of a national transitional justice and reconciliation process are particularly useful where justice mechanisms cannot realistically be expected to prosecute fairly all perpetrators or establish a credible judicial record of their crimes, as may well be the case in Iraq, where tens of thousands of ISIS suspects are potentially implicated by the broad provisions of the counterterrorism law.<sup>93</sup> Such commissions also are useful in promoting reconciliation.<sup>94</sup> In addition to creating an historical record, truth commissions can conduct investigations; take testimony from witnesses, victims, and perpetrators; recommend granting reparations to victims; and recommend reforms needed to prevent the recurrence of abuses.

Authorities should develop truth-telling mechanisms with a broad mandate and powers, including the right to subpoena testimony and witnesses, that would address abuses committed by all sides in the conflict. These can complement judicial processes and reparations schemes. Establishing a truth commission would not absolve Iraqi authorities of their duty under international law to prosecute the most serious crimes. However, a truth commission could, for example, take testimony from lower-level ISIS suspects for minor crimes as an alternative to prosecution.

## Flawed Trials in KRG Courts

As in Iraqi government courts, the Kurdistan Regional Government (KRG) is relying exclusively on its counterterrorism law to prosecute all ISIS suspects, without pursuing charges for any crimes under its criminal code. Authorities are charging individuals for membership in ISIS, including those who are not alleged to have committed any other crime. They are carrying out prosecutions without any apparent strategy on how to prioritize cases. At the same time, the KRG has no amnesty law to release ISIS suspects who claim they forcibly joined ISIS and are not found to have committed any other crimes.

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<sup>93</sup> United Nations-Nations Unites, “Guidance Note of The Secretary-General, United Nations Approach to Transitional Justice,” March 2010, page 6, [https://www.un.org/ruleoflaw/files/TJ\\_Guidance\\_Note\\_March\\_2010FINAL.pdf](https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf) (accessed on November 2, 2017).

<sup>94</sup> The International Center for Transitional Justice, “Truth Commissions”, <https://www.ictj.org/gallery-items/truth-commissions> (accessed on November 2, 2017).

### *Flawed Prosecutions; Lack of Strategy or Prioritization for ISIS Prosecutions*

The KRG passed the Law on the Combat of Terrorism in the Iraq Kurdistan Region (no.3/2006) so as to have its own counterterrorism legislation in place, which was initially valid for a period of two years.<sup>95</sup> The KRG law stipulates the death penalty for anyone who committed an act of terror; joined, founded, coordinated, or cooperated with a terrorist organization; or incited, planned, financed, or assisted in a terror act. It mandates a life sentence for a range of acts, including destroying a building, hijacking, kidnapping, or financing a terror attack. It further stipulates a sentence not exceeding 15 years for publishing terrorist propaganda and failing to notify authorities about a terror act.

After several extensions, the KRG's counterterrorism law expired in 2016 because parliament had been suspended and could not act to renew it. In mid-September 2017, parliament reconvened but by the time of writing had yet to renew the law. Despite the expiration of the law, the KRG continues to hold and charge thousands of ISIS suspects for ISIS affiliation under this law. Two counterterrorism judges in Erbil justified this by arguing that all the suspects they were charging committed the act of terrorist affiliation before the law expired.<sup>96</sup> For newer cases, they said they had a range of other criminal charges they could rely on to detain suspects, including the Law to Punish the Possession, Manufacture and Use of Explosives (no. 8/1992), which allows for sentences up to the death penalty for adults.<sup>97</sup>

Under Iraq's criminal code, authorities must try suspects for crimes committed within the geographical jurisdiction of where they are said to have committed the crime.<sup>98</sup> For example, ISIS suspected of committing crimes in Mosul should be tried in Iraqi courts for the governorate of Nineveh. Under Iraqi law, KRG forces should therefore transfer ISIS suspects charged with ISIS affiliation in governorates outside the KRG to authorities of the government of Iraq, something the Chief Justice and three Iraqi judges say they have requested from Kurdish authorities.

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<sup>95</sup> Iraqi Counterterrorism Law, No. 13 of 2005, and Anti-Terrorism Law in the Iraq Kurdistan Region, No. 3 of 2006.

<sup>96</sup> Human Rights Watch interview with Judge Fadhal Abbas and Judge Masoud al-Sinjari, Erbil, July 5, 2017.

<sup>97</sup> Punish the Possession, Manufacture and Use of Explosives (no. 8/1992), on file with Human Rights Watch.

<sup>98</sup> Global Justice Project: Iraq, "Criminal Procedure Code 23 of 1971, Kurdistan region of Iraq (as amended to 14 February 2010)," <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-kurdish-v2.doc>, art. 53 (accessed on November 6, 2017).

In response, the KRG counterterrorism judges and a KRG spokesperson said that because terrorism is a crime committed against all Iraqi citizens, KRG courts have jurisdiction over the terror crime of ISIS suspects even if they did not take place in the KRG.<sup>99</sup> However, they said that if prosecutors charge ISIS suspects with more than simply supporting a terrorist organization or committing acts of terror, but for example murder, rape, or other crimes, Iraqi courts in the relevant jurisdiction where the abuse happened would need to charge them. The judges stated that once ISIS suspects serve their sentence for terror affiliation in the Kurdish Region of Iraq, the KRG could hand them over to relevant Iraqi authorities to face further charges for crimes committed in territory under Iraqi government jurisdiction.<sup>100</sup> They confirmed comments made by Chief Justice Zaidan and a judge in Nineveh who stated that the KRG was not transferring most ISIS suspects to the custody of Iraqi government authorities. In addition, the KRG judges in Erbil said that in their experience, ISIS suspects preferred to remain in the Kurdish Region of Iraq because of better prison conditions and prison sentences as low as three years.

A lawyer handling dozens of cases of juveniles charged under the counterterrorism law told Human Rights Watch that in an exceptional act, KRG authorities transferred twelve children into the custody of Iraqi government authorities in mid-2017. Since then, the children have not been registered by Iraqi authorities and have “disappeared,” the lawyer said.<sup>101</sup>

In response to an Amnesty International request for information, a KRG spokesperson said in October 2016 that since 2014, the Asayish and counterterrorism unit had detained over 9,000 people on counterterrorism charges.<sup>102</sup> According to a KRG spokesperson who provided Human Rights Watch with a range of statistics, as of August 2017, judicial authorities in Erbil, Dohuk, Sulaimaniya, Kirkuk and Garmiyān were investigating at least 672 ISIS suspects on counterterrorism charges, had released at least 1,818, and had convicted at least 1,110, with sentences ranging from three years to death penalty. The

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<sup>99</sup> Human Rights Watch interview with Judge Fadhal Abbas and Judge Masoud al-Sinjari, Erbil, July 5, 2017. Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Human Rights Watch, September 6, 2017.

<sup>100</sup> Human Rights Watch interview with Judge Fadhal Abbas and Judge Masoud al-Sinjari, Erbil, July 5, 2017, a judge, Hamdaniya, July 6, 2017.

<sup>101</sup> Human Rights Watch interview with an Iraqi lawyer who requested anonymity, Baghdad, September 19, 2017.

<sup>102</sup> Amnesty International, *'Punished for Daesh's Crimes': Displaced Iraqi Abused by Militias and Government Forces*, 2016, p. 38, <https://www.amnesty.org/download/Documents/MDE1449622016ENGLISH.PDF> (accessed August 7, 2017).

spokesperson did not provide details on the number of women and children detained and released or convicted, nor did he provide disaggregated data on the sentences passed.<sup>103</sup>

Convictions by KRG judges against ISIS suspects appear to be proceeding rapidly and on a large scale. One Erbil judge said he had convicted 619 men of ISIS affiliation since the beginning of 2016, with sentences ranging from three years to death.<sup>104</sup> During the detention period, authorities hold adult male detainees in one of several official Ministry of Interior detention facilities in Dohuk, Erbil or Sulaimaniya, and hold women and children in what are referred to as reformatories run by the Ministry of Social Affairs and Labor.<sup>105</sup> One Erbil judge said that in his experience, the Asayish imprison most detainees for about six months to one year before their initial trial. Two counterterrorism judges in Erbil said the judiciary was working through the entire caseload of those in detention, and did not have a particular strategy to prioritize certain cases.<sup>106</sup>

According to the two judges, the cases rely heavily on confessions and written witness testimony about an ISIS suspect's affiliation, giving the investigative judge no opportunity to question witnesses.

Human Rights Watch knows of two ISIS suspects held by KRG authorities who may be implicated in serious ISIS-related crimes, including sexual slavery. A KRG court sentenced one, known as Umm Sayyaf, who was implicated in the enslavement and rape of several Yezidi women, and the killing of American aid worker Kayla Mueller, to life in prison under the counterterrorism law. To Human Rights Watch's knowledge, no separate charges were brought for enslavement and rape.<sup>107</sup>

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<sup>103</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Human Rights Watch, September 10, 2017.

<sup>104</sup> Human Rights Watch interview with Judge Fadhal Abbas, Erbil, July 5, 2017.

<sup>105</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Sarah Leah Whitson, Executive Director of Human Rights Watch's Middle East North Africa Division, January 10, 2017. [https://www.hrw.org/sites/default/files/supporting\\_resources/gl.2017.1.10.krg\\_response\\_to\\_hrw\\_findings\\_and\\_questions\\_on\\_the\\_treatment\\_of\\_child\\_terrorism\\_suspects.pdf](https://www.hrw.org/sites/default/files/supporting_resources/gl.2017.1.10.krg_response_to_hrw_findings_and_questions_on_the_treatment_of_child_terrorism_suspects.pdf).

<sup>106</sup> Human Rights Watch interview with Judge Fadhal Abbas and Judge Masoud al-Sinjari, Erbil, July 5, 2017, a judge, Hamdaniya, July 6, 2017.

<sup>107</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Human Rights Watch, September 6, 2017; "ISIS' Umm Sayyaf to be sentenced in Kurdistan," *Rudaw*, October 8, 2015, <http://www.rudaw.net/english/kurdistan/100820151> (accessed on August 7, 2017); and Sam Levin, "Isis widow charged for her role in the death of hostage Kayla Mueller," *Guardian*, February 8, 2016, <https://www.theguardian.com/world/2016/feb/08/isis-widow-charged-for-her-role-in-the-death-of-hostage-kayla-mueller> (accessed on August 7, 2017).

The second is Ammar Hamid Mahmoud Hussein, known as Abu Yasser, whom KRG forces captured after he participated in an ISIS attack on Kirkuk City on October 21, 2016. In March 2017, he gave an interview in which he spoke about multiple killings and rapes he perpetrated.<sup>108</sup> He is currently on trial in Sulaimaniya on counterterrorism charges.<sup>109</sup>

One judge decried the lack of any rehabilitation programs to counter extremist ideology for ISIS convicts in prison. He called on the international community to provide financial support and relevant expertise in establishing such programs.<sup>110</sup> An international aid worker said they were concerned that there was no reintegration program for detainees upon their release.<sup>111</sup>

The KRG has no amnesty law in place for ISIS suspects, and its parliament has not ratified the government of Iraq's amnesty law.

KRG authorities should develop a strategy to prioritize the prosecution of those who committed the most serious crimes, or their transfer to Iraqi government authorities, while releasing under an amnesty scheme those suspected only of membership in ISIS without evidence of any other serious crime. They should at minimum drop charges against those whose functions under ISIS contributed to the protection of human rights of civilians. For those suspected of mere membership, authorities should develop truth-telling mechanisms with a broad mandate and powers, including the right to subpoena testimony and witnesses, to complement judicial processes and reparations schemes.

