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The Torture of Women in Iraqi Prisons

I. Introduction

The criminal justice system of Iraq, formally known as the Republic of Iraq, appears to be flooded with reports of torture and sexual assault within the prison system. Numerous reports of torture, from across the country, are finally coming to the attention of international authorities.

It is undisputed that both imprisoned men and women are the victims of torture and sexual abuse. All of the violations of law and due process reported by women could easily be applied to men as well. However, due to the special status of women in Iraqi society it seems the human rights violations committed against them are more egregious and far less reported.

More than a decade of war and occupation has led to high levels of violence against women in Iraq.¹ These levels are currently higher than women have experienced in Iraq throughout the entire 20th century. The rise in violence may have been aggravated by widespread poverty, tensions, and displacement.²

The reported number of rape cases has increased significantly in recent years, with 596 cases reported in 2006 as compared to 150 in 2003.³ This is significant due to the fact that rape was considered non-existent in Iraq in prior decades, although this is likely due to failure to report. Presence of the international community, through Non-Governmental Organizations (NGOs) may account for the increase in reporting.

Exact data on the number of women raped, either in or out of prison, is still difficult to discern. Iraq is still, in large part, a warzone and this has rendered many parts of the country

¹ CEDAW, *Shadow Report Submitted to CEDAW Committee at 57th Session*, (February 2014), 9.

² U.N. Assistance Mission for Iraq [UNAMI], *Human Rights Report 1 September – 31 October 2006* (2007), 11.

³ U.N. Assistance Mission for Iraq [UNAMI], *Human Rights Report 1 January – 31 March 2007* (2007), 17.

inaccessible to the international community. Also, women may be discouraged from reporting sexually motivated crimes due to societal pressures, “honor killings”, and retaliation concerns.

In actuality, very few reported rapes ever reach the court system. Rape is routinely dealt with through a system of mediation and reconciliation.⁴ This is done in an effort to protect the victim from the social consequences of being impure in Iraqi society.

Despite the obstacles in obtaining statistics regarding women, there is significant evidence of widespread mistreatment, abuse, and torture in detention centers and prison facilities in general. According to the Ministry of Human Rights, there were at least 467 cases of reported torture and abuse in 2011 alone.⁵ It is important to note that the gender of those reporting was not disclosed but the magnitude of the number suggests it is a common problem.

The number of women imprisoned as of 2012 was 1,130, although only half had actually been convicted.⁶ There are more than 4,200 women being detained across Iraq in Interior and Defense Ministry Facilities.⁷ This means that women make up a sizeable portion of the inmates and detainees across Iraq.

These women may be particularly vulnerable to violence and sexual assault in prisons. Despite the numerous violations reported by men in prison facilities, women tend not to report incidents of ill-treatment or abuse while they are within the facilities.⁸

There are many reasons why an imprisoned or detained woman would not want to report sexual assault or physical abuse. In addition to the aforementioned reasons, imprisoned women also suffer from a lack protection from their captors and threats intended to silence them.

⁴ *Id.*

⁵ U.N. Assistance Mission for Iraq [UNAMI], *Report on Human Rights in Iraq: 2011* (2012), 16.

⁶ *Supra* note 63, at 21.

⁷ HRW, *Iraq: Security Forces Abusing Women*, (2014), 3.

⁸ *Supra* note 5, at 28.

However, the rampant nature of human rights violation within the criminal justice system ensures that at least some of them publicized. The Ministry of Human Rights and the Hammurabi Human Rights Organization have reported numerous violations at one women's prison located in Baghdad's al-Resafa district. They reported receiving allegations of torture and sexual abuse occurring while women were detained and interrogated.⁹

The most commonly reported techniques of torture and mistreatment reported to the Ministry of Human rights include: beatings, suspension from iron bars while beaten (falaqa), electric shocks administered to the genitals, metal nails driven under the fingernails, cigarette burns, suffocation, and repeated threats.

When women do report alleged rapes, the Iraqi Government tends to be less than responsive. In one instance a woman, identifying herself as Sabreen al-Janabi, was admitted to Ibn Sina Hospital in the International Zone of Iraq. There she reported being raped while in custody by three Iraqi officers serving with the Ministry of Interior's Public Order Forces.¹⁰

Despite her bravery in coming forward, the Iraqi government dismissed her allegations within two days and had the police officers honored. An arrest warrant was then issued for Ms. al-Janabi, but the legal basis for doing so was not listed.

Unfortunately, Ms. al-Janabi's story seems to be a common one among Iraqi women navigating the legal system. These women continue to suffer even if they do come forward due to the refusal of government officials to investigate rape and torture allegations.

The frequency with which torture reports go uninvestigated suggests widespread corruption of government officials. It is important to note that the violence occurring in prisons tends to be targeted towards Sunni prisoners. Also, persons of the Sunni faith are arrested or

⁹ *Supra* note 63, at 21.

