LIVING WITH FEAR:
TORTURE AND DISCRIMINATION COMMITTED AGAINST
LGBT PERSONS IN IRAQ

IN RESPONSE TO

THE FIRST PERIODIC REPORT OF
THE REPUBLIC OF IRAQ
SUBMITTED BY:

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The International Gay and Lesbian Human Rights Commission (IGLHRC)

This Report was also written in collaboration with local Iraqi women’s human rights organizations that wish to remain anonymous
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Introduction

This report, which addresses urgent areas of concern related to the torture of lesbian, gay, bisexual and transgender (LGBT) people in Iraq, is intended to supplement information the Government of Iraq provided in its first periodic report to the Committee against Torture (the Committee) for its review of Iraq during its 55th Session, to be held in July 2015. While, the Iraqi Government’s report to this Committee makes no mention of the rights of LGBT people, torture, cruel, inhuman and degrading punishment (CIDT) continues to flourish against LGBT individuals in Iraq, and victims have no guarantee of protection or redress. The Government of Iraq has failed in its obligation under the CAT to take proper measures to give effect to the rights recognized therein, to ensure effective remedies in cases of violations, and to prevent systemic impunity.

Faced with the ever-present possibility of extreme torture and CIDT, people who are or perceived as being lesbian, gay, bisexual, transgender (LGBT) or gender non-conforming in Iraq are in immediate danger. The state-sanctioned culture of anti-LGBT prejudice permeates Iraq’s institutions and society. Perpetrators of human rights violations against persons believed to be LGBT include victims’ family members, militia fighters and religious militants from various groups, as well as government officials. Members of the security forces and police are, at best, non-responsive to acts of torture committed on the basis of real or perceived sexual orientation or gender identity, and at worst, active participants in them. Victims of torture in Iraq can count on virtually no protection or recourse for torture and CIDT committed against LGBT and gender non-conforming persons.

Iraqi community service providers and human rights activists, including victims of anti-LGBT torture, take great risks to record instances of torture and CIDT committed on the basis of sexual orientation and gender identity. The shared hope of these individuals and their international allies is that these stories will spur immediate action on the part of the Iraqi government to ensure greater safety and protections for Iraqi LGBT people. Even in times of conflict, the Iraqi government is obligated to adhere to the CAT, and there are basic steps it can take now to help protect LGBT and gender non-conforming people from human rights violations. The first would be for it to acknowledge that LGBT people, like all people, have human rights that must be respected. The recent reformation of the Government’s only official agency handling LGBT issues, the LGBT Committee, is a positive step in remedying inadequate Government efforts to protect LGBT rights. However, the Committee has done little to address the protection gaps for LGBT and gender-nonconforming Iraqis and has no clear plan on how it intends to do so.

Information on human rights violations in this report was gathered through field interviews and documentation of personal testimonies in late 2014 and early 2015 by local Iraqi women’s organizations and the International Women’s Human Rights (IWHR) Clinic at CUNY Law School and is supplemented by reports from news agencies and human rights organizations. For safety and security reasons local Iraqi women’s organizations have chosen not to be identified by name. A set of specific recommendations for advancing the Iraqi government’s compliance with the CAT concludes this report.
Substantive violations

I. The Convention Guarantees Freedom from Torture; Article 1 (Defining Torture); Article 5 (Establishing Jurisdiction Over Offenses); Article 10 (Education and Measures to Prevent Torture)

The Convention against Torture and Cruel, Inhuman, or Degrading Treatment recognizes that no one shall be subjected to torture or other forms of cruel, inhuman or degrading treatment because all people have rights that are guaranteed to them based on the inherent dignity of the human person. Torture is defined in Article 1 as, “any act that by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as…punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

States parties must ensure that all acts of torture are classified offenses under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each state party shall make these offenses punishable by appropriate penalties which take into account their grave nature. While the Government of Iraq has codified torture as a crime, there is no explicit coverage for LGBT persons.