## Lack of Access to Legal Representation or Relatives

Iraqi and KRG law grants detainees the right to pick their own lawyer, or have one appointed by the state, who is present throughout the investigative period. They also have the right to communicate with their relatives, as well as have their relatives notified of their detention, as per the United Nations Standard Minimum Rules for the Treatment of

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<sup>108</sup> Robin Wright, "Face to face with the Ghost of ISIS," *New Yorker*, March 24, 2017, <http://www.newyorker.com/news/news-desk/face-to-face-with-the-ghost-of-isis> (accessed on August 7, 2017).

<sup>109</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Human Rights Watch, September 10, 2017.

<sup>110</sup> Human Rights Watch interview with Judge Fadhal Abbas, Erbil, July 5, 2017.

<sup>111</sup> Human Rights Watch interview with an international aid worker who requested anonymity, Erbil, July 5, 2017.

Prisoners.<sup>112</sup> The counterterrorism laws do not stipulate that terror suspects should be treated differently; however, our research suggests that in practice ISIS suspects do not have lawyers present during interrogations, nor are authorities allowing them to communicate with their relatives until the investigative period ends.

Chief Justice Zaidan acknowledged the flaws in the ongoing trials in Nineveh's counterterrorism court, including the absence of a lawyer throughout the investigation and lack of communications with relatives, and said the issues stemmed from a failure to implement the law.<sup>113</sup>

Article 19 of the Iraqi constitution and article 123 of the criminal procedure code guarantee detainees the right to a lawyer during interrogations and hearings.<sup>114</sup> According to Justice Minister Haidar al-Zamili and a senior counterterrorism judge in Nineveh, however, authorities had not provided any of the ISIS suspects with a lawyer to be present during interrogations, but did provide them with a state-appointed lawyer once the trial began.

Researchers observed two trials at the Nineveh counterterrorism court, during which ISIS suspects had a state-appointed lawyer present, but it is unclear whether the lawyers had met with their clients before the trial hearings. The lawyers did not speak once during the hearing, with the judge and the court reporter directly questioning the defendant. Besides the state-appointed lawyers, Human Rights Watch knows of only one humanitarian organization, the International Rescue Committee, providing legal support in Baghdad and Nineveh to detainees charged under the counterterrorism law, mainly for people arrested for having similar names to those of a genuine suspect.<sup>115</sup>

The July arrests of a group of private lawyers defending ISIS suspects in Nineveh's court on charges under the counterterrorism law of ISIS affiliation for their past work defending ISIS

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<sup>112</sup> United Nations, "Standard Minimum Rules for the Treatment of Prisoners," August 30, 1955, [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf), rules 58 and 68 (accessed on November 5, 2017).

<sup>113</sup> Human Rights Watch interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017.

<sup>114</sup> Constitution of the Republic of Iraq, Oct 15, 2005, <http://mofamission.gov.iq/documentfiles/IraqiConstitution.pdf> art. 19 (accessed on November 6, 2017); and Iraq: Criminal Procedure Code, No. 23 of 1971 as amended to March 14, 2010, <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-v2-eng.doc>, arts. 123 and 127 (accessed on November 6, 2017).

<sup>115</sup> Human Rights Watch interview with Marina Solecki, Protection Coordinator at International Rescue Committee, Baghdad, July 17.

suspects before June 2014 has had a chilling effect on representation.<sup>116</sup> One senior judge told Human Rights Watch that since the warrants were issued, private lawyers had stopped taking on ISIS suspects they believed were indeed affiliated with ISIS, only taking on cases of people they thought were wrongly-charged with as ISIS suspects, usually for having similar names.<sup>117</sup>

Justice Minister Haidar al-Zamili and a counterterrorism judge in Nineveh said that the authorities were obliged under the United Nations Standard Minimum Rules for the Treatment of Prisoners to grant detainees the right to have their loved ones notified of their detention and to communicate with them.<sup>118</sup> However, in practice, prosecutors have not allowed detainees charged under the counterterrorism law to communicate with their family during the investigative period.<sup>119</sup>

As per Iraq's criminal procedure code, as amended by the KRG in 2010, all detainees may request legal representation from the state.<sup>120</sup> However, all nineteen children Human Rights Watch interviewed at Erbil's reformatory for women and children in December 2016 said that they had not had legal representation during their interrogations and none knew whether they had attended a trial or seen a judge yet.<sup>121</sup> In addition, four adults held as ISIS suspects and released without charge from other facilities in the Kurdistan Region of Iraq told Human Rights Watch that they did not have lawyers present during their Asayish interrogation sessions.

KRG law does not stipulate a right for detainee families to be notified or to allow communications, but the KRG has committed to these obligations.<sup>122</sup> In Human Rights

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<sup>116</sup> "Iraq: Lawyers Arrested for Work in ISIS Courts," Human Rights Watch news release, August 10, 2017, <https://www.hrw.org/news/2017/08/10/iraq-lawyers-arrested-work-isis-courts>.

<sup>117</sup> Human Rights Watch telephone interview with a senior Iraqi judge who requested anonymity, August 8, 2017.

<sup>118</sup> United Nations, "Standard Minimum Rules for the Treatment of Prisoners," August 30, 1955, [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf).

<sup>119</sup> Human Rights Watch interview with a judge who requested anonymity, Hamdaniya, July 6, 2017; and interview with Justice Minister Haidar al-Zamili, Baghdad, February 2, 2017.

<sup>120</sup> Global Justice Project: Iraq, "Criminal Procedure Code 23 of 1971, Kurdistan region of Iraq (as amended to 14 February 2010)," <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-kurdish-v2.doc>, arts. 57 and 123.

<sup>121</sup> "KRG: Children Allege Torture by Security Forces," Human Rights Watch news release, January 29, 2017, <https://www.hrw.org/news/2017/01/29/krq-children-allege-torture-security-forces>.

<sup>122</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Sarah Leah Whitson, Executive Director of Human Rights Watch's Middle East North Africa Division, January 10, 2017.

Watch's interviews with 19 child ISIS suspects, only seven said KRG authorities had allowed them to communicate with their families.<sup>123</sup>

Authorities should ensure that ISIS suspects see a judge within 24 hours of detention, as per national law, have access to a lawyer throughout the investigative process and are allowed to communicate with their families.

## ISIS Suspects who are Children

Iraqi and KRG authorities are holding and trying children suspected of membership in or fighting for ISIS. In May 2017, prison staff in Nineveh said they were holding at least 80 child ISIS suspects in the same rooms as adults.<sup>124</sup> In January 2017, the KRG said it was holding at least 183 child ISIS suspects in its three reformatories for women and children.<sup>125</sup> An expert close to the penitentiary system told Human Rights Watch that as of August 2017, KRG and Iraqi government authorities were holding about 1,000 individuals detained before they were 18 years old as ISIS suspects.<sup>126</sup>

The treatment of children recruited by or associated with ISIS poses a significant challenge to Iraq. Some of these children have been responsible for acts of violence while simultaneously being victims of ISIS themselves. Iraq's history of abuses against children in detention, and against ISIS suspects, raises serious concerns for the welfare of children detained on charges related to ISIS affiliations. Further, Iraq's detention of children on the basis of mere membership in ISIS may be inconsistent with its international law obligations.

In March 2015, the UN Committee on the Rights of the Child said that children detained under terrorism charges in Iraq were reportedly held in extralegal facilities and that

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[https://www.hrw.org/sites/default/files/supporting\\_resources/gl.2017.1.10.krg\\_response\\_to\\_hrw\\_findings\\_and\\_questions\\_on\\_the\\_treatment\\_of\\_child\\_terrorism\\_suspects.pdf](https://www.hrw.org/sites/default/files/supporting_resources/gl.2017.1.10.krg_response_to_hrw_findings_and_questions_on_the_treatment_of_child_terrorism_suspects.pdf).

<sup>123</sup> "KRG: Children Allege Torture by Security Forces," Human Rights Watch news release, January 29, 2017, <https://www.hrw.org/news/2017/01/29/krq-children-allege-torture-security-forces>.

<sup>124</sup> "Iraq: Hundreds Detained in Degrading Conditions," Human Rights Watch news release, March 13, 2017, <https://www.hrw.org/news/2017/03/13/iraq-hundreds-detained-degrading-conditions>.

<sup>125</sup> "KRG: Children Allege Torture by Security Forces," Human Rights Watch news release, January 29, 2017, <https://www.hrw.org/news/2017/01/29/krq-children-allege-torture-security-forces>.

<sup>126</sup> Email from an expert close to the penitentiary system who requested anonymity to Human Rights Watch, September 11, 2017.



children who were relatives of terrorism suspects were also subject to wrongful arrest, held without charge, or charged with covering up terrorist acts. The committee also found that children's families were not notified of the child's detention, and that when detainees turned 18, they were transferred to death row.<sup>127</sup>

The Iraqi government and KRG authorities have specialized juvenile justice systems for children. However, not all children suspected of ISIS affiliations are being held in those systems' facilities throughout their investigation and trial. A lawyer handling dozens of cases of children charged under the counterterrorism law told Human Rights Watch that many children were being held in Baghdad for months in adult counterterrorism facilities, and not transferred to the juvenile facilities, while at the same time the primary juvenile facility in the city was holding more than double its capacity of child detainees.<sup>128</sup>

International treaties and standards establish several fundamental norms for those countries prosecuting child offenders. For example, the best interests of the child must be a primary consideration, together with the child's rehabilitation and reintegration into society. The state must exhaust all alternative options to arresting and detaining a child offender; their detention is only to be used as a last resort.<sup>129</sup> The arrest and detention of a child must last no longer than necessary, and the case must be brought to a conclusion as expeditiously as possible. While the child is detained, he or she is entitled to prompt access to legal assistance, and should be confined separately from adults unless this goes against the child's best interests. While the child is detained, he or she has the right to maintain contact with family members through both correspondence and visits. Further, children deprived of their liberty have the right to special care and assistance, which includes the right to educational and vocational training and to recreational activities.<sup>130</sup>

International instruments, standards, and norms that apply to children in relation to any criminal activity are also applicable to children alleged to be involved in terrorism-related

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<sup>127</sup> UN Committee on the Rights of the Child, "Concluding observations on the report submitted by Iraq under art. 8, para. 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict," CRC/C/OPAC/IRQ/CO/1, March 5, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/043/49/PDF/G1504349.pdf?OpenElement> (accessed June 21, 2016), para. 33.

<sup>128</sup> Human Rights Watch interview (name withheld), Baghdad, September 19, 2017.

<sup>129</sup> "Omar Khadr: Military Commission Trial of Ex-Child Soldier, Questions and Answers," Human Rights Watch Q and A, October 15, 2010, [https://www.hrw.org/sites/default/files/related\\_material/Omar%20Khadr%20Q%26A.pdf](https://www.hrw.org/sites/default/files/related_material/Omar%20Khadr%20Q%26A.pdf).

<sup>130</sup> *Ibid.*

activity. A group of experts meeting to address the issue of juvenile justice in a counterterrorism context highlighted that:

A specialized juvenile justice system should have the primary and preferred jurisdiction also over children investigated and/or charged with terrorism-related offenses. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interest of the child shall be a primary consideration. Particular attention should be given to alternatives to prosecution. Any justice action undertaken concerning the child should aim at his/her reintegration into society.<sup>131</sup>

The United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict said in 2011 that, when dealing with children who took part in armed groups, “more effective and appropriate methods, other than detention and prosecution are encouraged, enabling children to come to terms with their past and the acts they committed.”<sup>132</sup>

International guidelines known as the “Paris Principles” include explicit guidance for the treatment of child soldiers accused of crimes during armed conflict.<sup>133</sup> Issued in 2007 and endorsed by 108 governments, the guidelines state that children accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international

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<sup>131</sup> Global Counterterrorism Forum, “Initiative to Address the Life Cycle of Radicalization to Violence,” August 2016, <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf> (accessed on November 2, 2017).

