

KURDISTAN REGIONAL GOVERNMENT

COUNCIL OF MINISTERS

OFFICE OF THE KRG COORDINATOR FOR INTERNATIONAL ADVOCACY



**RESPONSE REPORT TO AMNESTY INTERNATIONAL
PRELIMINARY FINDINGS**

**ARBITRARY DETENTION AND JUVENILE JUSTICE
STANDARDS**

Updated on August 2021

Introduction:

The Office of the International Advocacy (KRG) is dedicated to following up on the allegations made against the human rights practices in prisons and detention centres. Herein, we provide a thorough and comprehensive legal and practical response on the issues of the rights of detainees and prisoners in the custody of the Asayish; outlining the due process of young detainees, the detention conditions and the monitoring of the conduct of Asayish staff and officers. The KRG have taken many constructive steps towards advancing human rights within the region in general. The Kurdistan Regional Government (KRG) has worked in close collaboration with the U.N. and partnering agencies to address fair treatment of all people in the region.

The KRG have continuously shown willingness and initiative to take further steps in the enhancement of its legal and political institutions, one of which is the implementation of the U.N. Convention against Torture (CAT) in detention centres and prisons. The Kurdistan Region's principles on human rights were drafted following amendments to the legal, institutional and policies of those set out by the Iraqi central government. The first act issued requested that the ministries of the new council in the Kurdistan National Assembly was to; "examine the laws, decrees and regulations and directives issued by the central authorities to identify what is not compatible with the welfare of the people of Kurdistan and to submit these to the National Assembly for a decision on the legitimacy or otherwise of their enforceability in the [Kurdistan] Region".

The Iraqi Code of Criminal Procedure no. 23 of 1971 (CCP) and Penal Code no. 111 of 1969 was kept and became part of the criminal legislation applicable in the Kurdistan region. Furthermore, it is worth noting that Kurdistan region have legal obligations under the international human rights treaty laws and customary laws, which includes the International Covenant on Civil and Political Rights (ICCPR), this protects individual's basic rights including the right to protection against arbitrary arrest.

As of 2003, the Kurdistan National Assembly addressed the shortcomings of these laws and incorporated amendments to the Iraqi criminal code (CCP) into the regional legislation. These amendments include but are not restricted to; the prohibition of torture, forced confessions, the rights of a detainee to seek legal counsel and the right to be informed promptly of the charges made against a detainee. With the passing of such legislations, among other concrete attempts to improve the human rights situation in Kurdistan, the KRG have shown great commitment to compile with the international standards to address and follow up on human rights issues.

Arresting Procedure in Kurdistan:

Apart from the many duties of the Ministry of Interior to enforce the law and regulate the lives of citizens and preservation of their lives and their property, the Ministry of Interior is considered as an Institution for the implementation of court decisions and orders. Therefore, no one can be arrested without warrant of arrest issued by the court. After the issuance of the warrant of arrest

against anyone the Ministry of Interior will proceed to arrest that person by both Iraqi Penal Code no.111 of 1969 and Iraqi Criminal Procedures Code no. 23 of 1971. Thus the Ministry of Interior has no right to detain any person, unless the courts issue orders to do so.

In the Duhok, Erbil and Sulaymaniyah Asayish, the accused is arrested solely by use of handcuffs and no other restraining techniques. If any Asayish officer strays from such regulations, they will be held accountable. To date, no cases have been reported against the arrest procedure or misconduct at arrest by Asayish against a civilian. It is worth noting that in the case of arrest and transfer, those convicted are then separated by gender and age.

The Ministry of Interior holds authority over the pre-trial detention and holding facilities, whilst the Ministry of Labour and Social Affairs are responsible for the prisons and rehabilitation centres post conviction. Once in the custody of the security forces, the detainee may be held for up to 15 days until the investigations have been finalized and a hearing has been held. However, in the event that further evidence is needed before the case goes to trial, the investigation period maybe extended on orders from the judge. Furthermore, for the Ministry of the Interior sends periodic lists to the appropriate authorities of the names of the detainees who have been held for more than 6 months and with ongoing investigations taking place into their case.