¹⁰ *Supra* note 3.

detained much more frequently than Shi'ite followers. This relates to the marginalization of Sunni persons in Iraq by the Shi'ite government and suggests further governmental corruption.

Although the problem of torture and sexual abuse in prisons is a large concern in respect to women prisoners, these are not the only problems with the prison system in Iraq. There have been reports suggesting imprisonment as a means to punish male relatives, being held without charge for extended periods of time, rampant overcrowding, and unsatisfactory living conditions.

By evaluating how women are victimized in Iraqi prisons, why they are specifically targeted, and what the international government can do to remedy it, it is the goal of this paper to shed light on a serious but underpublicized problem in the hopes of inspiring action.

II. Historical Changes

Iraq, formally known as the Republic of Iraq, is a country that has undergone enormous political changes in recent decades. For the majority of the 20th century, Iraq was one of the most progressive societies in the Middle East with in respect to the rights of women.¹¹

This is evident from the 1970 provisional constitution, which was in effect until 2005. It declared women and men equal in terms of legal rights. There was also a 1976 compulsory education law which required women to attend school through primary education.¹² The passage of the 1959 Personal Status law was considered one of the most progressive family laws in the Middle East at the time.¹³

Due in large part to these laws, women constituted 40% of the Iraqi labor force and enjoyed equal salaries, benefits, and advancement opportunities guaranteed by law by 1980.

¹¹ Katherine Metres Abbadi, *Gender Justice in Iraq: Constitutional, Legislative, and Policy Concerns and Recommendations*, Mich. J. Int'l L. 21, 22 (2006), 22.

¹² HRW, *No One is Safe* (2014), 16.

¹³ Abbadi, *supra* note 11, at 32.

Since that time, women have suffered from the unstable political climate and the imposition of patriarchal religious views by conservative religious officials. The last two decades in particular resulted in the stripping away of the rights of women due to the effects of armed conflict and terrorism.

The influence of foreign military intervention and the corresponding sanctions of Saddam Hussein seem to be relevant to the decline in the status of women. The direct result of armed conflict with the United States was the destruction of civilian infrastructure by 1991 and the repealing of government assistance, life necessities, and education.¹⁴ Female literacy, as a result, dropped by 50% across Iraq.

Saddam Hussein, in an attempt to maintain control during foreign intervention, resorted to forming political alliances with radicals. This further degraded the status of women in society. In 2001, in an attempt to please conservative allies, Hussein passed the Revolutionary Command Council Order No. 6 which reinstated a mitigated sentence for the killing of a wife or female relative if the motive was related to preserving family “honor.”¹⁵

Prior to that “honor killings” were afforded the same penalty as any other murder, under the 1972 Penal Code. The theory behind honor killings is that a woman may be killed by a male relative if she behaves in a way which dishonors the family name. The enactment of this piece of legislation alone resulted in the murder of approximately 4000 Iraqi Women by 2002, according to the UN Special Rapporteur on Violence against Women.¹⁶

Hussein also repealed other progressive policies, such a law from 1959 which made it illegal to engage in polygamy with consent from the existing wives. Additionally, Hussein

¹⁴ *Id.* at 23.

¹⁵ *Id.* at 24.

¹⁶ *Id.*

instituted gender-segregated high schools. This resulted in an education system where women were extremely disadvantaged. Hussein then made it illegal for women under 45 to travel outside of the country unless accompanied by a male relative.

As a response to high levels of male unemployment, all government ministries in 2000 were ordered to restrict female employment. This ensured that women were completely dependent on male relatives. As a result, women had virtually no choice but to remain in the home, which was believed by radicals to be their rightful place.

Women also began to be targeted for rape and sexual assault specifically in an attempt to punish family members. This was done in an effort to undermine the family's honor and further restrict female movement.¹⁷ The threat of rape or sexual assault led many citizens to pay "protection money" in the hopes of remaining unharmed.

After the 2003 invasion of Iraq by the US Military, the status of women continued to decline. Local Non-Governmental Organizations (NGOs) reported that women were less respected and had less freedom during the occupation.¹⁸ Women were increasingly restricted to the home due to security threats. The mindset was that women who leave the home or are without a male protector brought their sexual assaults upon themselves.

Additionally, the rates of poverty among women rose dramatically during occupation. This may have been linked to the rise of widows in Iraq, as women were forced to be financially dependent on their husbands under the Hussein Regime. It may also be related to the destruction of many civilian buildings and jobs.

While under occupation, Iraq may have been influenced by foreign behavior. US soldiers were known to have sexually humiliated and raped an undisclosed number of Iraqi women, both

¹⁷ *Supra* note 2.