<sup>132</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Children and Justice During in the Aftermath of Armed Conflict,” September 2011, [https://childrenandarmedconflict.un.org/publications/WorkingPaper-3\\_Children-and-Justice.pdf](https://childrenandarmedconflict.un.org/publications/WorkingPaper-3_Children-and-Justice.pdf) (accessed on November 2, 2017).

<sup>133</sup> The United Nations Children's Fund (UNICEF). “The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups,” February 2007, <https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> (accessed September 17, 2017).

law which offers children special protection through numerous agreements and principles.<sup>134</sup>

Another expert group, the Global Counter Terrorism Forum, has also called for any prosecutions of children to be handled by specialized juvenile courts, which are in a better position than general counterterrorism courts to apply the appropriate child-rights and child-development perspective.<sup>135</sup>

Children who are only accused of membership in a group like ISIS and not of any specific violent act pose a particular challenge. In 2017, UN Secretary-General Antonio Guterres said, “I urge member states, including when countering violent extremism, to treat children allegedly associated with non-State armed groups primarily as victims and to swiftly adopt protocols for their handover to civilian child protection actors in order to prioritize their reintegration.”<sup>136</sup>

The Special Representative of the Secretary-General for Children and Armed Conflict stated in 2011 that child soldiers should not be prosecuted “simply for association with an armed group or for having participated in hostilities.”<sup>137</sup>

While many countries are worried that children who are members of ISIS pose a future threat, detaining and prosecuting a child should always be regarded as a measure of last resort and the purpose of any sentence should be to rehabilitate and reintegrate the child into society.

Iraq should look at other ways of addressing offending behavior by children and channeling such children’s cases to non-judicial bodies, thereby avoiding the negative

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<sup>134</sup> “Omar Khadr: Military Commission Trial of Ex-Child Soldier, Questions and Answers,” Human Rights Watch Q and A, October 15, 2010, [https://www.hrw.org/sites/default/files/related\\_material/Omar%20Khadr%20Q%26A.pdf](https://www.hrw.org/sites/default/files/related_material/Omar%20Khadr%20Q%26A.pdf).

<sup>135</sup> Global Counterterrorism Forum, “Initiative to Address the Life Cycle of Radicalization to Violence,” September 2016, <https://www.thegctf.org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf> (accessed on November 2, 2017).

<sup>136</sup> UN General Assembly Security Council, “Report of the Secretary-General: Children and armed conflict,” A/72/361–S/2017/821, August 24, 2017, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/72/361&Lang=E&Area=UNDOC](http://www.un.org/ga/search/view_doc.asp?symbol=A/72/361&Lang=E&Area=UNDOC) (accessed on November 2, 2017) para. 237.

<sup>137</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, “Children and Justice During in the Aftermath of Armed Conflict,” September 2011, [https://childrenandarmedconflict.un.org/publications/WorkingPaper-3\\_Children-and-Justice.pdf](https://childrenandarmedconflict.un.org/publications/WorkingPaper-3_Children-and-Justice.pdf) (accessed on November 2, 2017).

effects on children of formal judicial proceedings and a criminal record. Iraq should adopt laws that contain specific provisions for the application of such alternative mechanisms. These alternative proceedings could include disengagement and de-radicalization components but also educational elements and psychological support, all aimed at supporting reintegration.

## Conditions in Detention

Human Rights Watch has reported on extreme overcrowding and poor detention conditions in Iraq for many years, as well as rampant arbitrary and incommunicado detention for over a decade.<sup>138</sup> The addition of thousands of ISIS suspects in these already poor and overcrowded detention facilities is no doubt a recipe for compounding the stresses on the existing system; all the detention sites researchers visited showed severe overcrowding. In Nineveh, where the two main government prisons in and just outside Mosul have been damaged in the fighting, the conditions are most acute as detainees remain for a long time in what are supposed to be temporary detention facilities. Because both counterterrorism laws stipulate sentences of life or death in prison, the burden of ISIS convicts on the prison system will persist. The Iraqi government and international actors should support the rehabilitation of Mosul prisons so that authorities can transfer prisoners to these facilities as soon as possible.

In March 2017, Human Rights Watch researchers observed the poor conditions of the makeshift detention facilities where Iraqi authorities were detaining a segment of the ISIS suspects in Nineveh. Researchers observed authorities detaining approximately 1,200 ISIS suspects in overcrowded and filthy conditions in a set of abandoned homes and a local police station in the towns of Qayyarah, 60 kilometers south of Mosul, and Hammam al-Alil, 30 kilometers south of Mosul. The ISIS suspects were mostly men and boys held together, without charge and with limited access to medical care. Human Rights Watch visited one cell of roughly 4x6 meters that had been housing 114 detainees for four months. The detainees were not given regular access to the outdoors or to showers. They ate and used a single toilet inside the room. The windows were bricked up, and the temperature and stench in the room were overpowering. At least four had died in cases

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<sup>138</sup> See Human Rights Watch reporting on Iraq at <https://www.hrw.org/middle-east/n-africa/iraq>.



A pile of water bottles filled with urine outside a hole in the wall from a 3 by 4-meter cell holding 38 detainees. © 2016 Belkis Wille/Human Rights Watch

that, according to prison staff, were linked to the lack of proper medical care and hygiene standards.<sup>139</sup>

Researchers observed on a second visit to the facilities that conditions improved after public reports emerged about the detention facilities, including the installation of air conditioning and sanitation blocks, but still remain inhuman.<sup>140</sup> By September 2017, a judge in Nineveh's counterterrorism court said Iraqi authorities now were detaining 5,500 ISIS suspects in these already overcrowded facilities.<sup>141</sup>

The evidence documented by Human Rights Watch strongly suggests that conditions at the Qayyarah and Hammam al-Alil facilities are hazardous, unfit to hold detainees for extended periods of time, and do not meet basic international standards. As a result, holding detainees there probably amounts to ill-treatment. The state of the facilities and severe understaffing pose severe risks to the prisoners, the prison administration, and the local community.

Detention conditions for ISIS suspects in the KRG have also raised concerns. Human Rights Watch researchers gained access to Erbil's reformatory holding women and children suspected of ISIS affiliation in December 2016. They observed severe overcrowding, with the facility holding six times as many detainees as it was designed for, a lack of sufficient clothing and blankets, and an acute shortage of psychosocial support for a severely

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<sup>139</sup> "Iraq: Hundreds Detained in Degrading Conditions," Human Rights Watch news release, March 13, 2017, <https://www.hrw.org/news/2017/03/13/iraq-hundreds-detained-degrading-conditions>.

<sup>140</sup> Bethan Mackernan, "Shocking photos emerge of suspected Isis fighters held like battery chickens in overcrowded prison," *The Independent*, July 18, 2017, <http://www.independent.co.uk/news/world/middle-east/isis-fighters-prison-photos-crowded-chicken-factory-images-iraq-mosul-a7849686.html> (accessed August 7, 2017).

<sup>141</sup> Email message from Iraqi judge to Human Rights Watch, August 23, 2017.

traumatized detainee population.<sup>142</sup> KRG authorities have not yet granted researchers access to adult male ISIS suspects in detention.

Nineveh authorities should urgently prioritize the rehabilitation of Mosul's two prisons, the only facilities fit for purpose in the area. Authorities should transfer all Nineveh detainees to official prisons built to accommodate detainees, and equipped to meet basic international standards, including separating children from adults. Until that happens, the Interior and Justice Ministries should, as an urgent priority, improve the conditions. The ministries should provide all detainees a medical screening upon arrival, and ensure access to medical care. International actors supporting Iraq should support the government's rehabilitation efforts in Mosul's prisons and ensure the fundamental rights of detainees are respected.

While the International Committee of the Red Cross has regular access to these facilities according to prison staff, some officials have blocked Human Rights Watch and other independent observers from maintaining regular access to the facilities and researchers were not allowed to conduct private interviews with the detainees. The authorities should ensure that government inspectors and international monitors of detention conditions have access to all facilities holding detainees, and carry out private interviews with them. Judges should order the release of detainees or prisoners being held in inhuman or degrading conditions.

### Ill-Treatment of Detainees

While Human Rights Watch is unable to determine the extent to which Iraqi and KRG authorities are ill-treating or torturing ISIS suspects in detention because of lack of researchers' access to detainees, Human Rights Watch, as well as other groups, has in the past documented pervasive torture and other forms of ill-treatment in Iraqi detention facilities.<sup>143</sup>

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<sup>142</sup> "KRG: Children Allege Torture by Security Forces," Human Rights Watch news release, January 29, 2017, <https://www.hrw.org/news/2017/01/29/krq-children-allege-torture-security-forces>.

<sup>143</sup> Human Rights Watch, *The New Iraq? Torture and Ill-Treatment of Detainees in Iraqi Custody*, January 24, 2005, <https://www.hrw.org/sites/default/files/reports/iraq0105.pdf>; Human Rights Watch, "Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees," April 23, 2005, <https://www.hrw.org/sites/default/files/reports/uso405.pdf>; Human Rights Watch, *By the Numbers: Findings of the Detainee Abuse and Accountability Project*, April 25, 2005, <https://www.hrw.org/sites/default/files/reports/cto406webwcover.pdf>; Human Rights Watch, *Caught in the Whirlwind:*

Article 37(1) of the Iraqi Constitution stipulates that “all forms of psychological and physical torture and inhuman treatment are prohibited,” and that “any confession made under force, threat or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law.”<sup>144</sup> Iraq’s criminal procedure code also prohibits torture and judges cannot rely on confessions extracted by torture.<sup>145</sup> However, it does not explicitly state that other evidence obtained by torture should be excluded.

Iraqi law does not provide details on how to investigate allegations of torture, but according to counterterrorism judges, when a defendant alleges they were tortured during interrogations, a judge should order a forensic examination to assess the claim and transfer the case to a higher court for review.<sup>146</sup> In addition, the General Amnesty Law grants detainees who claim they were convicted based on a confession extracted by torture the right to petition for a retrial.<sup>147</sup>

At the time of writing, Iraq’s parliament was considering passage of a new Anti-Torture Law that would require a judge to order a medical examination of any detainee alleging torture within 24 hours of learning of the allegation.<sup>148</sup> It lays out the criminal sanctions for those in command of individuals who torture, calls on judges to dismiss all evidence gathered through torture, dismiss the torturer from the case, and requires that detainees have their lawyer present throughout the investigative period.<sup>149</sup>

However, it appears in at least one case that these provisions are not being met. One Nineveh judge told Human Rights Watch that “many” ISIS suspects alleged torture in his courtroom, and that he ordered a medical examination in each case; he said but would not

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*Torture and Denial of Due Process by the Kurdistan Security Forces*, July 2, 2007, <https://www.hrw.org/sites/default/files/reports/kurdistan0707webwcover.pdf>; and Human Rights Watch, *No One is Safe: The Abuse of Women in Iraq’s Criminal Justice System*, February 6, 2014, <https://www.hrw.org/sites/default/files/reports/iraq0214webwcover.pdf>.

<sup>144</sup> Iraqi Constitution, art. 37, [https://www.constituteproject.org/constitution/Iraq\\_2005.pdf?lang=en](https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en) (accessed on November 6, 2017).

<sup>145</sup> Iraq’s Criminal Procedure Code, No. 23 of 1971, <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-v2-eng.doc>, art. 127 (accessed on November 6, 2017); and “KRG: Children Allege Torture by Security Forces,” Human Rights Watch news release, January 29, 2017, <https://www.hrw.org/news/2017/01/29/krq-children-allege-torture-security-forces>.

<sup>146</sup> Human Rights Watch interview with Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017.