The Iraqi government must take all appropriate measures to establish authority over offenses that have occurred in any territory under its jurisdiction or where the perpetrator or the victim is a national of Iraq. Article 10 states that “each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. This must be enforced regardless of the station or position of the person.” The Iraqi government has a duty to properly train personnel and officials about torture and to make sure that they are not the perpetrators of such acts. According to Article 14 of the Iraqi Constitution, “Iraqis are equal before the law without discrimination based on gender, race, …economic or social status.”

A. Iraqi Government's Failure to Prevent, Investigate, Punish and Provide Redress for Torture and CIDT against LGBT Persons.

According to interviews with Iraqi community-based LGBT rights advocates, the rights of LGBT and gender non-conforming persons to life and to freedom from torture or cruel, inhuman,
and degrading treatment are regularly violated in Iraq with impunity. People who are killed, injured or tortured on the basis of real or perceived sexual orientation or gender identity find no recourse in the institutions that should provide protection and support, such as state police and security forces, or medical facilities.\(^9\) Multiple sectors of society are implicated in these human rights violations, including civilians, militia members, religious leaders, police and security forces, government officials, healthcare workers and others.

Faced with continued armed conflict, the rise of militias, and the weakening of government institutions since 2003, LGBT people in Iraq are especially vulnerable to torture and CIDT from these various actors.\(^10\) The risks for them are constant as Iraq has also experienced a number of organized, deadly persecution targeting large numbers of people based on their real or perceived sexual orientation or gender identity. These flare-ups of violent persecution are instigated, inspired, carried out, or tolerated by state actors and militia, and rise to the level of torture and CIDT according to the CAT. For example, in 2009, in Sadr City, a low-income area of Baghdad, dozens of men were killed under suspicion of being gay. Press suggested that a fatwa or other religious invectives by Moqtada al-Sadr or other clerics had spurred an organized, violent campaign, involving some militia elements as well as killings by relatives of victims.\(^11\) In the weeks leading up to the spate of killings, local police said they had started cracking down on LGBT people, stating that they were cleaning up the streets to “get the beggars and homosexuals off them.”\(^12\)

In 2012, militia posted leaflets in the Sadr City neighborhood of Baghdad, listing names of young men identified as gay or “emo,” and calling for them to “change their ways” or risk death. According to a press release by the International Gay and Lesbian Human Rights Commission (IGLHRC), Human Rights Watch, and Amnesty International, “[i]n English, ‘emo’ is short for ‘emotional,’’ referring to self-identified teens and young adults who listen to alternative rock music, often dress in black, close-fitting clothes, and cut their hair in unconventional ways. People perceived to be gay, lesbian, transgender or effeminate are particularly vulnerable.”\(^13\) According to media reports, on February 6, 2012, Colonel Mushtaq Taleb Muhammadawi, director of the community police of the Iraqi Interior Ministry, called for the eradication of emos in Iraq.

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9 Doctors at hospitals in Iraq regularly deny LGBT people healthcare, or charge them double or triple the rate for treatment. Three of the many hospitals that have engaged in extortion and denial of treatment based on real or perceived sexual orientation or gender identity include Al Yarmouk Hospital, Al Kindi Hospital, and Al Samir Hospital. IWHR Clinic interview with Iraqi LGBT rights activists, January 24, 2015 (on file with authors); Email correspondences with Iraqi service providers, May 24, 2015 (on file with authors).

10 For more on how LGBT people in Iraq are at an acute risk of violence as a result of increased militia activity, entrenched societal discrimination, and a breakdown of law and order, see International Gay and Lesbian Human Rights Commission & MADRE, We’re Here: Iraqi LGBT People’s Accounts of Violence and Rights Abuse (2014) available at http://www.madre.org/page/human-rights-reports-193.html


Mission for Iraq (UNAMI) reported findings by NGOs and media outlets that Al Mahdi (Mahdi Army) and Asa’ib Ahl Al-Haq were responsible for “up to 56 persons described as ‘emos’ … reportedly killed in different parts of Iraq, especially in Baghdad and Babil.” UNAMI was able to verify twelve of the killings. Al Mahdi Army has a long history of committing torture and CIDT against LGBT individuals, including those who identify as lesbians. For instance, in 2008, Al Madhi Army kidnapped an 18-year-old lesbian in Baghdad. They took her to a place that was covered in blood. In that same place, there were some gay men and two other lesbians. Al Mahdi Army militants tortured them, burned the woman’s left thigh, and killed a gay man.19

