



HUMAN RIGHTS  
Office of the High Commissioner  
for Human Rights



UNITED NATIONS Assistance  
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# Report on the Death Penalty in Iraq

UNAMI/OHCHR

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# **Report on the Death Penalty in Iraq**

**UNAMI HUMAN RIGHTS OFFICE  
and  
OFFICE OF THE HIGH COMMISSIONER FOR HUMAN  
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## 1. Introduction

This report on the death penalty in Iraq is published jointly by the Human Rights Office of the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

The first section of this report outlines the international human rights standards on the use of the death penalty. The subsequent sections examine the domestic legal framework for the use of the death penalty in Iraq, judicial proceedings in death penalty cases, the implementation of the death penalty since 2004, and the justifications put forward by the Government of Iraq for its continued use. The report concludes with a set of recommendations to the Iraqi authorities, the Government of Kurdistan Region and the international community.

The death penalty was re-introduced by the Government of Iraq in 2004 after it was suspended by the Coalition Provisional Authority (CPA) in 2003. Executions resumed in 2005. According to Mr. Hassan al Shemmari, Iraq's then Minister of Justice, 690 executions have since been carried out.<sup>1</sup> Iraq is now the third most frequent user of the death penalty.<sup>2</sup>

Under Iraqi law, which remains largely unreformed since the time of Saddam Hussein, the death penalty applies a large number of crimes – not all of which involve the wilful taking of life. These crimes range from crimes against the internal and external security and State institutions, acts of terrorism to kidnapping, rape, drug trafficking where death results, prostitution, and “aggravated” murder. Since the re-introduction of the death penalty, nearly all cases to which it applied relate to conviction for crimes under the Anti-Terrorism Law<sup>3</sup> and the Iraqi Penal Code (IPC).<sup>4</sup>

Executions have been carried out in increasingly large numbers every year since 2005 – the exception being 2008, when no official executions were implemented. Since 2009, Iraq has suffered from spiralling violence perpetrated largely by terrorist and insurgent groups.

The Government has consistently stated that the death penalty is required because of the ‘extraordinary security situation’, and serves as a deterrent to acts of terrorism. It further considers that it is justified by the need to provide justice to the scores of victims of armed violence and terrorism. Finally, the Government claims that it is demanded by the ‘traditional values of Islam’, and that its use is supported by the majority of Iraqi people. However, despite these claims, the frequent use of the death penalty has not contributed to ending violence, nor has it served to provide justice for victims.

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<sup>1</sup> ‘690 executions in Iraq since 2004, Justice Minister’, Iraq Trade Link News Agency, 2 April 2014, available online <<http://www.iraqtradelinknews.com/2014/04/690-executions-in-iraq-since-2003.html>> accessed 8 April 2014. According to UNAMI monitoring, Iraq has implemented 675 executions from the resumption of death sentences in 2005 until 31 August 2014.

<sup>2</sup> Amnesty International (AI) ‘Death sentences and executions around the world in 2013’, available online <<http://www.amnesty.org.uk/death-penalty-2013-report-use-statistics-executions#.U0PkRI72-c8>> accessed 8 April 2014.

<sup>3</sup> Anti Terrorism Law no.13 of 2005.

<sup>4</sup> Iraqi Penal Code (IPC) no. 111 of 1969. By CPA *Order No. 7* of 10 June 2003, section 2: “Without prejudice to the continuing review of Iraqi laws, the Third Edition of the 1969 Iraqi Penal Code with amendments, registered in Baghdad on the fifth day of Jumada I 1389 or the nineteenth day of July 1969, shall apply, with the exception that i) Part Two, Chapter Two, Paragraph 200, and ii) Part Two, Chapter Three, Section One, Paragraph 225 are hereby suspended.”

The criminal justice system in Iraq remains weak. United Nations Assistance Mission in Iraq (UNAMI) monitoring has revealed a consistent failure to respect due process and fair trial standards, as required under Iraq international human rights obligations and the provisions of the Constitution of Iraq.

Of main concern are lack of resources, training, and forensic capacity of police and law enforcement officials to gather impartial and reliable evidence of sufficient standard to identify alleged perpetrators, to warrant charges, or to secure conviction before the courts. Lengthy pre-trial detention, particularly in relation to the Anti-Terrorism Law, which permits law enforcement officials to detain persons suspected of involvement in terrorism crimes without charge or trial for extended periods, is also a serious violation.

Other concerns include: interrogation of accused persons without the presence of a lawyer; the use of torture to induce confessions; the reliance by the Courts on confessions of the accused or the untested evidence of secret informants as the sole evidence on which convictions are founded; lack of opportunity for accused persons to prepare and present an adequate defence; and corruption by officials involved in the administration of justice. Many such cases have resulted in the handing down of death sentences. Although Iraqi law provides for an automatic appeals process in death penalty cases – including appeal to the Court of Cassation and the requirement of a final decree by the President of the Republic sanctioning the implementation of the penalty in individual cases – once death sentences are handed down by the court at first instance, they are almost never overturned on appeal, and clemency is rarely granted. The Constitution of Iraq<sup>5</sup> prohibits the granting of clemency or pardon for terrorism crimes.

UNAMI and OHCHR remain deeply concerned about the use of the death penalty in Iraq. The Secretary-General of the United Nations, his successive representatives in Iraq and the High Commissioner for Human Rights have consistently called on the Government of Iraq to become party to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty<sup>6</sup> and, in the meantime, to comply with United Nations General Assembly resolutions 62/149 (2007), 63/168 (2009), 65/205 (2010) and 67/176 (2012) by establishing an immediate moratorium on the use of the death penalty, and “to reduce the number of offences for which the death penalty may be imposed”.

## 2. International human rights standards on the use of the death penalty

Several international and regional human rights instruments prohibit the use of capital punishment or encourage its abolition and/or strictly limit its application. In particular, the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aiming at the abolition of the death penalty, states that *no one within the jurisdiction of a State Party to the present Protocol shall be executed*.