<sup>147</sup> General Amnesty Law, August 2016 (no.27/2016), [http://www.iraq-lg-law.org/ar/webfm\\_send/1629](http://www.iraq-lg-law.org/ar/webfm_send/1629), art. 9.

<sup>148</sup> Anti-Torture Law, 2017, on file with HRW, art. 4.

<sup>149</sup> *Ibid.* arts. 6, 7, 14.

give details on the outcome. However, he said he did not investigate or sanction any interrogators as a result of allegations of torture, even though he acknowledged that it was his role to investigate wrongdoing by interrogators.<sup>150</sup> Iraqi authorities did not allow Human Rights Watch to interview ISIS suspects during research visits to courthouses and prisons for this report. However, three individuals with access to detainees in Nineveh and Baghdad said that torture of ISIS suspects was rampant, often used to extract confessions.

There are also concerns that ISIS suspects are facing torture and other forms of ill-treatment in the KRG. Human Rights Watch has documented allegations of torture by KRG forces holding ISIS suspects. Out of nineteen child ISIS suspects held by the KRG and interviewed by Human Rights Watch, seventeen said that Asayish forces tortured them in order to extract confessions.<sup>151</sup> KRG authorities have not granted researchers access to adult ISIS suspects yet.

Iraq's criminal procedure code, as amended by the KRG in 2010, prohibits enforced confessions.<sup>152</sup> However, an international aid worker with knowledge of counterterrorism cases said that while torture of ISIS suspects during interrogations was prevalent, they had not seen a single instance of a judge ordering a medical examination of a detainee who had alleged torture.<sup>153</sup> In addition, according to a KRG spokesperson, upon arrival at detention facilities, detainees are only checked for chronic and contagious diseases.<sup>154</sup> The spokesperson said in January 2017 that seven detainees had alleged ill-treatment while in detention, but later told Human Rights Watch that no charges had been brought against any officials.<sup>155</sup> The KRG's counterterrorism law states that judges must set aside forced confessions unless corroborated by other evidence.<sup>156</sup>

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<sup>150</sup> Human Rights Watch interview with a judge who requested anonymity, Hamdaniya, July 6, 2017.

<sup>151</sup> "KRG: Children Allege Torture by Security Forces," Human Rights Watch news release, January 29, 2017, <https://www.hrw.org/news/2017/01/29/krk-children-allege-torture-security-forces>.

<sup>152</sup> Global Justice Project: Iraq, "Criminal Procedure Code 23 of 1971, Kurdistan region of Iraq (as amended to 14 February 2010)," <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-kurdish-v2.doc>, article 218.

<sup>153</sup> Human Rights Watch interview with an international aid worker who requested anonymity, Erbil, July 5, 2017.

<sup>154</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, email message to Human Rights Watch, September 6, 2017.

<sup>155</sup> Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, letter to Human Rights Watch, January 10, 2017, [https://www.hrw.org/sites/default/files/supporting\\_resources/gl.2017.1.10.krg\\_response\\_to\\_hrw\\_findings\\_and\\_questions\\_on\\_the\\_treatment\\_of\\_child\\_terrorism\\_suspects.pdf](https://www.hrw.org/sites/default/files/supporting_resources/gl.2017.1.10.krg_response_to_hrw_findings_and_questions_on_the_treatment_of_child_terrorism_suspects.pdf).

<sup>156</sup> Anti-terrorism Law in the Iraqi Kurdistan region, No. 3 of 2006.



Authorities should take all steps to prevent torture, including by allowing human rights researchers and international protection actors to visit screening sites and places of detention and interview detainees privately. The Higher and Kurdish Judicial Councils should instruct all judges to halt trials where detainees alleged ill-treatment and launch full and independent investigations into the allegations, dismissing any forced confessions. Authorities should publicly publish information on the number of detainee ill-treatment allegations and the number government officials sanctioned following investigations into the allegations.

## Death Penalty

Iraq has long had one of the highest rates of executions in the world, ranked number four after China, Iran, and Saudi Arabia.<sup>157</sup> Iraqi law permits the death penalty against adults for a range of crimes, including offenses under the counterterrorism law. In the Kurdish Region of Iraq, the KRG implemented a de facto moratorium on the death penalty in 2008, banning it “except in very few cases which were considered essential,” according to a KRG spokesperson, including for terror convicts.<sup>158</sup>

Under the Iraqi criminal procedure code article 224, all cases of defendants sentenced death automatically transfer to the High Federal Appeals Court in Baghdad for review of the verdict within 10 days.<sup>159</sup>

Currently, Iraqi government authorities are conducting executions without publicizing any official numbers.<sup>160</sup> Human Rights Watch is aware of at least 92 executions of suspected

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<sup>157</sup> “The Death penalty in 2016: Facts and figures,” Amnesty International press release, April 11, 2017, <https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/> (accessed on October 27, 2017).

<sup>158</sup> “Capital Punishment in Kurdistan: Over 250 convicts on death row,” *Rudaw*, March 14, 2017, <http://www.rudaw.net/english/kurdistan/140320174> (accessed on August 7, 2017); Dr. Dindar Zebari, chairman of the KRG’s High Committee to Evaluate International Organizations’ Reports, email message to Human Rights Watch, August 8, 2017.

<sup>159</sup> Global Justice Project: Iraq, “Criminal Procedure Code 23 of 1971, Kurdistan region of Iraq (as amended to 14 February 2010),” <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-kurdish-v2.doc>, articles 224, 257, 341.

<sup>160</sup> Murtadha Nasiri, “Report on Human Rights in Iraq July to December 2016,” United Nations Iraq, August 30, 2017, [http://www.uniraq.org/index.php?option=com\\_k2&view=item&id=7853:report-on-human-rights-in-iraq-july-to-december-2016&Itemid=650&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&id=7853:report-on-human-rights-in-iraq-july-to-december-2016&Itemid=650&lang=en) (accessed on November 2, 2017); and announcement by the Iraqi Ministry of Justice account on their official Facebook page, July 6, 2017, <https://www.facebook.com/276686282715100/photos/a.276728569377538.1073741828.276686282715100/443694919347568/?type=3&theater> (accessed on August 7, 2017).

ISIS members.<sup>161</sup> On August 2, the Higher Judicial Council issued a statement that the Nineveh counterterrorism court had handed down death sentences to four ISIS suspects, three of whom had been ISIS police and one responsible for recruiting fighters.<sup>162</sup> A judge at the court told Human Rights Watch on September 27 that they had already handed down around 200 death sentences.<sup>163</sup> The expedited nature of the trials in Nineveh's court, with the completion in six months of 5,500 investigative hearings of ISIS suspects now in the trial phase, raises concerns that there will be a large number of death sentences handed down despite serious due process shortcomings.

The Iraqi Penal Code prohibits the use of the death penalty against children.<sup>164</sup> However, Prime Minister al-Abadi stated on September 16 that judges are in the process of deciding whether to sentence to death a German girl captured by Iraqi forces in Mosul, for the crime of communicating with ISIS under the counterterrorism law.<sup>165</sup> In mid-September, Baghdad's Central Criminal Court authorities sentenced and reportedly executed a Russian man for membership in ISIS under the counterterrorism law.<sup>166</sup>

Human Rights Watch opposes capital punishment in all countries and under all circumstances. Capital punishment is unique in its cruelty and finality, and it is inevitably and universally plagued with arbitrariness, prejudice, and error. A majority of countries in the world have abolished the practice. In 2012, the United Nations General Assembly called on countries to establish a moratorium on the use of the death penalty, progressively restrict the practice, and reduce the offenses for which it might be imposed, all with the view toward its eventual abolition. Iraqi and KRG prosecution services should

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<sup>161</sup> "Iraq: Islamic State Executions in Tikrit," Human Rights Watch news release, September 9, 2014, <https://www.hrw.org/news/2014/09/02/iraq-islamic-state-executions-tikrit>; and "Iraq hangs 42 Sunni militants convicted of terrorism," Reuters, September 25, 2017, <http://uk.reuters.com/article/uk-mideast-crisis-iraq-execution/iraq-hangs-42-sunni-militants-convicted-of-terrorism-idUKKCN1Co1Qo> (accessed on October 18, 2017).

<sup>162</sup> "Nineveh Criminal Court sentences four ISIS militants to death," August 22, 2017, <http://www.nrttv.com/En/Details.aspx?Jimare=16168> (accessed on October 27, 2017).

<sup>163</sup> Human Rights Watch interview with a judge who requested anonymity, Tal Kayf, September 27, 2017.

<sup>164</sup> The Iraqi Criminal Code, arts. 72 and 73 prohibits the imposition of the death penalty for crimes committed when the defendant was a child or between the ages of 18 and 21 years. Juvenile Welfare act. No. 76 of 1983 ((In case a boy committed a felony punishable by imprisonment for life or with capital punishment, so the juvenile's court should pass a judgment against him instead of the penalty that is legally decided by sending him to the school of Rehabilitating the Boys for a period of (5) years.)) <http://gjpi.org/wp-content/uploads/juvenile-welfare-law-76-of-1983.pdf> (accessed on November 6, 2017).

<sup>165</sup> "The Latest: Iraq PM says Mosul abuses not systematic," Associated Press, September 16, 2017, <https://www.apnews.com/a4848bo7448b4ced9do6a2d17a5073af> (accessed on November 2, 2017).

<sup>166</sup> Susannah George & Qassim Abdul-Zahra, "Iraq PM: Half of IS families detained near Mosul are Turkish," *Associated Press*, September 16, 2017, <https://apnews.com/e15bo221boob419fba4f1f3a15d9d3f> (accessed on October 27, 2017).

stop demanding the death penalty for ISIS suspects, and both parliaments should abolish the death penalty.

## Lack of Victim Participation

Under Iraqi law victims have the right, if they choose, to participate in all trials, to provide testimony and to submit questions to the investigative judge to pose to suspects about their motivations.<sup>167</sup> However, Iraq and the KRG authorities have been trying ISIS suspects in most cases solely based on confessions and written witness statements, primarily about their ISIS membership. They are taking no measures to inform victim communities about who is being tried and when, or to solicit their participation in ongoing trials. As a result, according to victims whom researchers interviewed from diverse communities across Iraq, the ongoing trials seem to be doing little to convince victims that justice is being served.

According to one Iraqi lawyer, victims and witnesses normally do choose to have a role during Iraqi criminal trials in presenting their testimony of crimes committed.<sup>168</sup> They can also submit questions via their lawyer to the investigative judge, to put to the defendant. However, because the counterterrorism courts need only prove affiliation with ISIS to prosecute ISIS suspects under the counterterrorism law, they do not need victim testimonies to prove the culpability of ISIS suspects in any specific crimes under the criminal code, such as murder or rape. As a result, counterterrorism judges can forego gathering evidence from victims or witnesses. According to all five judges interviewed, judges are primarily relying on confessions as the basis for their prosecutions of ISIS suspects, as well as written testimony from friends or neighbours supporting claims of ISIS affiliation.<sup>169</sup>

One Nineveh judge told Human Rights Watch that while all hearings are open to the public, the court does not seek the testimony or participation of victims, and in fact would discourage it, saying it would put too great a burden on the system to maintain contact with victims.<sup>170</sup> In Baghdad, Chief Justice Zaidan and two counterterrorism judges said that once the situation in Nineveh stabilized and those displaced were able to return home,

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<sup>167</sup> Global Justice Project: Iraq, "Criminal Procedure Code 23 of 1971, Kurdistan region of Iraq (as amended to 14 February 2010)," <http://gjpi.org/wp-content/uploads/gjpi-cpc-1971-kurdish-v2.doc>, art. 143.

<sup>168</sup> Email message to Belkis Wille, September 15, 2017.

