

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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(Beirut) A close study of appeals court decisions in terrorism-related cases in [Iraq](#) shows that judges in close to two dozen cases in an 18-month period appeared to ignore torture allegations or to rely on uncorroborated confessions, Human Rights Watch said today. Some of the torture allegations had been substantiated by forensic medical exams, and some of the confessions were unsubstantiated by any other evidence and were apparently extracted by force, including by torture.

In each of these cases, the trial courts took the torture allegations seriously, found them credible, assessed the evidence, and acquitted the defendants. These cases show that gaps in [Iraqs](#) criminal justice system extend to the highest level. Under international law, courts should never rely on evidence obtained by torture. Member states of the Global Coalition To Defeat ISIS (also known as the Islamic State), who are meeting on September 26, 2019 on the margins of the UN General Assembly session in New York to discuss accountability measures for ISIS crimes, should agree not to transfer ISIS suspects from Syria to Iraq until the Iraqi justice system can ensure that criminal prosecutions meet international fair trial standards and until the government imposes a death penalty moratorium.

Our investigation into a large number of Iraqs court rulings found what may be repeated miscarriages of justice in terrorism cases, said [Lama Fakih](#), acting Middle East director at Human Rights Watch. How can Iraqi lawyers and counterterrorism judges stand by and watch this unfold?

Human Rights Watch reviewed the appeals court case files in 27 decisions issued between September 2018 and March 2019 by the Federal Court of Cassations criminal committee. In 21 cases, the appeals court overruled the trial courts acquittal and ordered retrials; in two cases, it upheld the acquittal; and in four cases, it upheld the trial courts conviction but increased the sentences. Human Rights Watch was unable to confirm the outcome of the cases following retrial.

Of the 27 terrorism cases, 23 were prosecuted under Iraqs counterterrorism law, three under the penal code, and one under the Weaponry Law No. 51 of 2017. The veracity of the court documents was confirmed by an independent Iraqi legal expert.

Criminal courts in Iraq are divided into courts for serious offenses, here referred to as criminal courts, and courts of minor offenses. The public prosecution, defendant, and complainant each have the right to appeal an acquittal, conviction, or sentence in a criminal court ruling. Appeals are heard by the criminal committee, consisting of a presiding judge and a minimum of four other judges, within the Federal Court of Cassation in Baghdad. The criminal committee automatically reviews all cases with a sentence of 25 years, life imprisonment, or death. The committee may uphold a decision or overrule it and return the case to the trial court for a retrial or a repeat judicial investigation.

In six cases, the defendants alleged at trials that investigators had tortured or otherwise coerced them into making a confession. The criminal committee overruled the acquittals and ordered retrials, relying on the recanted confession and mentioning evidence either not considered during the defendants trial or dismissed as unreliable. In two cases, the confession was the sole evidence. It was unclear from court documents whether trial judges had investigated those who had allegedly tortured or otherwise coerced the defendants, or if judicial investigators, police, or the public prosecution conducted criminal investigations into the allegations of torture and other crimes toward defendants who had made a complaint.

In two cases, the defendant submitted a forensic medical report that found signs he had been subjected to external force, yet the criminal committee ignored or dismissed the report. In one case, the criminal committee stated, What the defendants medical report mentions does not affect the value of the evidence available in the case, though the allegedly coerced confession was the only evidence presented at the trial.

While the issue of torture was not explicitly raised in seven cases, criminal courts in Anbar, Karkh, and Kirkuk acquitted defendants

because no evidence was presented beyond their confessions, the case files showed. In each case, the criminal committee found that the disputed confession was sufficient evidence to proceed with the charges, and ordered a retrial.

These cases raise concern, particularly in light of comments made by an Iraqi judicial expert and two experts on Iraqi law and on terrorism cases. They all said that in their experience, when the criminal committee overruled an acquittal and ordered a retrial, it was sending a clear message that the trial court should change its ruling. They said that these retrials could not be seen as a neutral judicial order to reassess the facts of the case, but rather an implicit order to find the defendant guilty.