On May 15, 2014, the Brigades of Wrath (Saraya al-Ghadhab), the military arm of Asa’ib Ahl al-Haq, (the League of the Righteous), posted a list on signs around Baghdad with the names and neighborhoods of 24 “wanted” persons; 23 accused of the “crime” of homosexual acts and one man accused of the “crime” of having long hair. Over the following two months, at least two militia attacks took place in Baghdad against groups of persons because of their real or perceived sexual conduct or sexuality, including the beheading of two young men, and the murder of at least 34 people in a brothel. In the recent fighting against the Islamic State, Iraqi government forces are coopting militias, including Asa’ib Ahl al Haq (League of the Righteous), and evidence points to collusion between state forces and militia in revenge killings. This cooperation between state forces and conservative religious militia implicated in anti-LGBT killings does not bode well for efforts aimed at preventing torture and CIDT and holding perpetrators accountable.

The torture and CIDT of the LGBT community in Iraq also reaches transgender persons. For example, a 27 year-old transgender person from Baghdad has been subjected to various forms of torture and CIDT and threats of torture by the army, Government-affiliated militias, family members, and members of society. The person also faces many difficulties trying to obtain

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17 Id.
18 Id.
19 Id.
24 Id. at 5 (2014).
government-issued identification documents that reflect her gender identity. In this case, as well as in others, the Government has not only failed to protect and provide basic services for transgender persons, but has actually taken part and participated in persecuting this particularly vulnerable segment of the society.

In addition to these organized episodes of anti-LGBT and anti-gender transgressing torture and CIDT in Iraq, the torture and killing of people based on their real or perceived sexual orientation or gender identity occurs regularly and with impunity. The following examples, drawn from recent interviews, highlight some of the extreme forms of torture and CIDT that LGBT individuals endure and the lack of recourse available to them.

In early 2014, a young man in Baghdad had a sexually transmitted infection affecting his anus and needed urgent care. He searched for months for a hospital that would take care of him. Ultimately, however, he had to pay double for service. The doctor that he did see put a tampon in his anus to prevent the bleeding. They refused to follow-up with him. Interviews with Iraqi service providers indicate that it is common practice at hospitals in the area for medical professionals to deny healthcare to LGBT people, or to people perceived as such; or to force them to pay double or triple the regular cost for treatment.

In November 2013, Asa’ib Ahl Al Haq (League of the Righteous) militia members tortured a gay man, insulting him, beating him, and then gluing his anus closed. The man required surgery at a hospital as a result. According to local human rights advocates, this form of torture is commonly used against those who are LGBT or gender non-conforming. Another commonly reported form of torture or CIDT is for attackers to put kerosene into the blood of people they perceive as gay or transgender causing an extremely painful death. Last year, the Iraqi government has reportedly coopted militias, including Asa’ib Ahl Al Haq, to fight alongside state armed forces in the ongoing conflict.

Around August or September of 2012, a man of approximately 30 years of age, went to a hospital in Samarra in response to a call by mosques for people to give blood after fighting between Al-Qaeda and government forces wounded many in the city. Once an orphan, the man, according to community members, had done sex work and also had sex with other men. A group of religious extremists saw him in the hospital, and accosted him. They escalated their abuse, ultimately beating him to death with metal pipes while still in the hospital. The group then burned his body in the middle of the hospital’s courtyard. Approximately 20-30 people were standing around the body at the time it was burning. Both the police and tribal leaders arrived. Police did not write a report, however, and the perpetrators went unpunished.