<sup>169</sup> Human Rights Watch interview with a judge who requested anonymity, Hamdaniya, July 6, 2017.

<sup>170</sup> Ibid. Human Rights Watch interview with a judge who requested anonymity, Hamdaniya, July 6, 2017.

victims would be welcome to participate, particularly during the trial.<sup>171</sup> They did not address what participation would look like and what steps courts would take in order to solicit that participation.

This is highly problematic in both working out whether the suspected ISIS member committed a serious crime, but also in cases where convicted ISIS members are granted amnesties, making it possible that those who committed serious crimes may well be released as key victims or witnesses did not know about their prosecution.

The KRG judges said that most hearings taking place in the Erbil counterterrorism chamber were open to the public and that all were welcome to attend, but that their courts did not take any steps to contact victims to solicit their testimony or participation during trials.<sup>172</sup>

Without active victim participation, some communities may proceed to take justice into their own hands. In one possible example of this, in June 2017, Sunni tribal leaders alleged that Yezidi fighters captured and perhaps killed at least 52 civilians from eight families belonging to a Sunni tribe rumored to have participated in the roundup and abuse of Yezidi women, in complicity with ISIS, in August 2014.<sup>173</sup> Though the families were still missing at the time of drafting, the Yezidi community has rejected the allegations.<sup>174</sup> While Human Rights Watch was unable to determine the veracity of the claim, it highlights concerns that the exclusion of victims from judicial processes could fuel a desire for groups to take justice into their own hands.

In a positive development, in March 2017, Iraq passed a Witness Protection Law that increases protections for victims, witnesses, experts, and informants who provide information in criminal cases.<sup>175</sup> This can encourage victims to testify against ISIS suspects charged with serious offenses, but without an opportunity to testify, it will not be of much help.

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<sup>171</sup> Human Rights watch interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017 and Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017.

<sup>172</sup> Human Rights Watch interview with Judge Fadhal Abbas and Judge Masoud al-Sinjari, Erbil, July 5, 2017.

<sup>173</sup> Video announcement from the media office of parliament representative Ali Almatioti official Facebook page, August 19, 2017, <https://www.facebook.com/1109944709091912/videos/1440079172745129> (accessed on October 27, 2017).

<sup>174</sup> Statement by Murad Ismael, executive director and a board member of Yazda posted on his official Facebook, August 20, 2017, [https://m.facebook.com/story.php?story\\_fbid=10155514612927092&id=822002091](https://m.facebook.com/story.php?story_fbid=10155514612927092&id=822002091) (accessed on October 27, 2017).

<sup>175</sup> Iraqi Parliament, "قانون حماية الشهود والخبراء والمخبرين والمجنى عليهم," March 11, 2017, <http://ar.parliament.iq/2017/03/11/13073/> (accessed on November 2, 2017).

If there is a desire by the victim to take part, Iraqi and KRG prosecution services should actively solicit victim participation in trials, including by taking steps to issue public information on upcoming trials of suspects and where feasible contacting victims' communities to request their appearance during the relevant trial, and providing financial assistance to cover their costs to attend. The prosecution services should allow victims to use trials as an opportunity to testify about the abuse they suffered, and submit questions to the defendant according to the law. They should take precautions to ensure the safety of participating victims and witnesses. International donors should support victim participation in ongoing trials, including by funding efforts to inform victims of ongoing trials and pay for their transport to and from the court where trials are taking place.

## Prosecution of Crimes Against Yezidi Victims

ISIS fighters executed at least 2,000 Yezidis and captured another 6,417 whom they imprisoned and subjected to a system of organized rape, sexual assault, sexual slavery, other forms of torture and ill-treatment, forced marriage to ISIS forces, and forced labor.<sup>176</sup> They also forced many to convert and conscripted children as fighters. While many Yezidis died in the attacks and during the subsequent period of imprisonment, about 3,000 have escaped from ISIS control in Iraq and Syria since 2014, with about 800 relocating outside of Iraq and the rest settling in the Kurdish Region of Iraq.<sup>177</sup>

Because of their horrific nature, ISIS abuses against the Yezidi population are some of the most documented and internationally condemned. Iraqi authorities and anti-ISIS coalition partners have repeatedly reiterated the need for Yezidi victims to have access to justice against ISIS suspects who perpetrated abuses against their community. Many international actors have supported efforts to gather and preserve evidence of ISIS crimes against Yezidis.<sup>178</sup>

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<sup>176</sup> UNHCR, "A Call for Accountability and Protection: Yezidi Survivors of Atrocities Committed by ISIL," August 2016, [http://www.uniraq.org/index.php?option=com\\_k2&view=item&task=download&id=1910\\_ca5ff308fd2154bb547334082b35290d&Itemid=650&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&task=download&id=1910_ca5ff308fd2154bb547334082b35290d&Itemid=650&lang=en) (accessed on November 2, 2017).

<sup>177</sup> Human Rights Watch interview with Murad Ismael, executive director and a board member of Yazda, Baghdad, July 12, 2017.

<sup>178</sup> "UN Panel Reports on ISIS Crimes on Yezidis," Human Rights Watch news release, June 6, 2016, <https://www.hrw.org/news/2016/06/21/un-panel-reports-isis-crimes-yezidis>; "Yezidis cautiously welcome Iraq court tasked with prosecuting ISIS," *Rudaw*, June 12, 2017, <http://www.rudaw.net/english/middleeast/iraq/12062017> (accessed on October 27, 2017); and "Iraq: Yezidi survivors of horrific abuse in IS captivity neglected by international community," Amnesty International press release, October 10, 2016, <https://www.amnesty.org/en/latest/news/2016/10/iraq-yezidi-survivors-of-horrific-abuse-in-is-captivity-neglected-by-international-community/> (accessed on October 27, 2017).

Despite this, neither Human Rights Watch nor Yazda, a prominent nongovernmental organization supporting the Yezidi community, are aware of a single trial by the KRG or by the government of Iraq of an ISIS suspect for specific crimes committed against a Yezidi individual.<sup>179</sup> Two counterterrorism judges in Erbil gave several contradictory reasons for this: Yezidi victims did not have any identifying information about their abusers, had not come forward to open specific complaints against individuals currently in KRG custody, or the abuses were committed in Sinjar, which lies outside the KRG's jurisdiction (despite the fact that KRG security and military force were in control of significant parts of the territory at the time they said this to researchers).<sup>180</sup> The Nineveh judge told Human Rights Watch that some suspects charged in his court had committed abuses against Yezidis, but were being charged like other suspects for ISIS affiliation under the counterterrorism law.<sup>181</sup>

Human Rights Watch's numerous interviews with Yezidi victims including most recently 12 Yezidi victims in May 2017 in Dohuk suggest that at least some victims have considerable information about the identity of their ISIS abusers. Eight of the 12 women and girls said ISIS forces held them in Syria while four said they held them in Iraq, all subjecting them to ill-treatment, including sexual violence, and a range of other abuses. Three of the Yezidi women and girls who had been held in Syria said that upon their return to Iraq, Asayish forces called them in for questioning; two said Peshmerga forces interviewed them as they crossed the border, and seven said no authorities had interviewed them. Those questioned by Asayish said that a male officer asked them for names of ISIS fighters, loved ones still under ISIS control, and other specifics, without providing any reason for the questions. There was no female officer present, the three said. All said they had not contacted authorities in order to open any criminal complaints.

"I would love to have justice for what was done to us," one of the girls, aged 17, said, "But I am worried about what would happen to the eight members of my family still being held by ISIS. Once my family is out, I hope that these men go to trial."

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<sup>179</sup> Human Rights Watch interview with Murad Ismael, executive director and a board member of Yazda, Baghdad, July 12, 2017.

<sup>180</sup> Human Rights Watch interview with Judge Fadhal Abbas and Judge Masoud al-Sinjari, Erbil, July 5, 2017; and "Kurdistan Region of Iraq: Yezidi Fighters' Families Expelled," Human Rights Watch news release, July 9, 2017, <https://www.hrw.org/news/2017/07/09/kurdistan-region-iraq-yezidi-fighters-families-expelled>.

<sup>181</sup> Human Rights Watch interview with a judge who requested anonymity, Hamdaniya, July 6, 2017.

In September 2014, the KRG's Ministry of Martyrs and Anfal Victims set up the High Committee for Identification of Genocide Crimes against Residents of Kurdistan Areas Outside of KRG, tasked with collecting evidence of international crimes committed against the Yezidi population and determining how best to protect and analyze the evidence.<sup>182</sup> Judge Ayman Mustafa, head of the committee, said he has been gathering testimony from victims in the hope that the witness statements can be used to charge ISIS suspects with war crimes, crimes against humanity, and genocide. So far, because of the lack of a legal authority in Iraq with jurisdiction over those crimes, he has not turned any of his team's information over to KRG or Iraqi government authorities holding and charging ISIS suspects.<sup>183</sup>

Like all victims of ISIS abuse, Yezidis deserve justice. Consultation with Yezidi survivors, groups representing their interests, and women's rights non-governmental organizations would help to identify and mitigate any concerns that survivors and witnesses may have about engaging with any judicial process. These could include concerns over the location of the trials and the safety of travel there, and the risk to any loved ones still in captivity if they participate in the trials, both issues that Yezidi victims raised with Human Rights Watch. In particular, the authorities should consider ways to protect information and provide confidentiality for those concerned with retaliation upon themselves or family members still held under ISIS captivity as well as adopting measures to combat stigma.

Iraqi and KRG authorities should work with all actors that have gathered evidence from Yezidi victims and witnesses to amass the evidence of abuses and information on perpetrators in a manner that is complete but does not duplicate previous documentation efforts, which might retraumatize victims and witnesses. They should work closely with the High Committee for Identification of Genocide Crimes and other initiatives with such evidence to identify any current ISIS suspects who are suspected of war crimes, crimes against humanity or genocide, and issue arrest warrants for those still at large. They should seek victim and witness participation in trials that they bring against suspects of the crimes committed, including killings, imprisonment and rape.

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<sup>182</sup>"Iraq: Protect Mass Graves," Human Rights Watch news release, January 30, 2016, <https://www.hrw.org/news/2016/01/30/iraq-protect-mass-graves>.

<sup>183</sup> Human Rights Watch telephone interview with Judge Ayman Mustafa, June 15, 2017.

### *Judicial Investigation Board for Crimes Against the Yezidis*

Perhaps because of mounting international pressure and frustration at the lack of prosecutions against ISIS suspects for abuses against the Yezidi population, in June 2017, Iraq's High Judicial Council announced it would create the Judicial Investigation Board for Crimes Against the Yezidis. The board, which would function as a special chambers, was initially set to be located in Baaj, 30 kilometers south of Sinjar city, but later moved to al-Shimal, in Sinjar, to handle cases of ISIS abuses against the Yezidi population, and women in particular.<sup>184</sup> Chief Justice Zaidan said in July that he had already nominated the judges for the chamber, as well as a Yezidi prosecutor, but did not yet have an allocated budget or venue.<sup>185</sup> He said that this chamber would allow for Yezidi victims to file claims under the counterterrorism law for killings, abduction, and even rape, which he said would be included in practice, despite it not being a crime covered by the law. He said that the prosecutor and judges at the court would then take up the cases to investigate and prosecute. He foresaw a role for victims to play in the proceedings, particularly at the conviction stage. If victims brought charges against ISIS suspects held in Erbil or other jurisdictions, he said that would represent a significant challenge, and he could not guarantee their transfer to an Iraqi government court.

