

# Human Rights Watch

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

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(Beirut) [Iraqs](#) judges routinely fail to investigate security forces credibly alleged to have tortured terrorism suspects, Human Rights Watch said today. Judges also frequently ignore allegations of torture and convict defendants based on confessions that defendants credibly allege were coerced.

Concern around the use of torture by the Iraqi security forces has [increased](#) considerably since the governments [mass arrests of thousands of Islamic State \(also known as ISIS\) suspects](#). Although Iraq is a party to the United Nations Convention against Torture, it has no laws or guidelines directing judicial action when defendants allege torture or mistreatment.

Torture is rampant in Iraqs justice system, yet judges lack instructions for responding to torture allegations, said [Lama Fakih](#), deputy Middle East director at Human Rights Watch. Defendants, including ISIS suspects, wont be able to get a fair trial so long as the security forces can freely torture people into confessing.

Human Rights Watch reviewed files of 30 cases tried by Baghdad courts between 2009 and 2018 in which defendants alleged torture, and in June and July 2018, sat in on 18 felony trials of ISIS suspects in Baghdad. All of the cases but one were brought under Iraqs counterterrorism law, which can carry a death sentence. In 22 of the cases, judges refused to respond in any way to the allegations of torture. In several cases, the judge ordered a forensic medical examination and found signs of torture, but did not necessarily order a retrial or investigation and prosecution of the abusive officers.

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Iraqi authorities have [long relied on confessions obtained through torture](#) to achieve convictions. In 2014, the [UN Assistance Mission for Iraq \(UNAMI\) reported](#) that judges regularly fail to take any action when defendants raised allegations before the court that they had been subjected to torture in order to force confessions in relation to the crimes for which they were standing trial.

Iraqs Constitution prohibits all forms of psychological and physical torture and inhumane treatment. Furthermore, 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. The Criminal Procedure Code also prohibits the use of mistreatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants to extract a confession.

However, the Criminal Procedure Code gives judges full discretion to determine whether a defendants confession is admissible, even if the defendant repudiates it. The procedure code also gives officials effective immunity from prosecution, by requiring approval from the responsible minister to refer the accused official for trial.

Human Rights Watch spoke with three senior judges and five private defense lawyers in Baghdad. The lawyers said that, in the absence of laws or guidelines regarding allegations of torture, under the constitutional ban on torture, the judge should order a forensic medical examination to determine whether the defendant was tortured. If so, the judge should transfer the defendant from the custody of the offending officer, dismiss the confession, and order a retrial, as required under Iraqs 2016 Amnesty Law.

But judges rarely ordered forensic medical examinations to investigate torture, the lawyers said. And when judges ordered a forensic report, they rarely ordered a retrial.

Lawyers also said that they rarely had any success when they tried to invoke the amnesty law in terrorism cases to obtain a retrial when suspects alleged torture. In an exceptional case, a lawyer said he was able to get a detainee released using the amnesty law because the victims family testified on behalf of the defendant that security forces had arrested the wrong man.

Judges have also failed to transfer defendants from the custody of accused officers, the lawyers said. Any defendant who testifies in court that their interrogators tortured them is at risk of being tortured again when returned to prison to face the same guards.

Article 123 of the Criminal Procedure Code provides that a detained suspect has the right to a lawyer within 24 hours of their arrest. But the security forces do not bring suspects before an investigative judge within 24 hours of arrest, as required by law, lawyers said, increasing the likelihood of torture. They estimated that terrorism suspects in Baghdad typically only saw a judge between 10 and 20 days after arrest, but that some detainees waited months or even years to be brought to court. The lawyers interviewed also said that they had never been allowed to attend a clients interrogation in a terrorism case, increasing detainees susceptibility to torture.

One consequence of the significant delays in appearance in court is that a forensic medical report, which a judge orders, may be unable to document the torture. In a 2014 case, a forensic report noted nine scars on the detainees body, but concluded that, The scars were inflicted more than six months ago and therefore cannot be identified.

Concerns that judges ignore claims of torture extend beyond Baghdad courts, Human Rights Watch said. In Nineveh governorate, which contains the city of Mosul, a [judge told Human Rights Watch in July 2017](#) that many ISIS suspects alleged torture in court and that he ordered a medical examination in each case though he provided no details on the outcomes and conceded he never investigated or sanctioned their interrogators. In July 2018, six lawyers at the Nineveh counterterrorism court told Human Rights Watch that while allegations of torture by defendants were common, they knew of no case in which an interrogator had been investigated.

Judicial authorities should investigate all credible allegations of torture and the security forces responsible, Human Rights Watch said. Judges should order transfers of detainees to different facilities immediately after they allege torture or ill-treatment, to protect them from retaliation.