¹⁸ Al Jazeera, *Iraqi Women Much Worse Off Under Occupation*, (2006).

in prisons and elsewhere.¹⁹ Instances of rape, abduction, prison abuse, and murder of women all increased during the occupation by foreign soldiers.²⁰

There have been accounts that US Soldiers and Coalition forces abused female prisoners. Specifically, women detained at Abu Ghraib Prison in 2004 claimed that US soldiers beat, humiliated, and threatened them with rape. It was also alleged that they were held in prolonged solitary confinement.²¹ It has been alleged that the current Iraqi officials learned methods of physical and psychological torture from the American Troops.²² The atrocities taking place at Abu Ghraib Prison alone, which were widely publicized throughout the international community, may be the cause for linking subsequent Iraqi torture to US military intervention.

The US established the Iraqi Interim Governing Council as a provisional government from 2003 to 2004, until Iraq became a full sovereignty. The council was disproportionately comprised of Shi'ite Muslims, as opposed to Sunni Muslims. The council's first decision was to overturn the secular Personal Status Law which was enacted in 1959.²³ This meant that a persons' status would no longer be determined through secular legislation but rather by religious affiliations.

American Judges, under President Bush's direction, undertook the training of more than 100 judges across Iraq in two week long seminars.²⁴ Therefore it is known that a significant number of Iraqi judges were trained with an emphasis on judicial independence, case

¹⁹ Abbadi, *supra* note 11, at 25.

²⁰ *Id.*

²¹ *Supra* note 12, at 12.

²² Wijhat Nadhar, *The Dark and Secret Dungeons of Iraq: Horror Stories of Female Prisoners* (2012), 5.

²³ Abbadi, *supra* note 11, at 31.

²⁴ John Hagan, Gabrielle Ferrales & Guillermina Jasso, *Collaboration and Resistance in the Punishment of Torture in Iraq: a Judicial Sentencing Experiment*, 28 *Wis. Int'l L.J.* 1, 7 (2011), 7.

management, international human rights law, ethics, and leadership. However, it is unclear how many trained judges were kept on the bench after the withdrawal of US troops.

It has been speculated that the basic principles of equality have not been instilled in Iraq. Instead, international and Iraqi officials may have allowed tribal traditions, customs, and extremist ideals to exploit the laws.²⁵ Specifically, there has been criticism that the Bush Administration's interpretation of torture law was difficult for Iraqi judges to understand, reconcile, and apply.²⁶

The US supervised the drafting of the current Iraqi Constitution, which was based largely on Islamic Sharia Law. The Sharia laws represent only one version of Islam, one which is extremely repressive of women's rights. The rights of women are frequently denied under the constitution due to vague drafting and misinterpretation or misconstruction by officials.²⁷

III. The Current Status of Women in Iraq

In Iraqi, women who are raped or sexually assaulted suffer repeatedly from their injuries, both physical and emotional, and from the social stigma attached to the assault.²⁸ As a result, women have ample reasons not to report when they are victimized.

In Muslim cultures, attacking a woman sexually is viewed as an attack on her "modesty and religious beliefs."²⁹ It also may be construed as bringing dishonor upon her family, having brought the attack on due to questionable morals, or it may even be grounds retaliation from the attacker.

²⁵ CEDAW Shadow Report, *Iraqi Women in Armed Conflict and Post Conflict Situation*, (2014), 8.

²⁶ *Id.* at 36.

²⁷ *Supra* note 18.

²⁸ *Supra* note 63, at 22.

²⁹ U.N. Office for the Coordination of Humanitarian Affairs [OCHA], *IRAQ: Local NGO warns of Rising Cases of Sexual Abuse* (2006).

These risks are magnified when women are in prison because the criminal detention system does not provide women which adequate protections and their inability to escape makes them victims-in-waiting. They are often granted little or no access to male family members, who they have been conditioned to depend upon for protection. Women may also be less likely to fight against their male captures.

This is due to the fact that some laws in Iraq try to place male citizens in a position of power over female citizens. An example of this can be seen through the institutionalized practice of honor killings. This makes women less likely to report a rape, for fear of dishonoring her family.

Honor killings are problematic due to the difficulty in verifying their occurrence. The surviving family members tend to covers-up the death of their female relative, perhaps to avoid an inquiry into the basis for the honor killing. Alleged honor crimes tend to be reported as accidental fires.

For example, between January and March of 2007 there were at least 40 alleged "honor crimes" which occurred in the regions of Erbil, Duhok, Sulaimaniya, and Salahuddin alone. The victims were all young women who reportedly died from "accidental burns" at their homes.³⁰ Other reports stated that 88 women between the ages of 15 and 45 were shot at home and left to die.³¹ The reported cause of death for each woman was suicide.

The modest efforts made to protect women may cause further victimization. To protect women rape victims from further harm, hospital officials tend to use reconciliation in informal

³⁰ *Supra* note 3, at 16.

³¹ *Id.* at 17.

settings to prevent the situation from being made public.³² To prevent instances of rape, the Ministry of Interior in Iraq has issued notices warning women not to leave their homes alone.³³

This does little to help women in prison or being detained, as they cannot retreat to the protection of their family nor can they even go to a hospital for examination. Even if they were able to obtain assistance from medical professionals, the commonly employed mediation and reconciliation resolution would not apply to them due to the sheer volume of rapists they face in the criminal justice system. These women would most likely be deemed impure because of the number of men who have victimized them.