Murad Ismael, executive director of Yazda, said the Yezidi community were not consulted about the formation of the board, and objected to certain aspects, such as its location, the choice of all Muslim judges, the lack of international expertise to provide forensic analysis of the over 40 Yezidi mass grave sites in and around Sinjar, and the lack of coordination with initiatives in the Kurdish Region of Iraq and internationally.<sup>186</sup> He said:

What we want is an international commission to examine the Yezidi genocide and draw up an accurate historical narrative. We want these people to have to stand up and explain why they did what they did, so we can all learn from this. We don't want everyone simply to be silenced and killed.

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<sup>184</sup> "Iraqi Supreme Judicial Council Decides to Form Tribunal for Crimes Against Yezidis," *Bas News*, June 12, 2017, <http://www.basnews.com/index.php/en/news/iraq/357193> (accessed October 27, 2017).

<sup>185</sup> Human Rights Watch interview with Chief Justice Faiq Zaidan, Baghdad, July 17, 2017, Judge Riadh Jafar and Judge Jabar Hussein, Baghdad, July 19, 2017.

<sup>186</sup> Human Rights Watch interview with Murad Ismael, executive director and a board member of Yazda, Baghdad, July 12, 2017. "Iraq: Protect Mass Graves," Human Rights Watch news release, January 30, 2016, <https://www.hrw.org/news/2016/01/30/iraq-protect-mass-graves>.



Ismael told Human Rights Watch he did not know of any Yezidi victims who had interacted with the Board and that authorities had failed to put in place any systematic and comprehensive effort to interview victims and witnesses.<sup>187</sup>

## Compensation

Iraq has taken some measures to compensate victims of “terrorism and military errors” through a 2009 law, amended in 2015.<sup>188</sup> Under this law, the government formed committees in each governorate to compensate those affected by terrorism, military operations, and military errors, by providing material compensation for physical or psychological harm, a pension, and an apartment or land or a financial grant to the affected person to build a house.<sup>189</sup> In January 2016, the committee announced that it had paid out at least USD 60 million in claims nation-wide over 2016.<sup>190</sup> In April, the committee announced it had approved more than 3500 claims of property damage across the country between January and March 2017.<sup>191</sup> In May 2017, the committee stated it approved payment of over 2000 compensation claims from damage caused by ISIS and anti-ISIS forces in Anbar.<sup>192</sup>

When researchers visited the Nineveh governorate’s office of the compensation commission in July 2017, it was functioning out of the same place as Nineveh’s counterterrorism court, located at the time in the Christian town of Hamdaniya in Nineveh governorate. A senior judge there told Human Rights Watch that by early July, the commission had received at least 6,000 claims for compensation for a range of losses including property and loved ones.<sup>193</sup> Murad Ismael said that Yezidi victims he was in

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<sup>187</sup> Email from Murad Ismael to Human Rights Watch, August 14, 2017.

<sup>188</sup> Omar al-Shaher, “Iraq Pays \$300 million to Terror Victims,” *al-Monitor*, April 17, 2013, <http://www.al-monitor.com/pulse/originals/2013/04/iraq-terrorism-compensation-victims.html> (accessed on August 16, 2017).

<sup>189</sup> “Iraq: ISIS Bombings are Crimes Against Humanity,” Human Rights Watch news release, January 15, 2017, <https://www.hrw.org/news/2017/01/15/iraq-isis-bombings-are-crimes-against-humanity>.

<sup>190</sup> Republic of Iraq General Secretariat for the Council of Ministers, “الأمانة العامة لمجلس الوزراء: اللجنة المركزية لتعويض المتضررين تصادق على أكثر من 15 ألف معاملة خلال عام 2016” <http://www.cabinet.iq/ArticleShow.aspx?ID=7138> (accessed on November 20, 2017).

<sup>191</sup> Republic of Iraq General Secretariat for the Council of Ministers, “الأمانة العامة لمجلس الوزراء: اللجنة المركزية لتعويض المتضررين تصادق على أكثر من 3500 معاملة خلال الأشهر الثلاثة الماضية” <http://www.cabinet.iq/ArticleShow.aspx?ID=7351> (accessed on November 20, 2017).

<sup>192</sup> Republic of Iraq General Secretariat for the Council of Ministers, “الأمانة العامة لمجلس الوزراء: اللجنة المركزية لتعويض المتضررين توعد بصرف مبالغ التعويضات الخاصة بالممتلكات المتضررة في الأنبار قبل تاريخ 2014/6/9” <http://www.cabinet.iq/ArticleShow.aspx?ID=7462> (accessed on November 20, 2017).

<sup>193</sup> Human Rights Watch interview with a judge who requested anonymity, Hamdaniya, July 6, 2017.

contact with did not know of such a compensation scheme and had received no compensation.<sup>194</sup>

The current compensation scheme does not meet the full reparation needs of victims. The authorities should develop and implement a gender-sensitive reparations program through a transparent and participatory process with survivors and women's rights groups and in accordance with international standards, for all victims of serious human rights violations committed during the conflict, including sexual violence.

## International Initiatives

Because of the gravity of the crimes committed, the role of foreign nationals in ISIS, and the role of foreign governments in the military campaign against ISIS, the international community has a responsibility to play to support credible, impartial justice efforts.

States committed to accountability for victims of all abuses in Iraq should focus on how to improve the ability of the judicial systems of both the Iraqi government and the KRG to prosecute the most serious crimes committed in a fair, impartial and effective manner. They can do this by urging Iraq to accept the jurisdiction of the International Criminal Court.

Iraq's international partners should urge Iraqi authorities to ensure that international crimes are incorporated into the criminal code, including modes of liability such as command responsibility. They should urge authorities to address the range of due process violations that are preventing defendants from having a fair trial, as well as funding trial monitors during the hearings. Further, Iraq's partners in the international community should take steps to help victims and their communities participate in the ongoing trials, and to fund the establishment of transitional justice mechanisms including those for truth-telling and reparations. Those states that oppose the death penalty should also continue their efforts to urge Iraq to abolish the death penalty.

Some international actors, while involved in various extra-judicial initiatives aimed at paving the way for criminal justice for ISIS victims, have largely remained silent on the need for accountability for victims of anti-ISIS forces and do not foresee a direct interaction with the current caseload of ISIS suspects. International staff involved in two such

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<sup>194</sup> Murad Ismael, executive director of Yazda, email message to Belkis Wille, Senior Iraq Researchers at Human Rights Watch, September 12, 2017.

initiatives told Human Rights Watch that their organizations were unable to fully support and endorse Iraqi proceedings because of serious concerns about the fairness of trials and due process in Iraq, as well as the application of the death penalty.

### *UN Security Council Mandated Investigative Team*

On September 21, 2017, the United Nations Security Council unanimously adopted a resolution that establishes an investigative team to collect and preserve evidence of serious crimes committed by ISIS in Iraq but which fails to include within its mandate abuses by anti-ISIS forces (see below). The resolution mandates the UN secretary-general to establish the investigative team headed by a special adviser to collect and preserve evidence of war crimes, crimes against humanity, and genocide, for anticipated use in future criminal proceedings in Iraq or possibly in other national courts. It stipulates that “any other uses” of the evidence collected by the team is to be “determined in agreement with the Government of Iraq on a case by case basis.”

The resolution asks the UN secretary-general to prepare, within 60 days, terms of reference “acceptable to the Government of Iraq” to guide the investigative team’s work for the Security Council’s approval. The Security Council stipulates that the terms of reference should specify the appointment of Iraqi investigative judges and other criminal experts to the team to work “on an equal footing alongside international experts.”

Though the Security Council resolution notes that the team should complement Iraqi investigations, it is unclear how its work will, in practice, interact with ongoing investigations by Iraqi and KRG security forces, as well as other nongovernmental efforts in Iraq to document ISIS crimes.

The investigative team should ensure that its own efforts do not risk re-traumatizing victims and witnesses and do not significantly delay the application of justice to the detriment of victims as well as detainees being held in inhuman conditions. In addition, once the team becomes operational, it should play a positive role in advocating that federal Iraqi and KRG authorities bring charges against ISIS suspects for the full range of crimes they have committed; improve respect for due process rights of suspects and detainees; take a more victim-centered approach to national accountability efforts; and abolish and/or suspend the

death penalty. The team should seek to convince the Iraqi government to allow it to broaden the investigations to include abuses by all sides in the conflict.

The Security Council resolution does not explicitly exclude the use of evidence in proceedings that allow for the death penalty, one of only two penalties laid out in the Iraqi government's counterterrorism law, and a sentence judges in both the Iraqi government and KRG court systems have handed down for counterterrorism convicts within the KRG judicial system. However, as long as Iraqi and KRG courts allow for the death penalty for ISIS suspects, the investigative team should not provide them with evidence it collects for use in ongoing ISIS prosecutions, in line with the longstanding United Nations policy of not supporting or assisting processes that could lead to the death penalty. On October 10, United Nations Secretary-General Antonio Guterres said "the death penalty has no place in the 21st century," describing it as a "barbaric practice."<sup>195</sup>

Instead, they should urge the Iraqi authorities at minimum to suspend the application of the death penalty in these prosecutions, for which there is recent precedent; the Lebanese government agreed to such a suspension of the death penalty in connection with the proceedings of the Special Tribunal for Lebanon as part of the government's agreement with the United Nations.<sup>196</sup>

### *Commission for International Justice and Accountability*

In 2014, the Commission for International Justice and Accountability (CIJA), a criminal-investigative group, expanded its operations from Syria, where it has been active since 2012 when it was founded, to northern Iraq, where it operates under a Memorandum of Understanding (MOU) with the KRG.<sup>197</sup> The MOU does not establish a direct relationship between CIJA and Iraqi or KRG prosecution or judicial authorities but grants CIJA a mandate to build domestic capacity and to gather evidence and build prosecution-ready case-files for use before an international or domestic court.

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<sup>195</sup> United Nations Security General, "Secretary-General's remarks at Panel on "Transparency and the death penalty" [as delivered], " October 10, 2017, <https://www.un.org/sg/en/content/sg/statement/2017-10-10/secretary-generals-remarks-panel-%E2%80%99Ctransparency-and-death-penalty%E2%80%99D> (accessed on November 2, 2017).

<sup>196</sup> "Factsheet: Special Tribunal for Lebanon," Special Tribunal for Lebanon-United Nations, <http://www.un.org/apps/news/infocus/lebanon/tribunal/factsheet.shtml> (accessed on November 2, 2017).

<sup>197</sup> Human Rights Watch Skype interview with Nerma Jelacic, External Relations and Communications at Commission for International Justice and Accountability, London, July 26, 2017.

CIJA, funded by the UK, EU, Canada, Germany, Norway, and Denmark, states that it is investigating war crimes, crimes against humanity and genocide organized and committed by members of ISIS while simultaneously building the KRG's capacity to conduct such investigations itself. According to Nerma Jelacic, a CIJA representative, while it collects crime-base evidence (evidence that shows the commission of crimes), CIJA focuses primarily on the collection of causal evidence that demonstrates the criminal culpability of ISIS leaders for participation in the crime themselves. Jelacic said that all this evidence is stored, analyzed, and then turned into criminal dossiers akin to pre-trial briefs for the purposes of future prosecutions. So far, CIJA has developed ISIS case dossiers on enslavement of Yezidi women and children and the Sinjar military operation, according to Jelacic.

Jelacic told Human Rights Watch CIJA is willing to hand these case dossiers over to domestic and international jurisdictions as long they observe due process and fair trials standards and prohibit the death penalty as a punishment. CIJA's current focus is developing local investigative capacity in Iraq at the same time as assisting national judicial authorities in Europe who may be pursuing cases against members of ISIS for serious crimes, including under the principle of universal jurisdiction, under which states can prosecute individuals responsible for international crimes, such as war crimes and crimes against humanity, that took place in the territory of other states.