Iraqs High Judicial Council should issue guidelines on the steps judges are obliged to take when a defendant alleges being tortured in custody. Parliament should pass the draft Anti-Torture Law, which would require judges to order a medical examination of any detainee alleging torture within 24 hours of learning of the allegation. As it currently stands, the draft law provides criminal sanctions for the torturer as well as their commander; says that judges should dismiss all evidence obtained through torture; removes the torturer from the case; and requires officials to allow detainees to have their lawyer present throughout the investigative period.

When judges convict based on coerced confessions and disregard allegations of torture, they are sending a message to the security forces that torture is a valid investigative tool, Fakhri said. The Iraqi government needs to do much more to ensure that criminal investigations are genuine and impartial and that officers who torture detainees are appropriately prosecuted.

#### **Access to a Lawyer During Interrogations, Investigative Hearings**

Lawyers said that in terrorism cases, they were not allowed to attend a clients interrogations with security officers, unlike for clients accused of other types of crimes. This limited their ability to plead on behalf of their clients, including making allegations of torture. They said that getting access to terrorism suspects was nearly impossible except during court hearings, though it varied by the security force and the location. They noted a few cases in which lawyers or wealthy families were able to bribe officers to allow communication with detainees.

The lawyers said that in terrorism cases they never seek permission to represent their clients at the initial investigative hearing out of concern that security forces and judges at the investigative court would label them ISIS lawyers, [subjecting them to arrest](#). They instead wait for the court to appoint a lawyer and only step in after the case is transferred to the felony court, where the risk of harassment and threats is significantly lower. In the 18 felony trials Human Rights Watch observed in Baghdad and Nineveh, private lawyers did not represent any of the terrorism defendants and the state-appointed lawyers did not actively mount a defense or seek investigations into torture claims.

Detainees who rely on state-appointed lawyers face difficulties obtaining proper legal representation. A member of Iraqs Bar Association in Baghdad said that the state pays state-appointed lawyers 25,000 IQD or US\$20 per case, regardless of the amount of time they spend. As a result, he said, lawyers have no incentive to meet their client before their investigative hearing, study the case file, or to continue to represent them in subsequent hearings. This lack of representation leaves defendants more vulnerable to abuse, lawyers said.

#### **Irregularities in Investigative Process**

Article 128 of the Criminal Procedure Code stipulates that within 24 hours after arrest, an interrogator is to obtain a primary confession from the defendant, which the defendant signs and which the interrogator hands over to the judge in the case file. The judge should then interview the defendant to obtain a second confession, confirming the information in the case file and the charges. The defendant and judge should both sign the confession.

Lawyers said that this procedure is not followed. In some cases the interrogator takes the primary confession directly to the judge, or the judge visits the prison and signs the primary confession. In other instances, officers bring the defendant to court, and before entering the courtroom, force the person to sign a blank paper. They then have a hearing in front of the judge, after which guards take the defendant out of the room, and the judge signs a confession written by the court scribe or the judge, which may not reflect what was revealed at the hearing.

One lawyer said he had represented a 30-year-old client who had been arrested at his home in Baghdad in August 2015 by the armys 54th Brigade. The defendant later told his lawyer that soldiers held him in Muthana Airport Prison and waterboarded him until he confessed to three alleged terrorist attacks in 2007. Once he confessed and his case was transferred from Baghdad's Central Criminal Court in Kirkuk to the Central Criminal Court in Risafa, six months later, the lawyer requested a forensic medical exam.

He knew the report would be too late to be accurate but told the judge about the waterboarding. The lawyer said the judge ignored the

information. The lawyer contacted Baghdad police regarding the incidents his client had confessed to, and said the police responded that only one of them had occurred. The lawyer said he was able to demonstrate to the judge that two of the attacks had never taken place, and that the one that had occurred, in March 2007, took place while his client had been in prison. He secured his clients release.

In a 2009 judgment, the judge referred to a forensic report that found scarring consistent with torture, but upheld the conviction by relying on what the case file said was other evidence. The court found that:

The statements of the defendants were recorded, and they pled guilty to the charges before the investigative officer and judge. They later withdrew their confession to the charges before this court, claiming that they were tortured. The court reviewed the medical report of the defendants regarding their claims that they were tortured. The court also reviewed the blueprint of the crime scene and decided that the evidence against the defendants was enough to convict them according to the plaintiffs statements, backed by the statements of the witnesses.

The lawyer said he argued successfully that the two defendants should be sentenced to 15 years instead of life because of the use of torture.