The status of women in Iraq is continually declining, as clearly depicted by the recently proposed draft of the Personal Status Law, called the “Jaafari Personal Status Law.” This law was approved by the Council of Ministers on February 25, 2014 and currently awaiting approval by the parliament in order to become law.

This law has provisions prohibiting Muslims from marrying non-Muslims, legalizing marital rape, and preventing women from leaving the home without express permission from their husband.³⁴ Furthermore, this proposed law grants automatic custody of children to the father in divorce cases and lowers the legal age of marriage for girls from 18 to 9 or younger with parental approval.

IV. Prison Conditions

The conditions found within the prisons in Iraq are generally appalling for several reasons. First, these prisons tend to be extremely overcrowded and cannot accommodate all of the prisoners. For example, one women’s prison in Iraq with a capacity of 250 inmates was

³² *Id.* at 17.

³³ *Supra* note 29.

³⁴ HRW, *Iraq: Don’t Legalize Marriage for 9 Year Olds* (2014).

found to be housing approximately 421 women in 2012.³⁵ In the Rusafa Complex, which is Site 4 of the Baghdad Prison, there was an estimated 500 to 800 women being detained in a facility built to hold only 250.³⁶

Second, these prisons cannot provide basic accommodations for the inmates and detainees. Some reports indicated that prisons did not have beds or blankets, although there may have been improvement in recent years.³⁷ However, the women's prisons tend to be completely lacking in facilities for special needs prisoners. Also, there tend to be no nurseries for children despite the fact that children are routinely kept with their imprisoned mothers.³⁸ For example, at the Shaaba Khamsa Facility, children are kept within earshot of where prisoners are hanged and they can clearly hear the executions.³⁹

Third, there may be underlying problems within the criminal justice system that exacerbates the problems within the prisons and detention centers. For example, the proportionality of sentences to the crimes committed seems imbalanced. One report stated that two thirds of women convicted of adultery or prostitution were sentenced to death, and another 15% convicted of the same crime were sentenced to 15 years to life imprisonment.⁴⁰ This results in a multitude of prisoners being detained for long period of time, which demands resources.

Also, there is little respect for the due process guarantees in place. This results in warrantless arrests, being held without charge, failure to promptly present the detainee to the

³⁵ CEDAW, *List of Issues and Questions by Shadow Report Coalition of NGOs* (2011), 4.

³⁶ *Supra* note 12, at 67.

³⁷ Jamie Tarabay, *Iraqi Women Claim Abuse in Prison*, Nat'l Pub. Radio (2006), 4.

³⁸ *Supra* note 26, at 15.

³⁹ *Supra* note 12, at 70.

⁴⁰ *Supra* note 26, at 15.

court, and other violations of Iraqi law.⁴¹ There have been numerous reports that detainees were not permitted regular access to legal counsel, often due to an inability to pay.⁴²

Prisoners are even held in prison long after being formally acquitted.⁴³ For example, One woman in Baghdad was still in prison six months after having the charges against her dismissed and had medical reports supporting her alleged torture.⁴⁴

These violations of Iraqi law produce an inflated number of prisoners in detention centers. This undoubtedly puts unnecessary pressure on the detention centers which are already coping with limited resources, poor conditions, and corruption.

The fourth reason that conditions are horrendous in Iraqi detention centers relates to the occurrence of torture and sexual abuse within the facilities. In an interview with 27 Iraqi female detainees in Baghdad many described being beaten, kicked, slapped, hung upside-down and beaten (Falaqa), given electric shocks, and raped or threatened with rape.⁴⁵

They were subsequently forced to sign confessions which they either did not read or were comprised of blank pieces of paper. As a result, approximately 70% of women in jail were convicted on the basis of questionable confessions without any corroborating evidence.⁴⁶

In 2011, a secret detention site was discovered in Baghdad, which was operated by the elite security forces of Prime Minister Nuri al-Maliki.⁴⁷ Torture was permitted, without impunity, at this site. Detainees were also kept without any access to lawyers or family members and they

⁴¹ *Supra* note 2, at 17.

⁴² U.N. Assistance Mission for Iraq [UNAMI], *Report on Human Rights in Iraq: July - December 2012* (2013), 9.

⁴³ U.N. Office of the High Comm'r on Human Rights [OHCHR], *Respect and Protect Human Rights in Iraq* (May 30, 2013).

⁴⁴ *Supra* note 7, at 2.

⁴⁵ HRW, *Iraq: Security Forces Abusing Women in Detention* (2014).

⁴⁶ *Supra* note 37, at 3.