The KRG is treating each detainee according to the current laws. Moreover, legal procedures will be taken against those whom breach the law in the Region; there are also previous investigations before any trial. While the KRG is facing the threat of ISIL, the Kurdish Parliament has issued a law preventing ill treatment towards detainees, even those who are arrested under cases of terrorism. Therefore, ill treatment is not allowed within jails in the Kurdistan Region.

The Iraqi Constitution, Article 37(1), provides the following foundations on liberty; A) The liberty and dignity of man shall be protected; B) No person may be kept in custody or investigated except according to a judicial decision; C) All forms of psychological and physical torture and inhuman treatment are prohibited. 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 20.

In the Kurdistan Region, government institutions prohibit the use of torture by officers and are committed to investigating allegations of torture and abuse within all prisons in the region. The Ministry of Labour and Social Affairs Law 7, Article (I) 27 and 28, permits the punishment only to deter and reform detainees who do not abide by the rules and regulations of the prison. As such, detainees are graded on good behaviour numerically; in the event of bad behaviour they will lose scores for which they will receive their due discipline.

The prison warden has the authority to amend any of the above disciplinary punishments but has to justify their decision based on a report from the officers on the prisoner's behaviour, taking into consideration the health and wellbeing of the prisoner. The punishments are more disciplinary; they are there to deter the prisoner from breaking the rules of order within the

prison community rather than to inflict physical torture. Therefore, officers accused to be mistreating prisoners will be held accountable and action will be taken to follow up on their misconduct. It is the duty of the Ministry of Interior to ensure that they protect the people and ensure that the law is abided. Any member of staff or officers from the Ministry of Interior and the Asayish who overlooks allegations of mistreatment and torture will have legal action taken against them. There are investigation committees that have been established by the Ministry of Interior to follow up on prisoner allegations on mistreatment accordingly.

In early 2018, 520 Asayish prison staff and officers have received training on inmate rights by INGOs assigned officers and prison focal points within the Kurdistan Region of Iraq. A further 1,500 members of the public including lawyers, judges, NGO representatives, provincial council members and journalists have taken part in seminars to learn about prisoners' rights conducted by the affiliated UN agencies and other INGOs. Asayish, have representatives of the judges and investigation officer in order to collect statements and evidence about the allegation from the detainee.

The investigative judge sends a representative from the court of investigation to the Asayish holding facilities to carry out the investigation along with the Asayish. The detention facilities that the Asayish forces currently operate are principally used to hold detainees suspected of security and terror-related offenses, as well as serious felonies. These facilities are only meant to hold suspects in pre-trial detention, pending the completion of criminal investigations and referral to a court of law. Asayish agents must then transfer convicted prisoners, under existing law, to a Ministry of Interior prison operated by the police forces, to serve out their terms. In a few cases, however, Asayish personnel continued to hold in their custody convicted prisoners whom they never transferred to a police prison, or who had already served their custodial sentence but remained in detention.

Detention Facilities in Kurdistan:

The Kurdistan Region's major governorates of Duhok, Erbil and Sulaymaniyah have Asayish controlled adult detention centres equipped with the necessary facilities to accommodate the wellbeing and social needs of the prisoners. The adult rehabilitation canthers in Duhok and Sulaymaniyah are well equipped newly built dedicated centres that meet the international standards with all the necessary health and social care facilities for the detainees. In Erbil building is in progress, lack of facilities/recourses but these will be resolves and it will be completed soon.

Prohibition the use of Torture:

Ministry of labour and social affairs prohibits the use of torture and investigates any alleged cases of torture and abuse within all prisons. In the case of arrest and transfer, those convicted are then separated by gender and age. Article I, 2008, the Ministry of labour and social affairs law number 7, article 27 and 28 states that lenient punishments to (teach someone a lesson) for

detainees who abide by the rules and regulations of the prison. Detainee good behaviour is graded numerically and in the event of bad behaviour, they lose scores.