Article 3 of the Universal Declaration of Human Rights guarantees the right to life, while article 5 categorically states that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.<sup>7</sup> Many eminent jurists express the view that the use of the death penalty

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<sup>5</sup> Art. 75 (1) Constitution of the Republic of Iraq <[https://www.usip.org/ruleoflaw/projects/unami\\_iraq\\_constitution.pdf](https://www.usip.org/ruleoflaw/projects/unami_iraq_constitution.pdf)>.

<sup>6</sup> United Nations General Assembly (UNGA) res. 44/128, annex, 44 UN GAOR Supp. (No. 49) at 207, UN Doc. A/44/49 (1989), entered into force July 11, 1991; 1642 UNTS 414.

<sup>7</sup> Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III).



inherently violates these provisions. In countries that have not abolished the death penalty, international human rights law requires as a minimum full compliance with the clear restrictions prescribed in particular in article 6 of ICCPR (to which Iraq is a State party since 1971).<sup>8</sup> According to this provision, its application shall be limited to the “*most serious crimes*.” In accordance with opinions of the Human Rights Committee, this term has been interpreted to mean that the death penalty should only be applied to the crime of intentional killing.<sup>9</sup>

The Human Rights Committee has also concluded that mandatory death penalty is not compatible with the limitation of capital punishment to the “most serious crimes”. According to the Committee, a mandatory sentence fails to take into account the defendant’s personal circumstances and the circumstances of the offence.<sup>10</sup>

Both ICCPR and the Convention on the Rights of the Child (CRC)<sup>11</sup> prohibit the imposition of the death penalty for crimes committed by persons when they were under 18 years of age.<sup>12</sup> In many instances, the lack of birth registration and difficulties in determining the age of children have resulted in violation of this explicit prohibition of the death penalty for persons under 18 at the time of offence. The Special Representative of the Secretary-General on Violence against Children recommended that, where it is not possible to conclusively determine the age of the child at the time of offence, she or he should be presumed to be below 18. All these cases should be reviewed to ensure full conformity with international human rights norms and standards.<sup>13</sup>

ICCPR requires that anyone sentenced to death has the right to seek clemency or pardon or commutation of the sentence.<sup>14</sup>

In accordance with article 6 of ICCPR, the imposition of the death penalty should not be contrary to other provisions of the Covenant. Accordingly, due process and fair trial standards that are provided by article 14 of ICCPR should also be strictly adhered to in all death penalty cases.<sup>15</sup> This article provides for, inter alia, the right to be informed of the charges; the presumption of innocence; the right to mount a proper defence; the right to examine or cross examine witnesses; and the right not to be compelled to testify against oneself or to confess guilt.<sup>16</sup> Those accused of capital offences must be assisted effectively by a lawyer at all stages of the proceedings. Furthermore, executions should not take place when an appeal or other recourse is pending. According to the jurisprudence of the United Nations Human Rights Committee and other international human rights instruments, the application and use of the death penalty in cases where the rights enumerated under articles 9 and/or 14 of ICCPR have not been respected constitutes a

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<sup>8</sup> *International Covenant on Civil and Political Rights* 999 UNTS 171, art. 6, para. 4. Iraq ratified ICCPR on 25 January 1971. Iraq is not a State party to the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty* 1642 UNTS 414.

<sup>9</sup> Human Rights Committee, *General Comment No. 6: Article 6 (Right to life)*, Sixteenth session (1982), paras 6-7.

<sup>10</sup> For instance, see *Rolando v. Philippines* CCPR/C/82/D/1110/2002).

<sup>11</sup> Iraq acceded to the Convention on the Rights of the Child on 15 June 1994.

<sup>12</sup> ICCPR, art. 6, para. 5; Convention on the Rights of the Child (CRC) 1577 UNTS 3, art. 37, para (a); Committee on the rights of the child, *General Comment No. 10: Children’s rights in juvenile justice*, Forty-four session (2007), para. 75.

<sup>13</sup> A/HRC/24/18, paragraph 65

<sup>14</sup> ICCPR, art. 6, para. 4.

<sup>15</sup> On arts 6 and 14 of ICCPR and states of emergency, see Human Rights Committee, *General Comment No. 29, Article 4: Derogations during a state of emergency*, Seventy-second session (2001), paras 15-16.

<sup>16</sup> ICCPR, art. 14, paras.2, 3(b), 3(e) and 3(g), respectively.

violation of the right to life as guaranteed by article 3 of the Universal Declaration of Human Rights and article 6 of ICCPR.<sup>17</sup>

Furthermore, article 2 of ICCPR states that each State Party to the Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This provision of non-discrimination must be respected and ensured to all, including those facing the death penalty.

Additionally, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Iraq is a State party<sup>18</sup> provides that the prohibition of torture is absolute and any statement or confession established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.<sup>19</sup> No exceptional circumstances whatsoever may be invoked as a justification of torture, whether that be a threat of terrorist acts, violent crime or armed conflict.<sup>20</sup> All allegations of torture must be promptly and impartially investigated by competent authorities.<sup>21</sup> Articles 7 of ICCPR, and article 4 of the Universal Declaration of Human Rights also prohibit torture.

Furthermore, given the generally lengthy legal processes and delays between the passing of a death sentence at first instance and execution, in addition to other factors prisoners faced while on death row, and the methods of implementing the sentence, many international bodies and commentators have concluded that the use of the death penalty constitutes cruel, inhuman or degrading treatment or punishment that violates CAT and article 7 of ICCPR. In accordance with ICCPR, the United Nations Human Rights Committee has also addressed this issue, known as “death row phenomenon”, in numerous cases. In one such case<sup>22</sup> the Committee considered (1) the state’s role in the delay, (2) the conditions endured on death row, and (3) the mental deterioration suffered on death row. In view of these factors working in concert, the Committee found violations of Articles 7 and 10 of ICCPR, “accepting the ‘death row phenomenon’ as cruel and inhuman punishment under international law.”