⁴⁷ HRW, *Iraq: Secret Jail Uncovered in Baghdad* (2011).

reported overcrowding, miserable conditions, beatings, and threats of rape. Similar secret prisons have been uncovered in Iraq and report similar human rights violations.⁴⁸

Although it is the law that detainees are to be transferred from police stations to prison as soon as possible, many women report spending several nights at local police stations where they were raped by police officers.⁴⁹ Um Aqil, an employee at a women's facility, stated that most women are raped in police stations and are given a pregnancy test upon arrival to the prison because they "expect they've been raped by police on the way to the prison."⁵⁰

One account from the Fourth Commander of the Second Brigade, Major Jumaa al-Musawi, confirms the systematic torture and rape that female detainees endure. In his own words: "...we start to do a body search on the women and hav[e] fun touching their private parts or breasts...if those women are pretty, we usually rape them immediately."⁵¹

Al-Musawi's assistant, Lt. Rafid al-Darraji added that they would routinely threaten the detainees' children so they will submit to being raped. Once they reach the detention center, al-Darraji and al-Musawi admitted to raping the female detainees again, then demanding information while threatening to distribute naked photos of her.⁵²

The duo readily admitted that "every single intelligence officer and soldier in the brigade" participated in these routine rapes. The openness with which these two law enforcement agents admit to their own misconduct suggests that this type of behavior is both rampant and without penalty.

⁴⁸ *Id.*

⁴⁹ *Supra* note 37, at 2.

⁵⁰ *Supra* note 12, at 39.

⁵¹ *Supra* note 22, at 1.

⁵² *Id.* at 2.

As horrendous as these accounts are, the transfer to prisons often marks the beginning of the worst phase for women. While there, officers from the Ministries of Interior and Defense choose which detainees will be tortured and then raped.⁵³ Some women even die from the torture. In 2012, the Ministry's annual report on condition in prisons documented over 115 deaths in prison which appeared to be the result of torture.⁵⁴

These numbers do not take into account the deaths that may be caused by torture but have been covered up. It also fails to account for prisons in which the international communities, NGOs, or other official bodies do not have ready access to. Lastly, these figures do not account for the "secret prisons" known to exist within Iraq.

V. The Laws of Iraq

The Iraqi criminal justice system had to largely be rebuilt after the fall of Saddam Hussein and the occupation by foreign soldiers. The first step in rebuilding the law was with the drafting of the Iraqi Constitution, which was overseen by the US government. The Iraqi Constitution provides many general safeguards to ensure that suspects are treated fairly.

Article 19 provides an absolute right to be represented by counsel throughout the entirety of the investigation and prosecution process.⁵⁵ Article 31, clause 1 prohibits the use of torture, broadly defined, to elicit confessions or conduct investigations. These are positive safeguards that are drafted into the Constitution to protect due process and human rights violations.

Although based off of traditional Islamic Law, the Constitution is not per se discriminatory to women. Art 18 of the constitution guarantees all Iraqi's the right to work.⁵⁶

⁵³ *Id.* at 4.

⁵⁴ *Supra* note 12, at 15.

⁵⁵ Iraq Const. art, 19.

⁵⁶ *Id.*, at art. 18.

Additionally, it prohibits domestic violence under Art 29, clause 4. It is unclear if this repeals Article 41 of the Iraqi Penal Code which states that “the punishment of a wife by her husband is a legal right and not a crime.”⁵⁷

The Penal Code No. 111 is seemingly more discriminatory, on its face, than the Iraqi Constitution. For example, Article 41 permits a husband to discipline his wife as a matter of right, regardless of the harm done to her.⁵⁸

Article 128 is the provision providing for a mitigated sentence for honor killings.⁵⁹ The damaging effects of this law are apparent, as it severely impedes upon a woman’s right to feel safe and secure in society.

Article 377 adopts a different legal standard for men and women in regards to the commission of adultery.⁶⁰ Under this law, a husband has free license to commit adultery because it is not illegal unless it is committed within the marital home.⁶¹ The same is not true for women. This law seems to directly conflict with the constitutional guarantees of equality. These different standards for men and women may cause women to have an inferiority complex and it makes them second class citizens within Iraq.

Article 398, provides for the resolution of sexual offenses through a marriage contract between the offender and the victim.⁶² At a minimum, a valid marriage between the rapist and the victim would give the perpetrator legal excuse and a significantly reduced penalty, if any penalty is given at all.

⁵⁷ Abbadi, *supra* note 11, at 31.

⁵⁸ Ministry of Justice Penal Code No. 111, art. 41 (1969).

⁵⁹ *Id.*, at art. 128.

⁶⁰ *Supra* note 58, at art. 377.

⁶¹ *Supra* note 26, at 13.

⁶² *Supra* note 58, at art. 398.

This law, aside from being generally offensive to victims, would subject victims to coercion and possibly a forced marriage. A similar concept is reflected in article 427, which provides for suspension of criminal investigations in kidnapping situations if the perpetrator marries the victim.⁶³ This is extremely problematic, both for the reasons discussed above and because children are usually the victims in kidnapping.