\(^{25}\) Id.
\(^{26}\) Interviews were conducted by the IWHR Clinic. Interviewees wish to remain anonymous.
\(^{27}\) IWHR Clinic interviews with three service provider organization representatives located in Iraq and the Kurdistan region, January 22 2015 (on file with authors).
\(^{28}\) IWHR Clinic interview with Iraqi LGBT rights activists, January 22 2015 (on file with authors).
\(^{30}\) IWHR Clinic Interview with Iraqi LGBT rights activists, January 24, 2015 (on file with authors).
In 2012, a non-governmental organization smuggled three men with “emo” haircuts out of Iraq to escape torture and CIDT. One man, a university student in Tikrit, was almost beaten to death by a crowd of approximately thirty people, armed with ??, who had surrounded his house. A team from the NGO succeeded in moving the man to safety at their office with no further incidence of violence. The young man asked them to retrieve one of his friends that he believed was at risk, so before they left for the organization’s office, they picked up this friend. A third man called the NGO and then arrived at the organization’s office, fearing for his life because he too was made aware of killings of people with “emo” haircuts similar to his. All three, who had nearly identical hairstyles identified as “emo,” were eventually smuggled out of central Iraq. These men were not able to count on security forces to protect them from torture and CIDT.

These are but a few examples of the many instances where LGBT people and people perceived to be LGBT in Iraq face torture and CIDT, with no recourse or access to justice. By failing to prevent, investigate, prosecute and provide redress for these forms of torture, Iraq has failed to meet its obligations under the CAT.

II. Articles 1, 2, 11, & 13 (Non-discrimination and Equal Protection of the Law)

The Iraqi government is obligated to ensure that no one inflicts acts of torture or CIDT against individuals because of actual or perceived sexual orientation. There are no allowances to torture an individual on any basis. Article 2(1) further states that “[s]tate parties should use all effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Article 2(2) adds that there “are no exceptional circumstances, including war or political instability that may invoke justification for torture.” In addition, all citizens of Iraq are entitled to equal protection under the law against torture or and to appropriate recourse if it occurs. Article 11 mandates that a “[s]tate party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.” Furthermore, Article 13 ensures “that any individual who alleges he or she has been subjected to torture in any
territory under its jurisdiction has the right to complain, and to have his or her case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.  

The Iraqi government is obligated to install a system that seeks to alleviate all forms of torture and CIDT. This system should apply to all Iraqi citizens and address the grievances of survivors of torture, while working to bring perpetrators to justice, regardless of the survivor’s sexual orientation or gender identity.

This Committee has repeatedly called on governments to take all necessary measures to combat torture and CIDT against LGBT individuals. For example, it recently expressed concern at Croatia’s “ill-treatment of gay, lesbian, bisexual, and transgendered persons by law enforcement and private actors, in violation of Articles 2, 11 & 13. The Committee stated “that all alleged acts of torture and ill-treatment should be subject to investigation.” To meet its non-discrimination and equal protection obligations under the CAT, Iraq must protect, investigate, prosecute and punish all instances of torture and other degrading treatment, no matter the sexual orientation or gender identity of the victim.

A. The Iraqi Government's Endorsement of Torture and CIDT against LGBT Persons.

The mere perception of being LGBT is extremely dangerous in Iraq and living openly as an LGBT person is nearly impossible. For victims of anti-LGBT torture, including cruel, inhuman and degrading treatment, there is no viable recourse in the Iraqi State. State security forces not only fail to investigate acts of torture and CIDT against LGBT people; they stand by and allow murderous hate violence to occur, fully aware of what is happening. Furthermore, security forces and government officials themselves commit anti-LGBT torture and CIDT. The State’s denial of access to justice for survivors of torture and CIDT encourages further acts to be committed by health professionals and others who capitalize on LGBT peoples’ vulnerable status. To understand the extent to which the Government of Iraq neglects and turns a blind eye towards acts of torture committed against LGBT individuals, one can review the Government’s report to this Committee. In the report the Government not only fails to mention the widespread acts of torture and CIDT based on real or perceived sexual orientation and gender identity, but likewise fails to make any mention of the LGBT community in Iraq. While there is no law that explicitly criminalizes same sex intimacy, individuals from the LGBT community are regularly tortured and subjected to inhuman treatment by public and private actors.