Human Rights Watch wrote to Iraq's chief justice on June 10, 2019 with the findings. The High Judicial Council, which manages and supervises the federal judiciary's affairs, responded on June 20, asking for the details of the cases reviewed, which Human Rights Watch provided on June 26. It also stated that, independent experts were unable to properly assess the decisions taken by the distinguished judges at the Federal Court of Cassation because they lacked the appropriate expertise. On July 18, it shared with Human Rights Watch an order from the chief justice to examine the cases Human Rights Watch shared but had not provided more information by the time of publication.

In line with international legal standards and Iraqi criminal procedures, Iraq's [High Judicial Council should issue guidelines](#) obliging judges to investigate all credible allegations of torture and the security forces responsible, and to transfer detainees to different facilities immediately after they allege torture or ill-treatment, to protect them from retaliation. It should reiterate to judges that they are obliged to dismiss any evidence obtained by torture. Judicial authorities should investigate and determine who was responsible for any torture, punish abusive officers, and compensate the victim.

The High Judicial Council should immediately review all terrorism-related decisions issued by the criminal committee since the beginning of 2018, followed by consideration based on the result as to whether a full review since 2005 is necessary, and remedy any miscarriages of justice that it identifies.

The authorities should also ensure that there is a clear legal basis for detentions; that all detainees have access to legal counsel, including during interrogation; that they appear before a judge within 24 hours of their initial detention and at regular intervals thereafter, with the judge determining the legality and necessity of their continuing detention; and that detainees are moved to facilities accessible to government inspection, and with regular access by independent monitors and relatives.

The US-led coalition and other countries with nationals facing potential terrorism trials in Iraq should press the High Judicial Council to share the findings of any review it conducts into Iraq's Federal Court of Cassation and ensure implementation of reforms to address the serious flaws raised in this report.

This investigation shows that detainees in Iraq face a significant risk of unfair trial at every stage of the criminal justice process, Fakhri said. The High Judicial Council needs to take a very close look at the terrorism-related decisions of the criminal committee.

Background

As of early 2018, Iraq authorities were [holding an estimated 19,000 men and boys](#) on charges of ISIS affiliation. Authorities have not responded to Human Rights Watch's repeated requests to share updated statistics on those in custody. As of early 2019, according to an Iraqi security official, the US-backed Syria Democratic Forces (SDF) in northeast Syria were holding an estimated 20,000 [Iraqis detained](#) during fighting against ISIS, as well as over 2,000 non-Iraqis who are at risk of being transferred to Iraq for investigation and possible prosecution as ISIS members. At least 900 Iraqis with alleged links to ISIS have already been [transferred](#) from northeast Syria to Iraq in recent months.

Given the findings, and the risk of torture and unfair trials leading to the death penalty, neither the Syrian Kurdish forces nor any country should transfer detainees to Iraq for prosecution for terrorism or related crimes. Despite extensive credible reports of torture in detention, Iraqi judges routinely [do not investigate](#) these allegations.

Flaws in the Federal Court of Cassation

While the defendants' arrest dates were not cited in most cases, one showed that the defendant had been arrested in March 2016 but only brought to trial in June 2017. The criminal committee overruled his acquittal in September 2018. While one case went from the trial to the appeals stage in just under six weeks, some cases took as long as a year or more. Two cases tried in 2018 related to crimes allegedly committed in 2006.

The right to a fair trial and the absolute prohibition of torture are set out in human rights treaties ratified by Iraq, including the International Covenant on Civil and Political Rights and the Convention against Torture. Key guarantees include that courts should not consider any evidence obtained by torture; that no defendant should be compelled to testify against themselves or confess guilt; and that defendants should have adequate time to prepare their defense, be able to consider and challenge the evidence and witnesses used against them, and present their own evidence and witnesses.

In March 2019, the Interior Ministry [endorsed new Standard Operating Procedures](#) for criminal investigations. These include articles to strengthen the defense, including by ensuring defense lawyers access to detained clients, case files, and interview records. The Interior Ministry should ensure that investigators are fully trained on the procedures and that they are put into practice across all detention facilities and during all investigations.

Torture Allegations

In October 2017, a man went on trial at Anbar Criminal Court for ISIS affiliation in 2014 in Fallujah, according to his case file. The defendant recanted his confession, saying he had been tortured. Witnesses testified that he had no links to ISIS. The court acquitted him, but the criminal committee overruled the acquittal in October 2018, finding that the confession was credible, and ordered a retrial. It found that, the accused has confessed during the investigation and in the presence of all legal guarantees of committing the crime.