Furthermore, in practice, executions often violate article 7 of ICCPR on the prohibition of cruel, inhuman or degrading treatment or punishment, because the methods used for execution involve

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<sup>17</sup> Human Rights Committee, *General Comment No. 32: Right to equality before courts and tribunals and to a fair trial*, Ninetieth session (2007), para. 59. On fair trial standards, see also: *Basic Principles on the Independence of the Judiciary* adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985; *Basic Principles on the Role of Lawyers* adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; *Guidelines on the Role of Prosecutors* adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>18</sup> Iraq acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 July 2011

<sup>19</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1465 UNTS 85, arts. 2.2 and 15, respectively. Iraq acceded to the CAT on 7 July 2011. See also ICCPR art. 7.

<sup>20</sup> CAT, art. 2, para. 2. Committee against Torture, *General Comment No. 2, Implementation of Article 2 by States parties*, Thirty-ninth session (2007), para. 5.

<sup>21</sup> CAT, art. 13.

<sup>22</sup> See *Francis v. Jamaica* (No. 606/1994, UN Doc. CCPR/C/54/D/606/1994 (1995).

unnecessary suffering and indignity, or because of the inhumane conditions suffered by death row inmates, such as solitary confinement, often for protracted periods, and through executions carried out without prior notice before the day of execution, as well as in instances of executions in public places.

Detailed safeguards concerning the rights of those facing the death penalty have been adopted by United Nations intergovernmental bodies,<sup>23</sup> the use of which is monitored by the Secretary General of the United Nations<sup>24</sup> and the Special Rapporteur on extra-judicial, summary or arbitrary executions. States must ensure that these guarantees are respected in relation to all cases involving the death penalty, irrespective of whether the State is undertaking actions to counter terrorism or/and an insurgency within its borders.<sup>25</sup>

An increasing majority of States favour abolition of the death penalty<sup>26</sup> and, even among many of those that still retain it there have been some noticeable steps towards limiting its use.<sup>27</sup> In fact, the drafters of ICCPR readily recognised the move towards the abolition of the death penalty. The last paragraph of article 6 of ICCPR provides that “*nothing in this article shall be invoked to delay or prevent the abolition of capital punishment in any State party to the Covenant*”. This culminated in the adoption of the Second Optional Protocol to ICCPR (to-date ratified by 81 States).

Since 2007, the United Nations General Assembly has adopted a series of resolutions calling on States that retain the death penalty to “establish a moratorium on executions with a view to abolishing the death penalty”.<sup>28</sup> The most recent of these resolutions was adopted in 2012 by 111 votes in favour to 41 against, with 34 abstentions.<sup>29</sup>

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<sup>23</sup> Economic and Social Council resolution 1984/50 of 25 May 1984 on *Safeguards guaranteeing protection of the rights of those facing the death penalty*; Economic and Social Council resolution 1989/64 of 24 May 1989 on *Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*.

<sup>24</sup> The Economic and Social Council, by its resolution 1745 (LIV) of 16 May 1973, invited the Secretary-General to submit to it, at five-year intervals starting from 1975, periodic updated and analytical reports on capital punishment. The Council, by its resolution 1995/57 of 28 July 1995, recommended that the quinquennial reports of the Secretary-General should continue to cover also the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty. Furthermore, in its decision 18/117, the Human Rights Council requested the Secretary General to submit supplementary annual reports.

<sup>25</sup> UNGA res. 60/158, *Protection of human rights and fundamental freedoms while countering terrorism*, 16 December 2005, para.1; UNGA res. 60/288, *The United Nations Global Counter-Terrorism Strategy*, 8 September 2006, Annex. Plan of Action, para. 3; UNGA res. 66/171, *Protection of human rights and fundamental freedoms while countering terrorism*, 19 December 2011, para. 6. In 2005 the then Commission on Human Rights appointed a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Commission on Human Rights res. 2005/80, 21 April 2005, para. 14). Its mandate was assumed by the Human Rights Council (HRC) (HRC res. 60/251, 15 March 2006, para. 6) and most recently extended for three years (HRC res. 22/8, 21 March 2013, para. 1).

<sup>26</sup> United Nations Secretary-General, *Report on Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, E/2010/10, 18 December 2009, para. 139. For a series of recent international and regional initiatives towards abolition of the death penalty, see United Nations Secretary-General, *Moratorium on the use of the death penalty*, A/67/266, 3 August 2012, paras. 48-66.

<sup>27</sup> United Nations Secretary-General, *Moratorium on the use of the death penalty*, A/67/266, 3 August 2012, para. 68.

<sup>28</sup> United Nations General Assembly resolution 62/149, *Moratorium on the use of the death penalty*, 18 December 2007; United Nations General Assembly resolution 63/168, *Moratorium on the use of the death penalty*, 18 December 2008; United Nations General Assembly resolution 65/206, *Moratorium on the use of the death penalty*, 21 December 2010 and United Nations General Assembly resolution 67/176, *Moratorium on the use of the death penalty*, 20 December 2012. The General Assembly had already expressed the desirability of abolishing capital punishment in all

Currently, more than 160 of the 193 Member States of the United Nations have either abolished the death penalty or do not practise it.<sup>30</sup> An increasingly large number of States from all regions have acknowledged that the death penalty undermines human dignity, and that its abolition contributes to the enhancement and progressive development of human rights. There is no right more sacred than the right to life. The taking of life is too absolute, too irreversible for any human being to inflict it on another.

### 3. Domestic legal framework on the death penalty

#### (a) Historical background to the death penalty in Iraq

Between 1979 and 2003, the death penalty was applicable to a wide range of crimes,<sup>31</sup> mostly under IPC as amended, but also for a range of security crimes and crimes against the State and even for prostitution under Revolutionary Command Council (RCC) orders.<sup>32</sup>

In June 2003, the Coalition Provisional Authority (CPA) promulgated Order No.7,<sup>33</sup> which provided for the continued application of the third edition of IPC to govern criminal matters in Iraq.<sup>34</sup> This edition of the penal code included all amendments, including those adopted by the then RCC until the beginning of 1985.<sup>35</sup> However, article 3 of the Order suspended the application of the death penalty, substituting it with life imprisonment or other lesser penalties as prescribed by IPC.