Lawyers said that bribery was commonplace in the judicial system and admitted to bribing security officers and judges to secure their clients release or better treatment. At the investigative stage the prosecution controls all the case documents, including any forensic medical examination report. The lawyers said they have to request access to the documents from the investigative judge. Sometimes the judge refuses and even if a judge allows access to the documents, it is usually only for a limited period. The lawyers said that generally they are only able to obtain copies of key documents needed to mount a defense, including a forensic medical report, by being well connected or paying a bribe, as one put it. This makes it significantly harder for them to use forensic medical examinations in their clients defense.

### **Refusal to Acknowledge Torture Allegations**

In 16 of the 18 trials of ISIS suspects in Baghdad Human Rights Watch monitored over the last year, defendants alleged that they had been tortured, including to extract confessions. In no instance did the judge take action base on the claim, although in some instances the judge asked the defendant in the courtroom to reveal any marks of torture. One lawyer said he observed at least four trials in the past year in which the judge said the alleged torture allegation was not credible because a coerced confession would have described a much more significant role with ISIS.

Human Rights Watch monitored a trial at the Baghdad Central Criminal Court in June in which a 35-year-old defendant, detained in 2017 for an alleged improvised bomb attack in Baghdad, told the judge his confession was false and that his interrogator had broken both his hands. The judge ignored the defendants request to examine his hands, but later ordered his release when his lawyer presented a police report proving the purported attack had never occurred.

In July 2018, in Baghdads Central Criminal Court, a defendant told the judge he had been tortured to extract a confession, but the judge ignored the allegations, independent court observers said. The defendant said that the officer who had tortured him had forced him to sign the confession blindfolded, with his hands bound. The judge rejected his request to let him demonstrate that his actual signature was very different. The judge didnt even react to the plea, he just convicted him, and sentenced him to death, one observer said.

One lawyer said that his client, 30, had been detained by the armys 54th Brigade in Baghdad in December 2015. The man, a local municipality employee, believed he was targeted because he objected to the culture of corruption and refused to accept bribes. He told his lawyer that when he was arrested, soldiers put a plastic bag over his head, took him to Muthana Airport Prison, and beat him and hung him from a rope for 10 hours. His lawyer said that after 10 days he was brought before the investigative judge:

A friend of mine working at the court alerted me to the hearing, but I was scared to represent him there and end up myself getting threatened, so I attended the trial but as an observer. My client, who had a state-appointed lawyer, told the judge he had confessed under torture. The judge completely ignored this, and even worse, after reviewing the file, ordered a deeper investigation.

The lawyer said that he understood the order to conduct a deeper investigation as a green light to the interrogators to use torture. Several lawyers said this was a common phrase judges use in court if there is no significant evidence on the defendant, and if they want interrogators to exert more pressure. One lawyer said that a judge had ordered a deeper investigation by scribbling the phrase on one of his case files.

This 30-year-old defendant sent for a deeper investigation later told his lawyer that over the next three months, the interrogators severely tortured him. They inserted a metal rod up his anus, electroshocked him, and beat him to obtain confessions to multiple crimes. The defendant was brought to court twice more during that time, first on charges of participation in two terrorist acts, where again he told the judge he had been tortured but was ignored, and then on charges of five terrorist acts. In that hearing, he confessed to all five acts, and then was transferred to another prison, the lawyer said.

At this point the lawyer formally represented him and asked the judge to order a forensic medical report. The report confirmed broken bones and abuse, he said, but he was only allowed to see the report briefly in court and not allowed a copy. The lawyer contacted Baghdad police and obtained confirmation that the five alleged terrorist attacks that the defendant had confessed to had never occurred. In June 2017, upon reviewing the police report, a judge ordered the mans release, stating there was not enough evidence to convict him. The judge did not take any steps to investigate the torture allegations, the lawyer said.

### **Investigations of Security Force Personnel**

Judges in Baghdad have not adequately investigated security force personnel implicated in torture. In the 30 cases Human Rights Watch reviewed in which defendants alleged torture, judges ordered a retrial in only three because of the finding of torture, but took no measures to identify the wrongdoers.

In one case, in February in Baghdads Central Criminal Court, a defendant told the judge that his interrogator had tortured him to extract a confession, independent court observers said. He named the interrogator, to which the judge responded that he knew the officer because

there have been a lot of complaints against him, he has a history of treating prisoners roughly. The judge then ordered a retrial. The observers said there was no indication that the judge had opened an investigation into the officer.