The punishments are as follows;

- Withdrawal from sports activities for no more than 3 months and lose up to 7 points in their behavior scoring,
- Not being allowed to have visitors again, for no more than 3 months and loss of 10 points in their good behavior score.
- Banning from contact/communication with family, etc by post.
- Isolation room and cut down on daily meals.

The prison warden has the authority to amend any of the above punishments but has to justify their decision based on a report from the officers on the behaviour or a counsellor for the psychological health status of the detainee. This therefore shows that the punishments are more psychological rather than physical torture.

Similarly, if an officer is thought to be mistreating prisoners they will be held accountable and action will be taken to follow up. Ministry of Interior, apart from his other responsibilities they ensure that they protect the people and ensure that the law is abided. If the department of decision-making, the officers and judges don't have a legal binding order on a person, they cannot be arrested or imprisoned.

According to the supernal court of Iraq, No: 111 (1969), after the order of arrest from the court the accused will be detained by the court and all the legal actions will be taken according to the Law number (23), 1971. The Ministry of Interior does not have the authority to arrest or release anyone without a court order. According to Law (19), article 12/1 Iraqi constitution law, internal arrest is forbidden and the power of arresting is only that of the judge.

Furthermore, all the arrest and transfer stations belong to the ministry of interior, apart from the adult rehab prisons and the convicted people from the ministry of labour and social affairs. In Asaesh, the detainees will be held for 15 days according to the law, until the investigations have been finalized; however in the event that further evidence is needed the investigation period maybe extended on order from the judge.

After the detainee receives their conviction from the court, they will be put in the custody of the ministry of interior in order to receive their due punishment according to the crime committed. However, there is no torture or physical punishment, as it goes against the Iraqi constitution, Article 333 of the penal code. If the detainee during the investigations received any physical punishment or torture they have the right to complain against the officer, according to the Iraqi federal constitution, which gives the right to the court to do so under Article 19/3.

Accusations of torture cannot be revealed unless the accusation goes through formal hearing first and a conviction is given. This is in Iraqi penal code, Article 1, No: 23 (1971). However if there is a witness to the accusation the court will take a formal statement and will investigate further and provide the report to the jury. Medical investigation reports on the alleged torture will also be required for the investigation process. Any member of staff or officers from the Ministry of Interior overlooks allegations of mistreatment and torture, legal action will be taken against them.

The conditions of the holding place for detainees:

In Asaesh, they have representatives of the judges and investigation officer in order to collect statements and evidence about the allegation from the detainee. The investigative judge sends a representative from the court of investigation to the Asaesh holding facilities to carry out the investigation along with the Asaesh. In regards to those detainees that have been mentioned to be mistreated by the Asaesh, you need to specify in which prison or facility they have been mistreated, in which department of Asaesh.

Torture and ill-treatment during Asayish interrogation:

Inappropriate treatment towards detainees on behalf of Asayish and other security departments is not permissible or tolerable under any circumstances. If such treatment is perceived to have taken place, it is immediately followed upon and immediate action is taken according to the applicable laws punishing anyone who is guilty of ill-treating the detainees. Investigation is not to be withheld in the detention and transfer police stations; however it is withheld in the offices of crime prevention. In exceptional cases where the detainee's life is threatened, investigation takes place in the police station with the presence of the investigating judge for the safety of the arrested individual.

If the suspect has been tortured by the police, it is necessary for him/her to reveal this during investigation and it is necessary for them to say this during their statement to the investigating judge. If the investigating judge acknowledges that the criminal has been pressured and ill-treated, he will take the necessary actions to acquire their rights by obtaining evidence and witnesses to the actions. Long trial process is due to the set legislative procedures that the investigators take in the security departments and the criminal prevention offices. However, it is the investigating judge who is responsible for convicting the person who is guilty of crime. It is also the investigator's duty to complete investigation file in the designated time.

Legal Representation:

In addition to the lawyers that are provided for the detainees by the government, the Erbil Women and Juveniles Reformatory Center has worked with the civil society on multiple occasions to provide volunteer/non-volunteer lawyers for the terrorism child detainees.