Later in 2003, CPA promulgated Order No. 31.<sup>36</sup> It set the maximum sentences applicable upon conviction for specific crimes, such as kidnapping, rape; theft; damage to public utilities and oil infrastructure; and use of force to commit theft of a means of transportation, to life imprisonment. These crimes had formerly been punishable by death. Furthermore, subsequent CPA Memorandum No. 3<sup>37</sup> issued in 2004 suspended the relevant sections of the Iraqi Criminal

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countries in the past. See for instance United Nations General Assembly resolution 2857(XXVI), *Capital punishment*, 20 December 1971, para. 3.

<sup>29</sup> UNGA doc. A/67/PV.60, 20 December 2012, pp. 16-17.

<sup>30</sup> A/697288

<sup>31</sup> For an overview of the legal framework related to the death penalty and the progressive increase of the list of crimes carrying the death penalty from 1968 onwards, see Amnesty International, *Unjust and unfair: The death penalty in Iraq*, April 2007, pp. 5-7, available online <<http://www.amnesty.org/en/library/asset/MDE14/014/2007/en/c4fa1b67-d3a6-11dd-a329-2f46302a8cc6/mde140142007en.html>>.

<sup>32</sup> The Iraqi Revolutionary Command Council was established after the military coup in 1968, and was the ultimate decision making body in Iraq before the 2003.

<sup>33</sup> CPA, *Order No. 7* of 9 June 2003 (Penal Code)

<sup>34</sup> CPA, *Order No. 7*, article 1.

<sup>35</sup> While this suggested that Iraqi Penal Code as it existed at the beginning of 1985 was in force (including any amendments made up to that date) the CPA Order did not clarify whether other rules and regulations, particularly those of the Revolutionary Council Command, continued in force.

<sup>36</sup> CPA, *Order No. 31* of 10 September 2003 (Modifications of Penal Code and Criminal Proceedings Law)

<sup>37</sup> CPA, *Memorandum No. 3* (Criminal Procedures) of 27 June 2004, (which further implemented CPA Order no. 7 of 9 June 2003), section 3 (d)(ix) suspended articles 285-293 of the Iraqi Criminal Procedure Code no. 23 of 1971 (CPC)

Procedure Code (ICPC)<sup>38</sup> that had prescribed the process and method of the use of the death penalty.<sup>39</sup>

The Constitution of Iraq, adopted by referendum on 15 October 2005, did not outlaw or prohibit the death penalty. While article 15 guarantees the right to life, it permits deprivation or limitation of the right if it is “in accordance with the law and based on a decision issued by a competent judicial authority.”

### **(b) Reintroduction of the death penalty and offences to which the death penalty applies**

The death penalty was reintroduced in 2004 and executions resumed in 2005. The laws reintroducing the death penalty and its implementation, and the laws that carry offences for which the death penalty can be imposed, are described below:

#### *(i) The Iraqi Penal Code*

Following the dissolution of the CPA and the Iraqi Governing Council, and the institution of the Iraqi Interim Government (IIG), on 28 April 2004, the latter issued Order No. 3<sup>40</sup> that reintroduced the death penalty for a wide range of crimes under IPC,<sup>41</sup> including premeditated and aggravated murder.<sup>42</sup> Other crimes that do not meet the threshold of “most serious crimes”, but are included in IPC, are those compromising the internal security of the State,<sup>43</sup> any crime that constitutes a public danger or the use of bacteriological materials<sup>44</sup>, and crimes relating to attacks on transport and telecommunication systems.<sup>45</sup> Order No. 3 also allow for the death penalty for crimes for which it had not been foreseen, including that of abduction under IPC,<sup>46</sup> and for trafficking in narcotics,<sup>47</sup> including where such activity was carried out to fund or abet activities using force or violence aimed at overthrowing the State or where casualties resulted.<sup>48</sup>

While IIG Order no. 3 specifically revoked CPA Order no. 7 of 2003, it did not clarify whether other crimes that had been punishable by death and that remained on the statute books would thereby be subject to death sentences - such as security crimes, slandering public officials, prostitution, and crimes against the State that were punishable by death under RCC orders.<sup>49</sup>

<sup>38</sup> Iraqi Criminal Procedure Code No. 23 of 1971.

<sup>39</sup> CPA, *Order No. 7*, Section 3(1), 10 June 2003. CPA, *Memorandum No. 3*, Section 4(m), suspended Articles 285-293 of ICPC relative to the implementation of the death penalty. All CPA official documents are available online <<http://www.iraqcoalition.org/regulations/>>.

<sup>40</sup> IIG, *Order no. 3* on 8 August 2004

<sup>41</sup> IIG, *Order no. 3* of 8 August 2004, published in the Official Gazette, issue 3987 of September 2004, arts 1-3. At least one of the crimes carrying the death penalty according to IIG Order no. 3, abduction (article 3), did not entail it before 2003, unless accompanied by rape or killing.

<sup>42</sup> IPC, art. 406

<sup>43</sup> IPC, arts 190, 191, 192 (iii), 193, 194, 195, 196 and art. 197, paras i and ii.

<sup>44</sup> IPC, arts 349 and 351 (i)

<sup>45</sup> IPC, arts 354 and 355

<sup>46</sup> IPC, arts 421, 422 and 423

<sup>47</sup> As defined by the Narcotics Act No. 68 of 1965, art. 14.

<sup>48</sup> As provided for in art. 190 of the IPC which states: “Any person who attempts to overthrow by force or with the use of violence the constitutionally appointed Republican regime or change the constitution of the State or the formation of the government is punishable by life imprisonment or imprisonment for a term of years. If the offence is committed by a group using bombs, dynamite or other explosives or firearms, the penalty will be death or life imprisonment. The penalty will be death if the offence results in any fatalities.”

<sup>49</sup> Such as RCC Order 1386 of 1985, RCC Order 155 of 1993, and RCC Order 234 of 2001 (raising the penalty for prostitution from 7 years imprisonment to death).

However, Order No. 3 automatically commuted to life imprisonment those death sentences that had been handed down prior to its adoption.<sup>50</sup>

Of most concern is article 136 (1) of IPC, which permits the substitution for a death sentence by the Court where the law sanctions a penalty of life imprisonment and where there were “aggravating circumstances” in the committal of the crime such as defined in article 135 of IPC. This article provides latitude to the Court to determine, according to its own interpretation, whether those aggravating circumstances exist and results in arbitrary application of the death penalty depending on how the presiding judge views the facts of the case.