In another case, a judge was initially willing to dismiss defendants confessions because of torture allegations and seek a retrial, but in a later hearing accepted a second set of coerced confessions. The defendants were two farmers from Diyala who were arrested in late 2016 by military intelligence forces and taken to Muthana Airport Prison, their state-appointed lawyer said. His clients had a hearing soon after their arrest. With his support both told the judge they had been tortured, and denied the confession presented to the judge. The judge agreed to set it aside but called for a deeper investigation without taking steps to investigate the offending officers. The lawyer said:

Suddenly on Sunday, only four days after the first hearing, I heard from someone in the court that they were back for another hearing. I rushed to court and saw that they were being represented by a new state-appointed lawyer and were just finishing their hearing. The lawyer told me that they had admitted to everything. They both got 15 years for joining ISIS. I saw them as they left the courtroom, one had a huge bulging bruise on his left eye and later they told me they had been beaten with electrical cables and had been hung from the ceiling, but it was too late. There was nothing I could do.

In two cases, a judge investigated allegations of torture without bringing a criminal case against the officers despite credible evidence of torture. The only case in which an officer was sentenced for torture was one in which the officer had cut off a prisoners penis during an interrogation.

In one case, a member of the Interior Ministrys intelligence service beat a 17-year-old boy with electrical cables, trying to extract a confession that the boy had stolen motorcycles in early 2018. A judge eventually released the boy without charge because of a lack of evidence and one month later, the family ordered a forensic medical report that confirmed the torture.

The officer was investigated but found not guilty at trial after his lawyer contended that the medical report was invalid because the examination was after the boys release, so there was no way of proving the source of the marks on his body. Later the same officer contacted me, the lawyer told Human Rights Watch. He killed a prisoner during a recent interrogation and needs me to get him off again.

In a second case, a lawyer said the defendant was accused of participating in an abduction in 2013. After months in which he refused to confess, the Interior Ministrys intelligence forces, which had been holding the detainee at their office in Sha'b neighborhood, transferred him to the ministrys intelligence forces in another Baghdad neighborhood. Soon after, he confessed and was brought to court.

The lawyer said he got the judge to order a forensic medical exam that found 14 signs of torture, including a swollen penis, a side effect of a common torture technique in which interrogators hang a full bottle of water from a string tied to a prisoners penis. Despite the evidence of torture and the lawyers complaint against one of the interrogators for torture, the defendant was found guilty and no one was convicted of torture. The lawyer said:

If you can imagine, the judge released the officer on bail the same day we filed the complaint. He then delayed the case for a few months until the war with ISIS was in full force, and all officers were called to the front line including him. I realized then that we would not get anywhere with the officer, so I pushed for the release of my client, using the forensic medical report. The judge ignored it and gave him the death penalty and we have been appealing the case since then.

In the 2009 case in which an officer cut off a detainees penis during an interrogation, the officer was sentenced to three years in prison. The lawyer did not know if the officer served all three years, or whether he returned to his old post. The torture victim was convicted in a second trial in which fake witnesses testified against him, the lawyer said.

In another case, the officers holding a detainee refused to comply with the judges order for a forensic medical exam, preventing any investigation of the alleged wrongdoer. The lawyer said that Federal Police forces had detained his client, 34, from Baghdad, in 2012 for a robbery and murder that left a woman and her three children dead. The case was prosecuted as terrorism. The defendant confessed to a judge, but the defendants wife told the lawyer her husband had told her he had been tortured an officer allegedly raped him repeatedly with three dildos. The lawyer had the judge order a forensic medical exam but the implicated officer refused to take the defendant to the medical center for the examination.

At a hearing in December 2012, the judge said that he was dropping the request for the medical exam, because the lawyer had not followed up to implement the request, the court documents show. The lawyer said the judge told him later, You did not pay the commander and now he is sick of you, so he will not take [the defendant] to get examined.

### **Threats to Defense Lawyers**

All the lawyers interviewed highlighted the serious risks to their careers and personal safety if they took on cases of ISIS suspects. One said that Interior Ministry intelligence forces held the lawyers client for three years, throughout which he maintained his innocence. After a hearing with an investigative judge, the judge ordered the defendants transfer to a special investigative committee under the authority of the prime ministers secret service, and he was sent to Muthana Airport Prison in Baghdad, the lawyer said. Within months his client had confessed because of torture including electric shocks to his penis, the lawyer said, and was brought to Baghdads Central Criminal Court in Kirkh:

I got the judge to order a forensic report, which confirmed torture. I told the judge that because my client was tortured he should get a retrial. My client told the judge he was innocent. Before I knew it, the judge filed a complaint against me for harassment of the court and interfering in the courts work and hospitalized me for two days before releasing me without charge. In the meantime, he sentenced my client to death.

The lawyer filed a complaint against the judge with his supervisor, but said no action was taken.

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