Therefore, the evidence against him as previously described is sufficient and convincing enough to convict and sentence him. It said nothing about the torture allegation.

In November 2018, the Karkh branch of the Central Criminal Court in Baghdad acquitted a man accused of complicity in the murder of an Iraqi Security Forces officer and of injuring others in 2013. The court ruled that his confession, the sole evidence, was not enough to convict him, citing an attendance sheet showing that he had been in a university class at the time of the incident, and witnesses who stated the same. The defendant said he had been coerced into confessing, and presented a forensic medical report finding that he had been subjected to external force.

The Federal Court of Cassations criminal committee found in March 2019 that the confession had been clear and detailed and cited statements made almost five years after the attack by other two officers who had been present at the time of attack. It stated that the forensic medical report findings did not affect all the other evidence and ordered a retrial.

In January 2018, the Anbar Criminal Court tried a man for ISIS affiliation and participation in two specific terrorist attacks. The defendant recanted his confession, stating he had been tortured, and the court, determining that there was no other evidence of his alleged links to ISIS, acquitted him.

The criminal committee overruled the decision in November and ordered a retrial, finding that the confession was credible because the defendant made it in the presence of the general prosecutor and his state-appointed lawyer, and citing statements made by plaintiffs not mentioned during the trial. It added that, his confession was not refuted by any medical report that confirmed that his confession was forced, and did not address the torture allegations deemed credible by the trial court anywhere within the decision.

According to the case file, in February 2018, a man charged with ISIS affiliation at the Anbar Criminal Court stated that he had been tortured into confessing. His brother, a juvenile in custody and accused of another crime, testified against him. The court said that it could not rely on his brothers statement because he was a juvenile himself on trial, and that it was suspicious that his own confession to investigators was identical word for word to the confession he later made to the investigative judge. It reasoned:

After careful consideration of the facts of the case and evidence obtained in it, the court found that the accuseds statements given to the investigator and the investigative judge were the same, word-for-word, and that the statements given by the accused as a witness, and who is the brother of the accused mentioned above, cannot be accepted since it came from a juvenile defendant, hence it cannot be admitted as evidence in a capital crime.

The criminal committee overruled the decision, finding both the defendants confession and his brothers statements credible, and ordered a retrial.

In January 2019, the Karkh court acquitted a man charged with ISIS affiliation, the case file shows. He recanted his confession at trial and presented a forensic medical report in which the doctor had found that he had been subjected to external force. A witness who had implicated the defendant as a member of ISIS also recanted. The court acquitted him for lack of evidence. In April, the criminal committee overruled the acquittal and ordered a retrial, referencing the defendants confession while ignoring the forensic medical report, and also relying on the retracted witness statement and two security agency reports that were not mentioned at trial.

On April 1, 2019, Iraqs High Judicial Council told Human Rights Watch that Iraqi courts had investigated 275 complaints against investigative officers by the end of 2018 in both terrorism and non-terrorism cases. The High Judicial Council stated that 176 of the cases have been resolved, while 99 cases were still being addressed. The council did not indicate what the term resolved meant in this context, nor how many of the 176 cases were being further investigated or had been dismissed.

Confession-based Prosecution

In one case in which the criminal committee ordered a retrial solely on the basis of a confession, in February 2019, it found that:

The decision issued by the Karkh Criminal Court to drop the charge against the accused and release him is incorrect and against the law as the accused had explicitly, and with the availability of all legal guarantees consisting of the presence of the deputy public prosecutor and the appointed lawyer, confessed to the crime. The accused confessed to belonging to a terrorist group and to have continued supporting it. Therefore, there is sufficient and convincing evidence to convict him.

In two cases, the additional evidence mentioned by the criminal committee was a single witness statement against the defendant that had not been presented at his trial. In a November 2018 case, the Risafa branch of the Central Criminal Court acquitted a man accused of selling weapons to the Islamic State because his confession was the sole piece of evidence against him. The criminal committee said a witness statement that had not been considered at trial was enough to substantiate the charges and ordered a retrial. In two other cases, the additional evidence the criminal committee relied on was a witness statement that did not implicate the defendant.

