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Subject: KRG Response to HRW Findings and Questions on the Treatment of Child Terrorism Suspects

I trust you're well, following up on your letter dated 27th December 2016 submitted to us, the KRG High Committee to Follow Up and Respond to International Reports (HCERIR) has prepared a response report (attached) on the allegations of 'prevalence and practice of torture and ill treatment of young detainees (Child Suspects of Terrorism) in the Iraqi Kurdistan Region.

Herein, we provide a thorough and comprehensive legal and practical response on the alleged issues on the rights of detainees (Child) prisoners in the custody of the Asayish and other related facilities (MOLSA); outlining the due process of detention and detention conditions.

In the Kurdistan Region, the use of torture and physical punishment against prisoners including boys ages 11-17 is strictly prohibited; the rights of prisoners and detainees are protected by the existing amended legislations and practices within the region. Those responsible for upholding law and order within the KRG have established strict policies against acts of torture, as per the U.N. Convention against Torture (CAT) as well as the Iraqi Constitution, which strongly prohibits physical and psychological torture of inmates. Moreover, prisons and detention centers run by the Asayish personnel consistently promote reform.

The issues addressed within this attached report cover the areas of arrest policy in the Kurdistan Region, conditions of detention facilities and due process, alleged overcrowding in prisons and holding facilities, alleged torture/physical punishment and supposed bribery.

In summation, attached response report serves as insight to the current situation surrounding human rights practices in the Kurdistan Region of Iraq and highlights the efforts undertaken to uphold the sanctity of these fundamental rights.

Yours sincerely,

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Kurdistan Regional Government
High Committee to Evaluate and Respond to International Reports

Response to Human Rights Watch Letter
“Torture and Ill-Treatment of Child Terrorism Suspects”

BACKGROUND

The High Committee is dedicated to following up on the allegations made against the human rights practices in prisons and detention centers. 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 centers 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 [Baghdad] 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 comply with the international standards to address and follow up on human rights issues.

ARREST POLICY & PROCEDURE IN THE KURDISTAN REGION

In Duhok, Erbil and Sulaymaniyah and other districts and sub districts controlled by the KRG, 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 UN Assistance Mission for Iraq (UNAMI) and a UN Rights Report had cited a large number of visits to detention centers in the Kurdistan Region, and interviewed over a hundred detainees, comprising men, women and children, during the first six months of the year 2015 “This is a sign that the Kurdistan Regional Government willingly welcomes international organizations to witness the conditions of the detainees.”

According to Iraqi Penal Code, 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 Iraqi Code of Criminal Procedures no (23), 1971.

Furthermore, the KRG Ministry of Interior does not have the authority to arrest or release anyone without a court order. According to article (19), paragraph 12/1 of the Iraqi Constitution, internal arrest is forbidden and the power of arrest is only that of the judge.

The Ministry of Interior holds authority over the pre-trial detention and holding facilities, whilst the Ministry of Labour and Social Affairs MOLSA are responsible for the prisons and rehabilitation centers and post-convictions. Under the custody of the Asayish, the detainee can be held for duration of 24 hours or 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 may be extended on orders from the judge.

Post-trial, once the detainee receives their conviction from the court; they will be put in the custody of the Ministry of Labour and Social Affairs (MOLSA) in order to receive their prison sentences according to the crime committed. The Ministry of Labour and Social Affairs emphasize that despite the crime committed, torture or physical punishment is not permitted as it goes against the Iraqi Constitution, Article 333 of the Penal Code that prohibits torture of prisoners.

Therefore, if the detainee during the investigation period or whilst convicted and imprisoned has physical punishment or torture inflicted upon them, then they have the right

to file a complaint against the officer(s), as per the Iraqi federal constitution, which gives the right to the court, under Article 19/3.

Accusations made against officers regarding torture and misconduct cannot be disclosed to the public unless the accusation goes through formal hearing first and a formal conviction is given (Iraqi Penal Code, Article 1/23, 1971). Should there be a witness to the accusation of torture and ill treatment, then the court will take a formal statement from the witnesses and will investigate further and provide the report to the jury. Medical investigation reports on the alleged torture will also be taken into consideration during the investigation process.