Ill-treatment in detention:

Punishment and ill-treatment of detainees in detention is completely and utterly prohibited in all institutions in the Kurdistan and perpetrators are held accountable for such acts in case they occur. According to the information we have received from Erbil Women and Juveniles Reformatory Center, the guards have not committed torture against any of the center's detainees. However, in some occasions, like policies in all the detention facilities around the world, disciplinary measures have been taken when detainees misbehave or violate the rules of the detention centers; however, these measures do not include torture and violent acts. The disciplinary measures include cutting access to telephone for a week or their visitors. Sometimes these disciplinary measures are considered torture by the detainees. There are regular meetings with the guards to remind them on how they should treat the detainees and inform them about the measures that will be taken against them in any cases. The detainees are satisfied with their situation in the facilities to an extent that they do not want to be transferred to other provinces.

Detention beyond sentencing:

According to KRG counter-terrorism law, after the court decision, the decision has to be reviewed by the Court of Appeals and according to law, the detainee must be held after their release until the decision is approved by the Court of Appeals.

Documentation:

In terms of documentations, all the detainees following their release have the right and can request their release documents from the court. Some of the detainees were complaining that the documents are not in Arabic, and thus, Arabic versions were provided for them, however, some of them are reluctant in requesting them from the court.

The latest 2018 statistics on the number of ISIS child detainees (convicted and detained) in Erbil Women and Juveniles Reformatory Center is as the following:

Convicted	Boys	girls
	46	6
Detainees	boys	girls
	18	14
Cases in the Appeal Court	39	

KRG's aid for refugees and IDPs:

Displacement to the KR continues in 2019, and people are forced to leave their areas due to the lack of security and decent living situation. In March 2019, 946 IDPs and refugees have sought refuge in the KR. Of that number, 932 are IDPs, and 14 are Syrian refugees. In the same month, more than 941 Syrian refugees have left the KR to either return to their liberated areas or immigrate abroad whether by legal means or otherwise.

The KRG provides equal health services in the IDP camps for Yezidis, Arabs, Shabaks, Christians, Shiite Turkmen, and everyone else.

After Yezidis faced horrendous crimes perpetrated by ISIL, many were in need of urgent aid; the KRG set a strategic plan to provide urgent help for the Yezidis.

The Ministry of Health has initiated workshops and trainings for the treatment of victims of sexual exploitation by ISIS. The trainings were provided in Duhok, Erbil, and Sulaymaniyah regarding clinical management of rape for all the doctors who work in the health centers. Trainings were also provided for officers in the Directorate of Combating Violence. Other trainings on service protocol for rape survivors were provided for the doctors throughout the year.

The KRG has taken the legal needs of the IDPs into close consideration as they needed legal support for the return of their rights. For this reason, 33,000 legal cases were supported and the number of the IDPs who benefitted from these services reached 60,000 people in March 2015.

The situation of Yezidis and the rescued women:

The Kurdistan Region received the refugees and IDPs with open arms. In coordination with other entities, i.e. local NGOs, it provided them with all types of aid such as shelter, food, healthcare and education. Following invasion of Shingal, 6,417 Yezidis were kidnapped by ISIL, including 3,548 females and 2,869 males. The KRG put all its efforts to rescue the kidnapped Yezidis and follow up with the cases of kidnapped Yezidis. Thus, a special committee was formed on November 25, 2014, and a special budget was allocated for rescuing the kidnapped Yezidis, including providing money for those who will help rescue the kidnapped Yezidi women. The government also makes arrangement for their rehabilitation in the society so that they will be able to live a dignified life.

According to the latest statistics, the number of the rescued Yezidis until May 2nd, 2019 reflects the following:

Rescued				
Total	Men	Women	Young Boys	Young Girls
3,451	337	1178	926	1010

The KRG continues its efforts to rescue the remaining kidnapped Yezidis in coordination civilians which are 2966 Yezidis, 1360 of whom are women and 1606 are men. On another side,

2,036 sexual violence cases against Yazidi women and girls have been recorded, among whom 1,052 are above 18 years old and 984 are under 18 years old.