Extended Sentences

In four of the 23 cases in which defendants were convicted under the Anti-Terrorism Law No. 13 of 2005, two received 15-year sentences and two life sentences. Upon appeal by the prosecution in two cases in an effort to increase the sentences, and the automatic appeal in the life sentence cases, the criminal committee ordered an unspecified increase in sentencing which in the case of life sentences could only be death. The committee said the initial sentences had been too light. One of the cases involved an elderly man sentenced to 15 years because of his age who was accused of working in a Mosul mosque and of pledging support to ISIS in religious speeches.

In two of the 27 cases, the criminal committee upheld a decision to acquit the defendants, in one case based on the defendants claim that he had been coerced into confessing. It was unclear from the court documents whether the judges initiated any investigations into the allegations of coercion.

Exonerating Evidence

In December 2018, according to court documents, the Karkh branch of the Central Criminal Court in Baghdad acquitted three men charged under the penal code for detonating a car bomb targeting Iraqi Security Forces in 2005. All three men recanted their confessions and the court said it had evidence that US forces had been behind the explosion and had claimed responsibility. It also found that the mens confessions diverged from one anothers significantly. In March 2019, the criminal committee overruled the acquittals, saying the men had confessed to Al Qaeda membership in the presence of a prosecutor and their appointed lawyer, and ordered a retrial. It stated that:

Upon examination and deliberation, it is evident from the facts of the case that the defendants have explicitly confessed to belonging to the terrorist Al Qaeda group and to carrying out several terrorist attacks, one of which is the crime at hand, in the presence of a member of the public prosecution and the appointed attorney. Their confessions were consistent with the course of the investigation, and the bomb being detonated by American troops does not affect the accuseds confessions. Therefore, there is sufficient and convincing evidence to convict them.

In December 2018, the Karkh Criminal Court acquitted two men who were accused of detonating a bomb in 2011, court documents show, because both defendants recanted their confessions, which had been inconsistent. In addition, witnesses to the attack stated that both defendants had nothing to do with it. The court stated in its decision to acquit that:

Statements given by the injured complainants... show that they did not complain against the accused regarding this crime since they had nothing to do with the incident and since they already knew them as they are from the same area.... The court found that the evidence against the accused amounted only to their confessions written during the investigation, which they recanted. The court also found that the confessions were not validated by any legally admissible evidence. In addition to that, the court found that the confessions given by both accused were inconsistent with each other.

The criminal committee cited the confessions and the exonerating witness statements, overruling the acquittal and ordering a retrial.

Guilt by Association

In August 2018, the Karkh Criminal Court acquitted the only woman among the 27, who was charged with ISIS affiliation based on her husbands membership. The criminal committee found that her acknowledgment that her husband had joined ISIS, and fake documentation she had while trying to smuggle herself to Turkey after he was killed, constituted enough evidence to convict her on terrorism charges and ordered a retrial. It reasoned:

The accused had confessed during investigation, with the availability of legal guarantees, that she is the wife of a member of the terrorist group ISIS, and that after her husband was killed by the Peshmerga an individual called her in order to transport them to Turkey, and she was given a fake civil identity card. They headed to Baghdad and were received by a defendant who owns a guesthouse and transports families from the ISIS terrorist group to safe areas. He took their photos and prepared fake IDs for the purpose of smuggling them out of Iraq, where they were arrested upon their attempt. Her confession was validated by witness statements of the arresting contingent and other witness statements, and the circumstantial evidence consisting of finding fakes IDs of the defendant. Therefore, there is sufficient and convincing evidence to convict and sentence her for the crime.

The criminal committee ruled that the fact that she was married to an ISIS member and had attempted to leave Iraq using false documentation was enough to secure a conviction under the Anti-Terrorism Law. If prosecuted for the crime of false documentation, the woman would have faced a sentence of as little as six months, But because she was tried under the Anti-Terrorism Law, she was instead potentially facing a sentence of up to 25 years in prison for being an accessory to a crime.

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Suspicious Killings and Extrajudicial Executions by Egyptian Security Forces

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