(ii) *Procedures for the implementation of death sentences under the Penal Code*

It should be noted that IIG Order No. 3 did not revive articles 285-293 of ICPC that had laid down the procedures to be followed in order to implement death sentences and which had been revoked by CPA Order no. 7 of 9 June 2003 (see below). The IIG Order No. 3 merely revived and amended article 285-B of ICPC, which henceforth stated that the death penalty shall be implemented after its approval by the Prime Minister and confirmation by the Presidency Council.<sup>51</sup>

Amendment Law No. 13 of 2007<sup>52</sup> specifically reinstated articles 285-293 of ICPC, but purported to do so retrospectively from 8 August 2004, the date on which the IIG Order No. 3 of 2004 reinstating the death penalty was promulgated. It thus appears that, between the re-instatement of the death penalty on 8 August 2004 by IIG Order No. 3 and the coming into effect of Law No. 13 of 2007, there was no lawfully prescribed means of implementing death sentences. Thus, any execution carried out during this period may have been unlawful.<sup>53</sup>

(iii) *Statute of the Iraqi High Criminal Tribunal and the death penalty*

Additional crimes for which the death penalty could be imposed were those provided for in the Statute of the Iraqi High Criminal Tribunal (IHCT):<sup>54</sup> genocide (Article 11), crimes against humanity (Article 12), war crimes and other crimes (Article 13), and other crimes (listed under Article 14) which were committed between 17 July 1968 and 1 May 2003.<sup>55</sup> In such cases, the possibility of granting pardon is excluded (article 27.2). Such a provision may amount to a violation of article 6(4) of ICCPR.<sup>56</sup> The operation of the IHCT was suspended by order of the Council of Ministers in April 2012.

<sup>50</sup> IIG, *Order No. 3* of 8 August 2004, art. 7.

<sup>51</sup> IIG, *Order No. 3* of 8 August 2004, art. 6: “As an exception from the provision of Article 285 (b) of the CPC no. 23 of 1971 and article 286 thereof, the death penalty will be implemented only after being approved by the Prime Minister and confirmed by the Presidential Council.”

<sup>52</sup> Amendment (Criminal Procedure Code No. 23 of 1971) Law No. 13 of 2007, published in the Official Gazette, issue 4039 of 18 April 2007.

<sup>53</sup> ICCPR, art. 6, paragraph 2 provides that a death sentence may only be imposed “...for the most serious crimes in accordance with the law in force at the time of the commission of the crime...” (emphasis added). There is a strong presumption against the retroactive application of law – and a law which purports to correct a ‘deficiency’ in the law by retroactive application of a later law in no way negates the fact that at the time these executions were carried out there were no provisions on how they were to be implemented.

<sup>54</sup> The Iraqi Supreme Criminal Tribunal Law No. 10 of 2005 published in the Official Gazette No. 4006 of 18 October 2005, also renamed the Tribunal. The IHCT was suspended by a decree of the Council of Ministers in April 2012.

<sup>55</sup> Anti-Terrorism Law No. 13 of 2005.

<sup>56</sup> ICCPR art. 6(4): “[a]nyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases”.

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(iv) *Anti-Terrorism Law and the death penalty*

The Anti-Terrorism Law of 2005 mandatorily applies the death penalty to those convicted of committing or threatening to commit acts of terrorism, including those who incite, plan, aid or abet (before or after the fact), or finance such acts either as principals or as accomplices.<sup>57</sup> The Law contains a broad definition of terrorism that is susceptible to wide interpretation:

“Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.”<sup>58</sup>

Article 2 prescribes acts that fall within the definition and Article 3 prescribes crimes against state security, which are also classed as acts of terrorism under the law. Among the broad range of activities defined as terrorist acts, many do not meet the threshold of “most serious crimes”, under international human rights law, including the use of violence or threats to expose civilians’ lives to danger; acts causing damage to or destruction of public buildings; participation or membership in a “terrorist gang” that carries out or plans to carry out acts of terrorism; encouraging or inciting citizens to commit insurrection or arming civilians to carry out such acts; kidnapping for financial gain as a means of promoting or inciting terrorism, etc.

(v) *Military Code*

The death penalty is also provided for by the Military Penal Code of 2007<sup>59</sup> and covers military personnel in times of war and general mobilisations. Offences carrying the death penalty are listed in Articles 27 and 28 – and include offences relating to failure of personnel to perform their duty in the circumstances leading to the surrender of themselves or other members of the armed forces and surrender of military installations and military objects or territory; passing of secret documentation or information to hostile powers during peace or wartime; inciting revolt, desertion, or defection of members of the armed forces to the enemy; inciting insubordination or disobedience among other members of the armed forces; disclosing military operations and military secrets to the enemy; spreading panic within the armed forces through misinformation; and communicating secretly with enemy forces, etc.

(vi) *Iraqi Internal Security Forces Penal Code*

The Iraqi Internal Security Forces Penal Code of 2008<sup>60</sup> carries the death penalty for a range of offences listed in articles 3 and 14, including causing public installations to be surrendered to the enemy; disclosing official or State secrets related to the security of the State; intentionally sabotaging or damaging public or military installations or infrastructure; inciting anyone to join an armed gang or take up arms against the State; encouraging or inciting rebellion among the armed forces during disturbances or emergencies; disclosing secrets to an armed gang; and the intentional destruction or damage of communications, transport weapons or ammunition. Article

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<sup>57</sup> Anti Terrorism Law No. 13 of 2005, arts. 2-4. Article 4 (1): Any one who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator.

<sup>58</sup> Anti Terrorism Law No. 13 of 2005, art. 1.

<sup>59</sup> Military Penal Code No. 19 of 2007, arts 28-29, 35.1, 43.3, 61.7.

<sup>60</sup> Internal Security Forces Penal Code No. 14 of 2008, arts 3 (1), A-G, 14.2.

14 also imposes the death penalty where a member of the armed forces assaults another member of the armed forces that results in the death of the victim.