The penal code, although slightly sexist, does not intentionally provide for a lack of due process or unfair trials. There are many safeguards in place to protect due process. Article 92 of the Iraqi Criminal Procedure Code requires that a person be arrested only on the basis of a judicial warrant unless exceptional circumstances exist.⁶⁴ These exceptional circumstances are designed to be limited to instances where the crime was committed in front of a witness or where the person has escaped legal arrest.⁶⁵

According to Article 123, detainees must be brought before an investigating judge within 24 hours of their arrest.⁶⁶ However, pre-trial detention may be extended, under Article 109 of the code, for as long as necessary for the investigation to proceed, or until there is a ruling on the preliminary investigation by a judicial inquiry or trial.⁶⁷

Article 109 causes some problems because it undermines the bright-line rule regarding pre-trial detention. Although unnecessarily vague, this provision does set an absolute limit for pre-trial detention at six months unless the court grants an appropriate extension.⁶⁸

⁶³ *Supra* note 26.

⁶⁴ *Supra* note 58, at art. 92.

⁶⁵ Amnesty Int'l, *Iraq: A Decade of Abuses*, (2013), MDE 14/001/2013, 81.

⁶⁶ *Supra* note 58, at art. 123.

⁶⁷ *Supra* note 58, at art. 109.

⁶⁸ *Supra* note 63, at 31.

Persons being detained by police officers are supposedly guaranteed access to attorneys. Article 123, like Art 19 of the Constitution, provides a right to be represented by counsel when being questioned and to have a court appointed legal counsel free of charge.

The use of torture is prohibited under Article 127 of the penal code. It is very similar to the prohibition listed under Article 37 of the constitution. However, the penal code also provides, under Article 333, that any public servant who uses torture will be punished by imprisonment or detention. It also includes threats and the use of force within the definition of torture.⁶⁹

Article 218 prohibits the use of torture and other methods of coercion specifically in obtaining a confession. However, the penal code also provides that it is within the trial courts discretion to admit a pre-trial confession even if it was subsequently repudiated.⁷⁰ This once again creates unnecessary vagueness and uncertainty.

Article 213 allows for arrests and convictions based on the testimony of secret informants which are allowed to contain unsupported allegations.⁷¹ This tends to make the basis for arrest less than reliable and subject to corruption.

As discussed previous, the most prevalent violations of Iraqi law claimed by prisoners are: arrest without warrants, prolonged incommunicado detention without any charges or trial, unfair trials, use of suspicious confessions, and torture or sexual assault.⁷² However, the laws of Iraq do safeguard against these things. Therefore it is clear that the problem does not necessarily lay in the actual laws but in the failure to comply with the laws and the failure to properly apply the laws in a clear and uniform manner.

⁶⁹ *Supra* note 63, at 35.

⁷⁰ *Supra* note 58, at art. 217.

⁷¹ *Supra* note 12, at 7.

⁷² *Supra* note 63, at 28.

Some laws are overly subject to abuse, possibly due to vague drafting. For example, Law No. 13 of 2005, Iraq's Anti-Terrorism Law, is a sweeping anti-terror law which allows the death penalty for perpetrators of terrorist acts, accomplices, or anyone remotely involved. This law has been disproportionately used against followers of the Sunni Religion.⁷³

This law is also responsible for 15% of the incarcerated females across Iraq. Primarily, women are detained under Article 4 of this law for allegedly "covering up" for their husbands or male relatives.⁷⁴ The Anti-Terrorism law is often used to circumvent the protection provided by Constitution and the Penal Code, such as right to be free of arbitrary arrest and detention and right to a fair trial.⁷⁵ This law clearly is drafted vaguely and provides a loophole for complying with the other due process guarantees listed within the Iraqi Constitution and even the Penal Code.

In addition to the internal laws of Iraq, the country is also bound by its international treaty obligations. Iraq is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the Convention on the Elimination of Discrimination against Women (CEDAW), both of which are relevant here.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) is an international human rights instrument, under the review of the United Nations, which aims to prevent torture, cruel/inhuman, or degrading treatment and punishment worldwide.

⁷³ *Supra* note 12, at 72.

⁷⁴ *Supra* note 12, at 6.

⁷⁵ *Supra* note 12, at 36.

Among other things, UNCAT requires participating states to prevent torture within their countries and it forbids countries to export people to countries where they will likely be tortured. The text of the convention came into effect in June of 1987.

The text of the UNCAT treaty contains a preamble and 33 articles which are broken into three separate parts. Part 1 consists of articles 1 through 16, Part 2 consists of articles 17 through 24, and Part 3 consists of articles 25 through 33.

Part 1 contains the substantive rules of the convention. It begins with a detailed definition of torture under Article 1 and a ban of torture, even during wartimes, under Article 2.⁷⁶ Article 4 requires that torture be treated as domestic crimes and Article 5 requires that the state establish its jurisdiction against such crimes.