In early 2015, 520 Asayish prison staff and officers have received training on inmate rights organized by JNP to address the rights of prisoners, the laws against torture and freedom to report ill treatment. Where a detainee or prisoner makes an allegation against an Asayish officer, a dedicated investigative committee is set up which typically include collaborative efforts from independent judges, investigation officers and the Asayish to follow up.

The detention facilities under Asayish management are principally used to hold detainees suspected of security and terror-related offenses, as well as committing 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. Following conviction, the detainee will leave the custody of the Asayish and be transferred to the prison facilities, administered by the Ministry of Labour and Social Affairs, in order to serve their prison sentence.

CONDITIONS OF DETENTION FACILITIES AND DUE PROCESS

The Asayish have representatives of judges and investigation officers who collect prisoner statements and evidence about the allegation from the detainees themselves. The investigative judge sends an independent representative from the court of investigation to the Asayish holding facilities to carry out the investigation along with the Asayish. Kurdistan Region major governorates of Duhok, Erbil and Sulaymaniyah, the adult as well as teenagers prisons and rehabilitation centers administered by the Ministry of Labour and Social Affairs are equipped with the necessary facilities to accommodate the detainees' well-being and social needs. The prisons in Duhok and Sulaymaniyah are both well-equipped newly built dedicated centers that meet the international standards with all the necessary health and social care facilities for the detainees. Similarly, a new built detention centre in Erbil has recently been established (April, 2015) and is due to formally receive prisoners under Asayish custody.

OVERCROWDING IN PRISONS AND HOLDING FACILITIES

A new built prison has been established in Erbil, the grounds measures 125 x 91 meters squared which makes 2 buildings including a communal garden and visiting halls. The first building of this prison encompasses of administrative offices on the first floor wherein

documents are held and processed. The second floor holds 10 service rooms for healthcare, kitchen and dining, library and educational facilities as well as fitness and recreational facilities. In total, the prison consists of 92 prisoner halls and 10 specially assigned rooms which can house up to 900-1000 prisoners.

In the second building, the first floor is dedicated to 16 prison halls, each fully equip with bathroom facilities, air conditioning, central heating and CCTV monitoring systems in place. The second floor contains a kitchen and a staff and officer lounge.

TORTURE AND PHYSICAL PUNISHMENT

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, the Ministry of Labour and Social Affairs (MOLSA) prohibits the use of torture by officers and is 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 disciplinary punishment only to deter and reform detainees who do not abide by the rules and regulations of the prison.

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 for the crime committed. Therefore, officers accused to be mistreating prisoners will be held accountable and action will be taken to follow up on their misconduct in the court of law.

It is the duty of the Ministry of Interior to ensure that the Asayish protects the people including young detainees 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 prisoners allegations on mistreatment accordingly.

REPORTED CASES TO DATE

The Ministry of Interior set up the Kurdistan Region Independent Board on Human Rights Committee to follow up on allegations that were made by 7 convicts who claimed to have endured torture and mistreatment in prison (legal order 1368, 8th July 2014).

The committee for this legal order comprised of representatives from the Erbil governorate Asayish (No:1659, 20th August 2014), Ministry of Labour and Social Affairs informs that this investigation is ongoing.

Furthermore, the Ministry of Labour and Social Affairs (No: 13689, 8th July 2014), has requested an additional court order to investigate allegations made against several police officers regarding reports of mistreatment of detainees under Asayish custody. For the years of 2015 and 2016 there were no reported cases regarding these issues.

However, the KRG has recorded record keeping of attempted suicide cases that have not been reported up to date. In the cases of terrorism, there are no limits and boundaries of jurisdictions to be held accountable, for the limits of law and based on Iraqi penal code 111 of 1969, they have been held. On the grounds of access to family and legal representatives, after the end of any pre legal investigation, detainees are afforded legal rights and grounds to due process in the custody and care of family and any legal administrators not limited to phone calls and i.e., that are legally necessary.