### *International Criminal Court*

Iraq is not a member state of the Rome Statute, the treaty that established the International Criminal Court (ICC).<sup>198</sup> Unless the Iraqi government ratifies the treaty or accepts the jurisdiction of the court through a declaration, the ICC could only obtain territorial jurisdiction over serious crimes committed there if the UN Security Council refers the situation to the court. The Security Council, with what is called an "ICC referral," could give the court jurisdiction as far back as 2002 when the Rome Statute entered into force.<sup>199</sup>

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<sup>198</sup> Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>; and International Criminal Court members, Global map, <https://www.icc-cricket.com/about/members> (accessed on October 18, 2017).

<sup>199</sup> Rome Statute, art. 15.

The European Union and the UN Human Rights Office have called on Iraq to become a member of the ICC to allow for possible prosecution of war crimes, genocide, and crimes against humanity by all parties to the conflict.<sup>200</sup> However, Iraq has not indicated any openness to becoming a member of the court. Prime Minister Haider al-Abadi told Human Rights Watch in March 2016 that Iraq has no plans to join the court—out of apparent concern that the court would also be able to examine crimes by government security forces.

Though Iraq is not an ICC member, the court has jurisdiction over alleged serious crimes committed by the nationals of its member countries—in this case, citizens of ICC states who may have also committed serious crimes in Iraq as members of ISIS. However, as a matter of policy, the ICC prosecutor’s office focuses on those individuals most responsible for mass crimes. In April 2015, the ICC prosecutor, Fatou Bensouda, said the prospects of her office investigating and prosecuting those most responsible for crimes committed by ISIS were limited.<sup>201</sup> She said that though there were indications that “significant numbers” of ICC member nationals joined the ranks of ISIS as foreign fighters, the organization’s leadership was made up of Iraqi and Syrian nationals. At the same time, Bensouda said her office remained open to receiving additional information “which could provide further clarity on the positions occupied by State Party nationals within the ISIS organizational hierarchy.”<sup>202</sup>

### *Investigations in Third Countries*

Investigations are underway in some European countries against people accused of serious crimes in Syria and Iraq under the international law principle of universal jurisdiction.<sup>203</sup>

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<sup>200</sup> Fifteenth session of the Assembly of States Parties, General Debate, International Criminal Court, “Statement on behalf of the EU and its Member States for “General Debate” at the 15th Assembly of States Parties to the Rome Statute in November 2016,” November 16-17, 2016, [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Slovakia\\_EU-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/GenDeba/ICC-ASP15-GenDeba-Slovakia_EU-ENG.pdf) (accessed on November 2, 2017).

<sup>201</sup> Office of the Prosecutor in the International Criminal Court, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS”, April 8, 2015, <https://www.icc-cpi.int/legalAidConsultations?name=otp-stat-08-04-2015-1> (accessed on November 2, 2017).

<sup>202</sup> *Ibid.*

<sup>203</sup> “War Crimes Prosecutions in Europe: Video, Q&A Highlight Cases Spurred by Syrian, Iraqi Refugees,” Human Rights Watch news release, October 20, 2016, <https://www.hrw.org/news/2016/10/20/war-crimes-prosecutions-europe>.

In 2014, German judicial authorities initiated a broad preliminary investigation, without specific suspects, to examine crimes committed by ISIS in both Syria and Iraq, with a focus on the ISIS attack on the Yezidi minority in Sinjar, Iraq, in August 2014.<sup>204</sup> In addition German authorities are conducting 27 investigations against individuals for crimes committed in Syria and Iraq.<sup>205</sup>

Other investigations may be underway for which no public information is available.

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<sup>204</sup> For more information on this attack see Joe Stork (Human Rights Watch), “The Nightmare in Iraq”, August 9, 2014, <https://www.hrw.org/news/2014/08/09/nightmare-iraq> (accessed October 18, 2017); and “Iraq: Forced Marriage, Conversion for Yezidis – Victims, Witnesses Describe Islamic State’s Brutality to Captives,” Human Rights Watch news release, October 11, 2014, <https://www.hrw.org/news/2014/10/11/iraq-forced-marriage-conversion-yezidis>. Many potential witnesses are now in Germany as a result of an immigration program that brought about 1,100 Yezidis, mainly women and children, to Baden Württemberg. According to unconfirmed media reports, the Federal Prosecutor’s Office has obtained an arrest warrant against an ISIS member for genocide, war crimes and crimes against humanity.

<sup>205</sup> Human Rights Watch, *These are the Crimes we are Fleeing. Justice for Syria in Swedish and German Courts*, October 3, 2017, <https://www.hrw.org/report/2017/10/03/these-are-crimes-we-are-fleeing/justice-syria-swedish-and-german-courts>.

### III. Impunity for Abuses by Iraqi and KRG Forces in Conflict with ISIS

Human rights abuses committed by Iraqi and KRG anti-ISIS forces in their battle against ISIS are well-documented. Abuses include mass killings, summary executions, disappearances, kidnappings, torture, and widespread home demolitions of Sunni homes in ISIS-held areas.<sup>206</sup> Human Rights Watch has requested information from both authorities on numerous occasions about whether they have held Iraqi or KRG forces accountable for abuses; replies have stated only that they are investigating the abuses, with no information on the outcomes of the investigations.

Iraqi authorities at most promise to investigate incidents of abuse by their forces, but these rarely if ever result in any public accounting or sanction of the abusers. In the most notorious recent example, grotesque videos emerged online in May 2017 of Iraqi officers from the Interior Ministry's elite Emergency Response Division torturing and executing ISIS suspects and their family members.<sup>207</sup> In July, an adviser to the prime minister told Human Rights Watch that the government was holding six officers implicated in the videos and would announce actions against them, "but not for some time, because it would interfere with the current congratulatory victory messages."<sup>208</sup> On August 17, the Prime Minister's office issued a statement that it had established a special committee to investigate over 20 allegations of abuse in the context of the Mosul operation, including the allegations

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<sup>206</sup> "Iraq: Execution Site Near Mosul's Old City," Human Rights Watch news release, July 19, 2017, <https://www.hrw.org/news/2017/07/19/iraq-execution-site-near-mosuls-old-city>; "Iraq: Investigate Possible Mosul Abuse," Human Rights Watch news release, July 13, 2017, <https://www.hrw.org/news/2017/07/13/iraq-investigate-possible-mosul-abuse>; "Iraq: Alleged ISIS families sent to rehabilitation camp," Human Rights Watch news release, July 13, 2017, <https://www.hrw.org/news/2017/07/13/iraq-alleged-isis-families-sent-rehabilitation-camp>; "Iraq: New Abuse, Execution Reports of Men Fleeing Mosul," Human Rights Watch news release, June 30, 2017, <https://www.hrw.org/news/2017/06/30/iraq-new-abuse-execution-reports-men-fleeing-mosul>; "Iraq: Dozens found handcuffed, executed around Mosul," Human Rights Watch news release, June 6, 2017, <https://www.hrw.org/news/2017/06/05/iraq-dozens-found-handcuffed-executed-around-mosul>; "Kurdistan Region of Iraq: Yezidi Fighters' Families Expelled," Human Rights Watch news release, July 9, 2017, <https://www.hrw.org/news/2017/07/09/kurdistan-region-iraq-yezidi-fighters-families-expelled>; "Kurdistan Region of Iraq: Thousands Fleeing Kept Waiting Near Front-Line," Human Rights Watch news release, June 21, 2017, <https://www.hrw.org/news/2017/06/21/kurdistan-region-iraq-thousands-fleeing-kept-waiting-near-front-line>; and "Kurdistan Region of Iraq: 'New Detentions of Fleeing Men, Boys,'" Human Rights Watch news release, June 3, 2017, <https://www.hrw.org/news/2017/06/03/kurdistan-region-iraq-new-detentions-fleeing-men-boys>.

<sup>207</sup> Sarah Leah Whitson (Human Rights Watch), "Winning Battles, but Losing the War for a United Iraq," *The Star*, May 27, 2017, <https://www.hrw.org/news/2017/05/27/winning-battles-losing-war-united-iraq>.

<sup>208</sup> Human Rights Watch interview (name withheld), Baghdad, July 14, 2017.



against Emergency Response Division officers.<sup>209</sup> It stated that they had arrested several of the officers who were facing trial.

On September 17, Prime Minister al-Abadi stated that initial investigations into allegations of abuse during the Mosul operation found they were carried out by individuals and were not “systematic.”<sup>210</sup> He told the Associated Press that soldiers found guilty were being held accountable and “at the moment we are listening to all reports, to all claims, there is no indication that this is a systematic abuse of human rights.” He also stated that the officers involved were largely being charged with “negligence,” unless they were found to have issued orders to commit the abuses. At time of writing this report, authorities had yet to provide Human Rights Watch with any update on the trials proceeding against any soldiers or officers, and researchers received footage of a captain and a corporal from the abusive Emergency Response Division unit and directly implicated in the torture and executions back in command of forces and participating in military operations.

Investigations of PMF abuses have not fared any better. In July 2017, Human Rights Watch interviewed two judges in Baghdad’s criminal appeals court. One, Judge Jabar Hussein, is tasked with ruling on cases of abuses by the PMF, as well as counterterrorism or other criminal cases against those detained by the Federal Police or the PMF.<sup>211</sup> While he initially told researchers he had so far ruled on 57 cases against PMF members, he went on to state that the cases were actually against individuals who pretended to be part of the PMF, but in fact were not. He could not cite a single case of a PMF member charged with a crime.

Despite the troubling record of the PMF for abuses against Iraqi civilians, the Iraqi government’s approach continues to be one of unbridled praise. In early 2015, the Higher Judicial Council placed slogans on its letterhead praising the Popular Mobilization Forces.<sup>212</sup> The slogans include the following phrases: “The Popular Mobilization Forces are the Back Support for the Intrepid Iraqi Army,” or “With our Army and the Popular Mobilization Forces Iraq is Stronger and Enduring.”

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<sup>209</sup> Iraqi prime minister office official website, August 17, 2017, <http://www.pmo.iq/press2017/17-8-20171.htm> (accessed on November 2, 2017).

<sup>210</sup> “The Latest: Iraq PM says Mosul abuses not systematic,” *Associated Press*, September 16, 2017. <https://www.apnews.com/a4848bo7448b4ced9do6a2d17a5073af> (accessed on November 2, 2017).

<sup>211</sup> Human Rights Watch interview with Judge Jabar Hussein, Baghdad, July 19, 2017.

<sup>212</sup> “Iraq: Looting, Destruction by Forces Fighting ISIS,” Human Rights Watch news release, February 16, 2017, <https://www.hrw.org/news/2017/02/16/iraq-looting-destruction-forces-fighting-isis>; and “Iraq: Fallujah Abuses Inquiry Mired in Secrecy,” Human Rights Watch news release, July 7, 2017, <https://www.hrw.org/news/2016/07/07/iraq-fallujah-abuses-inquiry-mired-secrecy>.

Similarly, despite promises by KRG authorities to investigate KRG forces' destruction of Sunni Arab villages and homes documented by Human Rights Watch, as far as researchers are aware, authorities have not sanctioned any commanders or soldiers who ordered or participated in the destruction.<sup>213</sup> The Independent Human Rights Commission in the Kurdish Region of Iraq concurred with Human Rights Watch's findings in January 2017 that Asayish forces tortured child ISIS suspects.<sup>214</sup> KRG authorities told Human Rights Watch they opened an investigation into the allegations, but as of late September 2017, the investigation had apparently yielded no results and authorities had not sanctioned any officers who ordered or participated in the ill-treatment.<sup>215</sup>

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<sup>213</sup> Human Rights Watch, *Marked With An "X"*, p. 7.

<sup>214</sup> "KRG: Children Allege Torture by Security Forces," Human Rights Watch news release, January 29, 2017, <https://www.hrw.org/news/2017/01/29/krp-children-allege-torture-security-forces>.