(vii) *Trafficking Law*

The Trafficking in Persons Law of 2012 imposes the death penalty for the perpetrator of human trafficking, if the act contributed to the death of the victim.<sup>61</sup>

(viii) *Narcotics Control Law*

Article 14 of the of the Narcotics Control Law of 1965<sup>62</sup> imposes the death penalty where trafficking of narcotics was carried out to fund or abet activities that use force or violence aimed at the overthrow of the State or terrorist acts where casualties result.

**(d) Prohibition of the use of the death penalty against minors and pregnant women**

IPC prohibits the imposition of death penalty for crimes committed when the defendant was a minor or was between the ages of 18 and 21 years.<sup>63</sup> IPC also prohibits the death penalty from being carried out on pregnant women and within four months of giving birth. In such cases the President of the Republic, on the advice of the Prime Minister, has the authority to commute the death sentence to life imprisonment.<sup>64</sup>

**(e) Reform initiatives**

The Iraqi National Action Plan on Human Rights, adopted by the Council of Ministers on 27 September 2011, includes plans on ‘*Reducing the death penalty causes in various legislations*’ and on ‘*Amending Anti-Terrorism Law to Guarantee the Protection of basic Rights and Judicial Control*’, which were to be implemented within a timeframe of 15 months. At time of writing, no steps had been taken to implement these plans. The General Amnesty Law of 2008, which came into force on 27 February 2008, did not include crimes carrying the death penalty.<sup>65</sup>

**(f) Use of the death penalty in Kurdistan**

The autonomous Kurdistan Region of Iraq (KR-I) re-introduced capital punishment in 2006.<sup>66</sup> The KR-I also adopted its own anti-terrorism law,<sup>67</sup> which contains a vague definition of terrorism (article 1) and lists eight offences that carry the death penalty (article 2).

Discussions on a bill to formally abolish the death penalty were initiated in the Kurdistan Region Parliament in 2010,<sup>68</sup> but no bill has yet been submitted.

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<sup>61</sup> Trafficking in Persons Law No. 28 of 2012, art. 8.

<sup>62</sup> Narcotics Control Law No. 68 of 1965.

<sup>63</sup> IPC, art. 79.

<sup>64</sup> CPC, art. 287/A.

<sup>65</sup> General Amnesty Law No. 19 of 2008. See UNAMI, *Human Rights Report: 1 July - 31 December 2008*, para. 74.

<sup>66</sup> Implementation of the death penalty was suspended by (KR-I) Law No. 22 of 2003, art. 11 of which also suspended a number of provisions of ICPC carrying the death penalty. It was then re-introduced by (KR-I) Law No. 6 of 2006, Law on Re-enforcing Articles of Part Two of the Criminal Procedure Code, art.1. See UNAMI, *Human Rights Report: 1 September - 31 October 2006*, para. 93.

<sup>67</sup> (KR-I) Anti-Terrorism Law No. 3 of 2006, which entered into force on 16 July 2006.

<sup>68</sup> UNAMI Human Rights Office (HRO)/OHCHR, *Report on Human Rights in Iraq: 2010 Report on Human Rights in Iraq*, January 2011, p. 30.



## 4. Judicial proceedings relating to the death penalty in Iraq

### a) Arrest and preliminary investigation

The Iraqi Constitution<sup>69</sup> and laws dealing with arrest, detention and trial generally reflect many rights guaranteed by international law; however, in practice the legal requirements are not always respected. According to article 15 of the Iraqi Constitution, ‘every individual has the right to enjoy life, security and liberty; deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority’. In addition, article 37 paragraph B states that ‘no person may be kept in custody or interrogated except in the context of a judicial decision’. Article 92 of the *Iraqi Criminal Procedure Code* (1971)<sup>70</sup> (ICPC) states that the ‘arrest or apprehension of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law.’

Public authorities with the power of arrest are the Iraqi Police and the Security forces, administrative and policy responsibility for which are split, depending on the force in question, between the Ministry of Interior (MoI), the Ministry of Defence (MoD) and the Prime Minister’s Office. These authorities consist of the Directorate of Counter Terrorism and Organised Crime under MoI, the Baghdad Operation Command and Counter Terrorism Unit (Prime Minister’s Office), Brigade 56 (‘Basra Brigade’ - which is responsible for security in the ‘Green Zone’ in Baghdad), and Brigade 54 (‘al-Muthanna Brigade’) which are administratively within the Department of Defence, but receive their policy direction from the Prime Minister’s Office. All these may arrest any person against whom a warrant has been issued by a judge or court or in other cases stipulated by law – the exception being authorities under the direction of the Prime Minister’s Office, who may arrest individuals prior to obtaining a warrant.<sup>71</sup>

Furthermore, according to article 103 of ICPC any police officer or court official may arrest any person a) against whom an arrest warrant has been issued by the competent authorities; b) carrying arms, whether openly or concealed, without lawful permission; c) on reasonable grounds that he or she deliberately committed a felony, or a misdemeanour and has no particular place of residence; or d) who impedes a member of the court or public official from carrying out his duty.

There is nothing in Iraqi law<sup>72</sup> that prescribes the procedures for carrying out arrests, nor are there any restrictions as to the time or place that arrests can be effected. There are no provisions specifically on procedures to be followed when arresting women.

There is no legal provision requiring that an arrest warrant be provided to the accused at the time of arrest, however, the accused should be informed of its existence at that time.<sup>73</sup>

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<sup>69</sup> Constitution of the Republic of Iraq <[https://www.usip.org/ruleoflaw/projects/unami\\_iraq\\_constitution.pdf](https://www.usip.org/ruleoflaw/projects/unami_iraq_constitution.pdf)>.

<sup>70</sup> Iraqi Criminal Procedure Code Law No. 23 (1971), The Iraqi Gazette No. 2004, 31.5.1971.

<sup>71</sup> Additionally, ICPC authorises any person to carry out an arrest without an order from the authorities, where: a) the offence was committed in front of witnesses or b) if the person has escaped after being lawfully arrested by the authorities; c) the person has been sentenced in his or her absence to a penalty restricting his or her freedom; or d) the person is found in a public place in a clear state of intoxication or confusion or has lost his or her reason: art 102, ICPC.