Article 12 of the UNCAT provides that each state must ensure that competent authorities proceed with a prompt investigation whenever there is reasonable ground to believe that an act of torture has been committed.⁷⁷ Significantly, Article 15 of the UNCAT provides that any statement made which was a result of torture cannot be used as evidence in any proceeding except against the torturer.⁷⁸

Under Part 2, the treaty sets out reporting and monitoring of the convention, along with steps regarding implementation. Finally, Part 3 deals with ratification, enforcement, and amendments to the convention.

The Committee Against Torture (CAT) is a body of experts that monitor the implementation of the convention. All parties to UNCAT are required to submit reports every

⁷⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *drafted* Dec. 10, 1984, UN Treaty Doc A/RES/39/46.

⁷⁷ *Supra* note 76.

⁷⁸ *Supra* note 76.

four years to CAT. Once the report is received, CAT examines it, addresses concerns, gives recommendations, and even has the power to investigate reports of torture.

Notably, CAT has consistently called for the elimination of incommunicado detention.⁷⁹ Incommunicado detention is equated to solitary confinement or unnecessary isolation. CAT has also recommended that state parties review convictions based solely on confessions and that other independent evidence should be obtained.⁸⁰

There is an Optional Protocol to the Convention against Torture (OPCAT) which attempts to establish an international inspection system for places of detention. It entered into force in June of 2006.⁸¹ However, Iraq is not currently a party to OPCAT.

Iraq's accession to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) occurred on July 7, 2011. This means that Iraq is officially bound by the above terms of the convention.

Although bound by the terms of the convention, many of the reported human rights violations, discussed above, would also violate UNCAT. Specifically, the use of torture and torture elicited confessions, the failure to investigate, the use of incommunicado detention, and the failure to prosecute the torturers, all offend the treaty.

The Convention on the Elimination of Discrimination against Women (CEDAW) is another international treaty adopted by the United Nations. The treaty was adopted in 1976 and came into force in 1981. Iraq has been signed onto the CEDAW, with reservations, since 1986.

⁷⁹ *Supra* note 63, at 32.

⁸⁰ *Supra* note 65, at 42.

⁸¹ Optional Protocol to the Convention against Torture, *adopted on* Dec. 18, 2002, UN Treaty Doc A/RES/57/199.

The goal of this convention is to eliminate gender discrimination, but the international campaign has faced obstacles due to culture, religion, and traditions abroad. The vast majority of country parties to the CEDAW are signed on with reservations.

Discrimination against women, under Article 1 of the convention, is defined as “any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.⁸²

The CEDAW believes that discriminatory provisions or identity based personal status laws tend to perpetuate discrimination against women.⁸³ Therefore, this convention seeks action to put an end to all gender based discrimination. States that ratify the convention are required to protect women through gender equality in their legislation. These states, under Article 2, must also establish tribunals and public institutions to protect women and to eliminate all forms of gender discrimination.⁸⁴

One of the reservations of Iraq is regarding the provisions of article 2. Article 2 deals with the country’s internal duties in eliminating discriminatory laws. Iraq will not comply if compliance would be in conflict with Islamic traditions or laws. Iraq also has a reservation as to Article 9 which deals with equality in nationality. Iraq has opted to retain their own laws regarding nationality, which are dependent on the child’s paternity.

⁸² Convention on the Elimination of Discrimination against Women, *adopted on Dec. 18, 1979*, UN Treaty Doc 34/180.

⁸³ *Supra* note 34.

⁸⁴ *Supra* note 82.

In Addition, Iraq has reservations as to Article 16 of the Convention which states that women have equal rights to men regarding marriage and family relations.⁸⁵ This reservation is without prejudice regarding Islamic law being the ultimate source of women's rights. Iraq also entered a reservation as to Article 29 of this Convention with regard to the principle of international arbitration in connection with the application of this Convention. However, this is a commonly held reservation among party states to the CEDAW.

Regardless of the reservations held by Iraq, some of their laws and alleged actions may violate this treaty. For example, the proposed Jaafari Personal Status Law, if made into law, would violate Article 2 of the CEDAW by legalizing marital rape.⁸⁶ Also, laws which create a distinction between men and women would violate the CEDAW.

VI. Action, or Lack There-of

The judicial system of Iraq currently suffers from a lack of accountability and from widespread corruption. Iraqi officials confronted with allegations of torture and abuse in prisons dismiss all claims as either exceptional or fabrications.⁸⁷ Government officials could not provide information of any ministry official who was ever prosecuted or convicted of torturing or sexually abusing a detainee.⁸⁸

Officials in a position to prevent human rights violations often fail to act. For example, many attorneys have complained that judges ignore visible signs of physical abuse on female prisoners.⁸⁹ Ministry officials have discovered illegal conditions at police stations. In one case, a woman was detained at a police station for 40 days, repeatedly beat and raped by several police

⁸⁵ *Supra* note 82.