<sup>215</sup> Human Rights Watch interview with Dr. Dindar Zebari, chairman of the KRG's High Committee to Evaluate International Organizations' Reports, Erbil, September 28, 2017.

# Recommendations

## Transitional Justice

- All relevant Iraqi government and KRG authorities should engage in discussions to develop a national strategy for ISIS prosecutions and a range of other initiatives, including truth-telling and reparations, to address ISIS crimes;
- The strategy should include public communications on all justice processes, and advocate for victims' participation;
- The authorities should urgently develop a coordinated strategy to prioritize the prosecution of those who committed the most serious crimes by bringing charges for the full range of crimes committed, and with a clear role for victim engagement;
- Authorities should prioritize the prosecutions of ISIS suspects responsible for the most serious crimes by bringing charges for those specific crimes;
- For those suspected only of membership in ISIS without evidence of any other serious crime, and especially for children, the authorities should consider alternatives to criminal prosecution, which are clogging the judicial system and prisons while not providing justice for victims or helping Iraq transition towards a more peaceful future;
- The authorities should, at a minimum, drop charges against those whose functions under ISIS contributed to the protection of human rights of civilians;
- If authorities insist on pursuing the broadest possible prosecutions, including only for membership in ISIS without any further offense, they should prioritize first and most quickly trying those with the most minimal charges against them and promptly releasing those eligible under the amnesty law. This would help to address the mass overcrowding of prisons;
- As an alternative to prosecutions, authorities should develop truth-telling mechanisms with a broad mandate and powers, including the right to subpoena testimony and witnesses, that would address abuses committed by all sides in the conflict, to complement judicial processes and reparations schemes;
- The authorities should develop and implement a gender-sensitive reparations program through a transparent and participatory process with survivors and women's rights groups and in accordance with international standards, for all

victims of serious human rights violations committed during the conflict, including sexual violence.

## Screenings, Arrests and Detention

### *To Iraqi and KRG Detaining Forces*

- Only detain individuals who have a court-issued arrest warrant against them;
- Only detain children as a measure of last resort;
- Enter the names of all detainees into the relevant databases that store the names of detainees;
- Promptly bring all detainees before a judge who can rule on the legality and necessity of their detention on an individual basis;
- Ensure that all detainees are charged promptly or released.

### *To the Iraqi Ministry of Interior*

- Ensure that only those forces with a legal mandate to do so are participating in screening and detention;
- Ensure compliance with the prime minister's June 5, 2017 order calling on the Ministry of Interior to notify families of the whereabouts of those detained in the course of the Mosul operation;
- Ensure compliance with the Minister of Interior's July 13, 2017 order calling on its forces to detain individuals only in line with Iraq's criminal procedure code (no.23/1971) art. 93.

### *To the Iraqi and KRG Ministries of Justice, Health and Interior*

- Notify families of ISIS suspects where the suspects are being held, including through local police, camp management or other interlocutors if necessary;
- Ensure that ISIS suspects have the presence of their state-appointed or chosen lawyer during all interrogations and hearings;
- Issue public, regularly updated information about the detentions, charges, and convictions of ISIS suspects;
- Ensure that detentions of ISIS suspects are carried out pursuant to the relevant criminal procedural codes, requiring a court-ordered arrest warrant and bringing detainees before a judge within 24 hours;

- Ensure that detainees are held in facilities accessible to government inspection, international monitors of detention conditions, relatives, and lawyers, with regular and access;
- Provide all detainees with a medical screening upon arrival, and access to adequate medical care;
- Provide government inspectors and international monitors of detention conditions with access to all facilities holding detainees;
- Publicly publish information on the number of detainee ill-treatment allegations and the number government officials sanctioned following investigations into the allegations.

*To the Iraqi and KRG Ministries of Justice, Interior, and Labor and Social Affairs*

- Develop alternatives to prosecution and detention for children suspected of ISIS affiliation, including appropriate rehabilitation and reintegration programs to aid their return to society.

*To the Iraqi Ministries of Justice, Health and Interior*

- Ensure that all child detainees are held in appropriate juvenile facilities, are separated from adults, and have access to education and rehabilitation programs;
- Transfer all Nineveh detainees to official prisons built to accommodate detainees, and equipped to meet basic international standards, including separating children from adults, adequate sanitary installations and regular access to bathing facilities, and prompt and accessible healthcare. Until that happens, as an urgent priority, improve the conditions;
- Rehabilitate Mosul's two prisons so that detainees held in Nineveh can be transferred to proper detention facilities built for the purpose, to minimize current inhuman conditions of detention.

*To the Iraqi Ministries of Justice, Interior and Higher Judicial Council*

- Release those eligible for amnesty under the General Amnesty Law, and consider granting amnesty in all cases where individuals are not implicated in any serious crimes beyond membership in ISIS;
- Continue to issue public, regularly updated numbers of those released under the General Amnesty Law, with information on their charges.

### *To the KRG Parliament*

- Consider adopting an amnesty law at the end of hostilities with ISIS as suggested by international humanitarian law, with the clear exception of serious crimes including war crimes and crimes against humanity.

### *To the Iraqi and KRG Judicial Councils*

- Instruct judges to order the transfer of detainees or prisoners being held in inhuman or degrading conditions to a facility with appropriate standards and, if this is not possible, consider alternatives to detention;
- Instruct judges to halt trials where detainees allege ill-treatment and launch full and independent investigations into the allegations, dismissing any enforced confessions;
- Issue guidance for judges and prosecutors on which cases to pursue and which to drop;
- Issue guidance for judges and prosecutors to charge individuals for the full range of crimes committed including under the criminal code or, at a minimum, document crimes under the criminal code during the investigative process, even if suspects are charged only under counterterrorism laws;
- Instruct judges to order the release of all children not yet formally charged;
- Ensure that judges submit all cases of children convicted of ISIS affiliation to the board assessing candidacy for amnesty;
- Prosecute child suspects only as a measure of last resort, in strict accordance with international juvenile justice standards, and with the purpose of any sentence being to rehabilitate and reintegrate the child into society;
- Instruct judges to stop imposing the death sentence across the board including on those convicted of ISIS related crimes;
- Make public all trial proceedings and convictions as a measure of transparency, to demonstrate the justice system's accountability to victim communities, and to support the creation of an accurate historical narrative;
- Provide gender-sensitive training to judges including on dealing with sexual and gender-based violence.

### *To the Iraqi and KRG Ministries of Justice, Interior and Judicial Councils*

- Actively solicit victim and witness participation in trials, including by taking steps to issue public information on upcoming trials of suspects and where feasible contacting victims' communities to request their appearance during the relevant trial, and fund and facilitate the transport of victim families to participate in the trials;
- Take steps to ensure their safe participation, including through anonymous testimonies, if necessary;
- Allow victims to use trials as an opportunity to testify about the abuse they suffered, and submit questions to the defendant according to the law;
- Investigate all alleged crimes, including unlawful killings and mutilation of corpses, by any party in the conflict in a prompt, transparent, and effective manner, up to the highest levels of responsibility. Prosecute those found criminally responsible;
- Consult with survivors and other interest groups including women's rights groups, to develop a victim-centred approach to justice including ensuring confidentiality of information and data, and a comprehensive policy on reparations in line with international human rights law including programs to deal with stigma against victims.

### *To the Iraqi and KRG Presidents*

- Suspend all applications of the death penalty and put in place *de facto* moratoria;
- Commute the sentences of all those facing the death penalty to life sentences.

### *To the Iraqi and KRG Parliaments*

- Accede to the Rome Statute in order to become a member of the International Criminal Court (ICC);
- Incorporate war crimes, crimes against humanity and genocide into the criminal code;
- Abolish the death penalty;
- Accede to the Optional Protocol to the Convention Against Torture.

### *To the Iraqi Parliament*

- Pass the Anti-Torture bill pending before parliament.

### *To International Actors Supporting Justice for Victims in Iraq*

- Support the rehabilitation of Mosul prisons;
- Fund international monitors of detention conditions at prisons holding ISIS suspects, who should publish their reports;
- Press the Iraqi and KRG authorities to prosecute of the most serious ISIS crimes and develop alternatives to criminal prosecution against those suspected of mere ISIS membership without additional crimes;
- Press the Iraqi and KRG authorities to prosecute individuals for the full range of crimes committed including under the criminal code or, at a minimum, document crimes under the criminal code during the investigative process, even if suspects are charged only under counterterrorism laws;
- Urge Iraqi authorities to ensure that all defendants, including states' own nationals, have a fair trial with their due process rights met, and do not receive the death penalty, whether they face trial in Iraq, or elsewhere;
- Urge Iraqi authorities to ensure that their own nationals facing charges have consular access and support and legal representation;
- Support victim family participation in ongoing trials including, by funding efforts to inform victims of ongoing trials and pay for their transport to and from the court where trials are taking place;
- Advocate for the incorporation of war crimes, crimes against humanity and genocide into the criminal code, including modes of liability such as command responsibility;
- Advocate ratification of the International Criminal Court Statute and the Optional Protocol to the Convention Against Torture;
- Fund activities that train counterterrorism judges on the need to investigate and prosecute ISIS suspects for violations of the criminal code;
- Fund international actors to carry out trial monitoring in Iraqi government and KRG courts;
- Advocate for trials of anti-ISIS forces suspected of having committed crimes in the context of the battle against ISIS;



- Support programs to provide alternatives to detention and prosecution, including truth-telling mechanisms, and rehabilitation and reintegration programs for children suspected of ISIS affiliation.

*To the United Nations Security Council Mandated Investigative Team on ISIS*

*Accountability*

- Ensure any investigative efforts minimize the risk of re-traumatizing victims and witnesses, and do not significantly delay the application of justice, to the detriment of victims as well as detainees being held in inhuman conditions;
- Urge the federal Iraqi and KRG authorities to bring charges against ISIS suspects for the full range of crimes committed, improve respect for due process rights of suspects and detainees, adopt a victim-centered approach to national accountability and reconciliation, and abolish and/or suspend the death penalty;
- Urge the Iraqi government to allow it to broaden its investigations to include abuses by all sides in the conflict;
- As long as Iraqi and KRG courts allow for the death penalty for ISIS suspects, refrain from providing them with evidence it collects for use in ongoing ISIS prosecutions, in line with the longstanding United Nations policy of not supporting or assisting processes that could lead to the death penalty.



## FLAWED JUSTICE

### Accountability for ISIS Crimes in Iraq

Iraqi and Kurdistan Regional Government forces have captured thousands of individuals on suspicion of affiliation with the Islamic State (also known as ISIS) since the battle against the group began in 2014. Based on dozens of interviews with lawyers, judges, prison directors, senior authorities, formerly detained individuals, and families of those still in detention, *Flawed Justice: Accountability for ISIS Crimes in Iraq* analyzes the Iraqi and KRG security and judicial systems' handling of ISIS suspects, from screening, detention, and prosecution. It examines the major due process violations in the thousands of ongoing trials of Iraqi and foreign ISIS suspects, and the complete absence of victim participation in these trials. It concludes that these proceedings fundamentally undermine efforts for true accountability for the horrific abuses perpetrated by ISIS and anti-ISIS forces and for future community reconciliation. The report urges Iraqi authorities to devise a national strategy for ISIS prosecutions, focusing on those responsible for the worst offenses and seeking alternatives to prosecution for others, as well as provides a range of recommendations for Iraqi, KRG and foreign actors to improve the detention and prosecution practices to better meet international standards and grant judicial remedy to victims.

*(above) The overcrowded cell of an informal detention center near Mosul holding ISIS suspects.*

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*(front cover) An ISIS suspect held for questioning by Iraqi forces near Mosul.*

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