<sup>72</sup> The law governing the arrest and detention of individuals consist of ICPC as amended by the CPA *Memorandum No. 2* (2003).

<sup>73</sup> Where a warrant is issued, it should contain relevant information, including the full name of the accused, identity card details and physical description (if known) place of residence, profession and the type of offence to which the

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All arrests carried out under the *Anti-Terrorism Law* (2005)<sup>74</sup> are without warrant – warrants usually being issued by the judge post arrest.

Following arrest, persons are held at facilities administered by the detaining authority. For those detained by MoI, these are usually police detention facilities known as *tasfiraat*. According to article 19, paragraph 13 of ICPC, a preliminary investigation report must be submitted to the competent investigating judge within 24 hours from the time of arrest. According to the same law, this period can be extended only once for a further 24 hours. In practice however, it appears the period for initial referral is often extended to 72 hours. For all non-terrorist related crimes, the accused is then transferred to the competent investigation judge to initiate an inquiry.

Persons accused of terrorist crimes are often transferred to the Directorate of Counter Terrorism and Organised Crime, which is staffed with at least 20 investigating judges of the Central Criminal Court, each of whom is a counter-terrorist specialist as required by the *Anti-Terrorism Law* (2005).<sup>75</sup>

In relation to non-capital crimes, the total period of detention on remand should not exceed one quarter of the maximum sentence for the offence, and should not in any case exceed 6 months. If a period of more than 6 months is necessary the judge must seek permission from the criminal court, or order the release of the detainee with or without bail. However, if the person is accused of an offence punishable by death, as is the case with terrorism crimes, the accused can be held in remand for as long as is necessary for the investigation to proceed and until the investigating judge determines that charges should be laid and all legal proceedings are concluded. Defendants in terrorism cases are usually held on remand until the judicial proceedings in the case are finalised and sentence is implemented.<sup>76</sup>

The resources of the investigating judges are limited in relation to the demand. Monitoring by UNAMI of detention centres and prisons, has revealed that detainees can be held on remand for excessive periods beyond that permitted by law for initial investigations and trials to be completed. As noted, in capital cases detainees remain on remand until the conclusion of all legal

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warrant relates, the applicable legal provision and the date of the warrant. It should also have been properly signed and stamped by the court (arts 93 and 94 of ICPC).

<sup>74</sup> Anti-Terrorism Law No. 13 of 2005, <[http://www.vertic.org/media/National%20Legislation/Iraq/IQ\\_Anti-Terrorism\\_Law.pdf](http://www.vertic.org/media/National%20Legislation/Iraq/IQ_Anti-Terrorism_Law.pdf)>. In November 2011 the Council of Ministers approved a new *Anti Terrorism Bill*, which would replace the 2005 act. At time of Writing (August 2014) the Bill remained before the Council of Representatives. *Aswat al Iraq*, 'Gov't ratifies anti-terror law for country stability – official', 28 December 2011 <[http://en.aswataliraq.info/\(S\(q04pzn45a4fwlqamnavnbm45\)\)/Default1.aspx?page=article\\_page&id=146232&l=1](http://en.aswataliraq.info/(S(q04pzn45a4fwlqamnavnbm45))/Default1.aspx?page=article_page&id=146232&l=1)> .

<sup>75</sup> According to article 109 of ICPC, if a person is accused of an offence punishable by a period of detention not exceeding 3 years, by imprisonment for a fixed term of years or by life imprisonment, the judge may order that the accused be held for a period of no more than 15 days (which is extendable for further 15 day periods) or may release the accused on a pledge with or without bail from a guarantor, if the judge is satisfied that release of the accused will not lead to her or his escape and will not prejudice the investigation. In any event the total period of pre-trial detention should not exceed one quarter of the maximum sentence applicable for the crime, and should not exceed 6 months. If it is considered necessary to extend the period of pre-trial detention to a period of more than 6 months, the examining judge must submit the case to the criminal court to seek its authority for an appropriate extension, which then itself should not exceed one quarter of the maximum applicable sentence; otherwise the investigating judge or the criminal court should order the individual's release, with or without bail.

<sup>76</sup> Once the accused person is transferred to the competent court for investigation, the presiding judge is required to issue a detention order containing the full name of the accused, the relevant legal clause under which she or he is held, the date of the start of detention and the date of its expiry. This order should be signed by the issuing judge and then be stamped by the court: ICPC art. 113.

processes and sentence is carried out. UNAMI has interviewed detainees and prisoners who claimed that they had been held for up to six years in *tasfiraat* while waiting for preliminary investigations to be completed. Claims of delays of two to four years or more for investigating procedures and/or trials to be completed are commonly reported by detainees and prisoners – particularly for suspects held in relation to capital crimes, including terrorism-related charges.

#### **b) Right to a lawyer and to legal representation**

The Iraqi Constitution provides that arrested persons have the right to mount a defence, which is inviolable and guaranteed in all phases of investigation and trial.<sup>77</sup> Every person has the right to be treated with justice in judicial and administrative proceedings.<sup>78</sup> The Court shall delegate a lawyer at the expense of the State for a person accused of a felony or misdemeanour who is unrepresented.<sup>79</sup> All untried detainees are also permitted to apply for free legal aid where such aid is available, and to receive visits from his or her legal adviser.

Article 8(1) of the Coalition Provisional Authority (CPA) *Memorandum No. 3* (2003)<sup>80</sup> provides any person accused of a *felony* the right to access a lawyer while in detention during all stages of proceedings, including during preliminary investigation by the investigating judge and during trial. Interviews between detainees and their lawyers can be held within the sight, but not within the hearing, of a police or institutional official.<sup>81</sup> The Memorandum also provides for the right of silence for detainees.

Despite the constitutional guarantee of the right to defence during all stages of investigation and trial, and CPA *Memorandum No. 3* (2003) providing for the right of any person accused the right to access a lawyer while in detention, persons accused of terrorism charges can be held incommunicado for the duration of the investigation process and may have no access to lawyers at all in violations of international human rights norms.