As the examples in the prior section illustrate, the State Party's discriminatory attitude and practices encourage torture and CIDT against people who are LGBT, or who are perceived to be so, at all levels of society. Through their unwillingness to investigate or pursue even the most open of perpetrators, security forces encourage anti-LGBT human rights violations including torture and killings. In addition to the prior examples of torture and CIDT, testimonies illustrate that the environment of impunity emboldens family members who feel “shamed” by the real or

40 Id.
perceived LGBT status of their relatives to commit honor killings against them as a way to restore honor to the family. The social obligation to conform to gender norms and heteronormative standards is strongly enforced in the home and those who deviate become targets for honor killings. Honor crimes remain severely under reported and police rarely investigate or punish them. Many fear reporting suspicion or even the commission of an honor crime because police do not adequately protect potential victims and judicial authorities do not effectively prosecute perpetrators.\textsuperscript{41} Sadly, the social and legal acceptance of honor killing has been used by some Iraqi families to even perform public executions.

For example, in June of 2012, in the Northern city of Samarra, the burning remains of two young men perceived to be gay were left in the street of a busy public intersection for over two hours.\textsuperscript{42} Human rights advocates who stopped at the intersection to document the incident, noted that the family members of the two youth, who claimed to have killed them both, were standing in the street holding pistols in their hands as they watched the men’s bodies burn. The security forces of the Ministry of the Interior, who were informed of the incident before hand,\textsuperscript{43} witnessed the shooting and burning and were noted to be standing near the families. Human rights activists also noted that the family appeared ‘proud’ of their deed, openly talking about how they did it, and noting that such acts restored honor to their family. There were no repercussions for the killings and no media coverage of the incident. Security forces conducted no investigation and generated no report, despite being present at the scene. This act was a clear representation of the anti-LGBT torture and CIDT committed in Iraq that goes unpunished.

\section*{III. Response by the Government of Iraq}

In its report to the Committee, the Government of Iraq states that it is making progress to adopt human rights norms and incorporate them into its governmental policies, as is required by its Constitution.\textsuperscript{44} The Government of Iraq emphasizes that it is determined to promote, protect and safeguard human dignity and it holds a genuine desire to address and prevent all forms of torture.\textsuperscript{45}

Although no mention of issues concerning LGBT persons is made in the Government’s report, we commend the Iraqi Government on the establishment and reformation of its LGBT Committee, which is tasked with the promotion and protection of LGBT people’s human rights in Iraq and a positive step forward in the Iraqi Government’s commitment to eradicating torture and CIDT against LGBT and gender non-conforming individuals. However, there is no strategic plan or formulated activities by the Committee defining their approach and strategy for addressing human rights violations committed against LGBT persons. Consequently, pervasive torture and CIDT against LGBT people in Iraq occur regularly.

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{42}] IWHR Clinic Interview with Iraqi LGBT rights activists, January 23, 2015 (on file with authors).
\item[\textsuperscript{43}] Iraqi-based human rights advocates report that official condoning of anti-LGBT “honor” killings is common practice, especially where tribal leaders hold greater influence than local government officials. Informing security forces ahead of time would ensure no officials would intervene with the killing.
\item[\textsuperscript{44}] CAT, State Report, June 2012, ¶ 1.
\item[\textsuperscript{45}] Id. ¶ 14.
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The extent of grave human rights violations committed against people based on real or perceived sexual orientation and gender identity, as well as the impunity with which state and private actors commit these acts, point to a systemic problem, which the Iraqi Government is obligated under the CAT to address.

IV. Recommendations to the Government of Iraq

- The Government of Iraq should clearly and publicly state that it does not tolerate any form of torture and CIDT against persons because of their real or perceived sexual orientation or gender identity.

- The LGBT Committee of the Government of Iraq should develop a strategic plan for ending torture and CIDT against LGBT persons in consultation with Iraqi women’s human rights organizations.

- The Government of Iraq should work with Iraqi rights-based organizations to provide human rights trainings and education to security forces in order to address torture and CIDT based on real or perceived sexual orientation and gender identity.

- The Government of Iraq should work with Iraqi rights-based organizations to enact gender sensitivity and LGBT training and education programs for the Ministry of Health to prevent torture and CIDT against LGBT people in healthcare.

- The Government of Iraq should institute public awareness and sensitivity campaigns directed at changing harmful attitudes towards LGBT individuals.