⁸⁶ *Supra* note 34.

⁸⁷ *Supra* note 12, at 73.

⁸⁸ *Supra* note 12, at 7.

⁸⁹ *Supra* note 12, at 80.

officers but ministry members simply ordered she be transferred to prison and did not take further action.⁹⁰ Ministry members did act in 2011 by closing Campy Honor Detention Center due to the rampant use of torture, but no investigation into the torture was ever launched.⁹¹

Prime Minister Nuri al-Maliki had previously promised to reform the criminal justice system, beginning with the release of detained women with release orders, but there was no progress more than a year later.⁹² Other individuals who were released were threatened with re-arrest if they broke their silence about the prison conditions.⁹³

Despite the fact that instances of rape and abuse of women in pre-trial detention have become publicized, Prime Minister al-Maliki has failed to act appropriately. The Prime Minister, in response to widespread protests against these human rights violations, acted by releasing 11 detainees who were sexually and physically abused in detention.⁹⁴ Al-Maliki has also been criticized for having zero tolerance for peaceful demonstrations, for being corrupt, and for consolidating his power by appointing loyalists without parliamentary approval.

The United Nations Assistance Mission for Iraq's (UNAMI) mandate is assisting the government in fulfilling its human rights obligations.⁹⁵ Data collected by UNAMI from Basra Prison tended to show a slight improvement in pre-trial detention times. The pre-trial detention periods appear to have decreased from up to several years in 2010 to no more than three months in 2012.⁹⁶

VII. Conclusions and Recommendations

⁹⁰ *Supra* note 37, at 3.

⁹¹ HRW, *Iraq: Closing Torture Prison Wont' End Abuse* (2011).

⁹² *Supra* note 46.

⁹³ *Supra* note 12, at 78.

⁹⁴ HRW, *Iraq: A Broken Justice system*, (2013).

⁹⁵ *Supra* note 3, at 2.

⁹⁶ *Supra* note 44, at 10.

The problems facing women in Iraq are numerous. The decreasing status of women in Iraq combined with the country's general lack of respect for the laws create a situation where women are unsafe in detention centers.

Women, like men, are often subjected to violence, coercion, threats, and poor conditions while being detained in Iraqi Prisons. Unlike men, women are particularly vulnerable to sexual assault, rape, and sexual torture while in jail. The reasons for this are linked to the stigma attached to sexual assault and impurity within Islamic society. Once detained, their honor is threatened in an attempt to both ensure their compliance, to humiliate them, and to punish their relatives.

There are many laws which should serve to protect Iraqi citizens and women in particular, from these gross human rights violations in detention centers. The Iraqi Constitution and the Iraqi Penal Code both provide guidelines for the treatment of detainees. However, corruption, disrespect for the laws, and vague drafting turn these safeguards into empty promises.

Specifically, the constitution does not currently address how existing and proposed laws can be revised to ensure compliance with the rights of women. There should be a particular focus on upholding article 29 of the Iraqi constitution which prohibits all forms of violence and abuse in the family, school, and society. This should be used to stop honor killings and violence against females in general, which would improve women's status in Iraq in general and increase their security.

In addition, the Iraqi Constitution remains ambiguous on several issues. There is particular difficulty with applying the laws in a consistent and uniform manner. Therefore a Supreme Court, similar to the US model, should be formed to interpret these laws in an equitable manner and reform any laws that are particularly subject to abuse.

Similarly, the judicial system itself should be reformed. Judges should be required to open an inquiry into allegations of torture. Any confessions obtained through suspect means should be disallowed. Failure to comply with these basic principles of due process should result in the immediate disbarment of the violating judge.

The Iraqi authorities, in general, should be required to acknowledge the prevalence of abuse of female detainees, investigate and prosecute the perpetrators. Additionally, there needs to be collusion between investigative judges, lawyers, and security forces in order to ensure accountability. With a cohesive system of checks and balances, the Republic of Iraq may be able to combat some of the internal corruption it currently faces.

The most important change to be made would be to require that all allegations of violence and sexual assault against all prisoners, particularly women, be investigated by ministry officials responsible for law enforcement.

Iraq should also look into the proportionality of punishments and bring them into compliance with international standards and human rights principals. The crimes of torture, rape, and sexual abuse should have stronger punishments and should not be mitigated for marriage or honor considerations. These punishments should also be strictly enforced, even against government officials.

As for the international obligations imposed on Iraq through CEDAW and UNCAT, there should be enforcement of their implementation. These conventions both contain committees that can oversee compliance and investigate any non-compliance. Specifically, Iraq does not have reservations to UNCAT and therefore the CAT should enforce Iraqi compliance.

Although the international community does seek to empower Iraqi women, funding is often weak, but this support is essential in obtaining international human rights standards for

women in Iraq.⁹⁷ The international community should allocate more time and resources to helping Iraqi women.

⁹⁷ *Supra* note 26, at 10.