Monitoring of detainees and prisoners by UNAMI has revealed that suspects arrested in relation to criminal charges (who are mostly held in *tasfiraat* or the Directorate of Counter Terrorism under the authority of MoI) are rarely informed by investigating judges of their right to remain silent or of their right to have a lawyer present during the investigation. UNAMI has received a large volume of allegations from detainees, prisoners and former detainees and prisoners, as well as members of their families, that torture of detainees following initial arrest and during the investigation proceedings is commonplace, aimed at inducing accused persons to make confessions in relation to the crimes for which they have been detained. Trial monitoring conducted by UNAMI outside of the Kurdistan Region, has also revealed that most defendants appear in court without a lawyer representing them, and while Courts will appoint lawyers to represent defendants during trials, adjournments of the proceedings are rarely granted to enable the defendants to converse with their lawyers or to prepare their case. Court appointed attorneys rarely intervene in the proceedings, except following sentencing to enter a plea for leniency.

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<sup>77</sup> Iraqi Constitution, art. 19(4).

<sup>78</sup> Iraqi Constitution, art. 19(6)

<sup>79</sup> Iraqi Constitution, art. 19(11)

<sup>80</sup> ICPC subsection B. Subsection B was added by CPA *Memorandum Number 3*, s. 4(c), signed 18 June 2003 - published in the Official Gazette, issue 3978 of 17 August 2003 and a revised version, signed on 27 June 2004, which was never published in the Official Gazette (which is the version on CPA archive website at <<http://www.cpa-iraq.org/regulations/index.html>>).

<sup>81</sup> CPA *Memorandum Number 2* (2003), s. 30, para.14.

### c) Competent judicial authority

After the investigation of the accused is completed, the investigative judge confirms the charge or charges and refers the case to the criminal court for trial. Defendants are usually transferred at this point to a facility under the authority of the MoJ where they are held on remand until the legal procedures are final.

Criminal Courts (Felony Courts and the Central Criminal Court of Iraq (CCCI)) have the jurisdiction to hear death penalty cases.<sup>82</sup> The basic system of administration of criminal justice in Iraq under the Ba'athist regime<sup>83</sup> was basically left intact after the US-led invasion in 2003, although the CPA instituted some modifications to the court structure and to the applicable criminal codes operative in Iraq.

The Council of Judges was re-established by CPA *Order No. 35* of 13 September 2003<sup>84</sup> and CPA *Memorandum No. 12* of 8 May 2004<sup>85</sup> as a body independent of the MoJ. It evolved into the Higher Judicial Council (HJC) pursuant to article 45 of the *Transitional Administrative Law*

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<sup>82</sup> On Felony Courts, see ICPC art. 138/B. The Central Criminal Court of Iraq (CCCI) was established pursuant to CPA *Order No. 13* (revised and amended), 22 April 2004, s. 1.1; the CCCI has state-wide jurisdiction and should concentrate on certain cases, including terrorism (sections 18.1 and 18.2). In case of a death sentence imposed as the result of a trial *in absentia*, a new trial will be conducted if the accused is arrested or surrenders to the authorities: ICPC, arts. 247/A and 254/B.

<sup>83</sup> During the Ba'athist regime, the court system followed the French pattern as first introduced during the rule of the Ottoman Turks, although the system had undergone several modifications during the twentieth century. Most 'third-class' crimes (petty crimes, or contraventions), which carried penalties of imprisonment from one day to three months or of fines up to ID30, were tried in local magistrate courts. These courts, which were found in all local municipalities, were presided over by municipal council members or by other local administrative officials. Second-class crimes (misdemeanours) were punishable by three months to five years imprisonment, while first-class crimes (felonies) were punishable by five years to life imprisonment or by the death penalty. Felonies and misdemeanours were tried within criminal courts attached to civil courts of first instance, located in provincial capitals and in district and sub-district centres. At first instance, criminal trials were presided over by one judge. Six courts of session held jurisdiction in the most serious criminal matters, and they acted as courts of appeal in relation to the lower criminal or magistrate courts. Four of these courts were identical to the civil courts of appeal; two were presided over by local judges from the courts of first instance. Three judges heard cases tried in the courts of session. The Court of Cassation was the state's highest court for criminal matters. At least three judges were required to be present in its deliberations, and in cases punishable by death, five judges were required. The Court of Cassation also served as the highest court of appeals, with power to confirm, reduce, remit, or suspend sentences of lower courts. It assumed original jurisdiction over crimes committed by judges or by high-ranking government officials. The revolutionary courts, composed of three judges, operated separately from the regular criminal court system, and sat permanently in Baghdad to try crimes against the security of the state; these crimes were defined to include espionage, treason, smuggling, and trade in narcotics. Sessions were held *in camera*, and the right of defence reportedly was severely restricted. It was also believed that regular judicial procedures did not apply in these special courts, summary proceedings being common. The prisons system, administered by the Ministry of Labour and Social Affairs, was dominated by the Abu Ghraib Central Prison near Baghdad, which housed several thousand prisoners, and by three smaller branch prisons located in the governorates of Basra, Babil, and Ninawa. Additional detention centres were located throughout the country.

<sup>84</sup> See USJ Quinney College of Law, University of Utah, *Global Justice Project Iraq* <[http://gjpi.org/wp-content/uploads/2009/01/cpa\\_35.pdf](http://gjpi.org/wp-content/uploads/2009/01/cpa_35.pdf)>.

<sup>85</sup> See USJ Quinney College of Law, University of Utah, *Global Justice Project Iraq* <<http://gjpi.org/wp-content/uploads/cpa-memo-12.pdf>>.

(2004)<sup>86</sup> and CPA Order No. 100,<sup>87</sup> section 3(13). Those laws amended the *Judicial Organisation Law* No. 160 of 1979 and the *Law of Public Prosecution* No. 159 of 1979.<sup>88</sup>

The Iraqi Federal Judiciary (which includes the judges sitting on the Federal Court of Cassation, trial judges, investigative judges and prosecutors) comes under the authority of the HJC, which also oversees the affairs of federal courts and court staff.<sup>89</sup> The federal court system comprises the ordinary civil, labour, personal status, and criminal courts (including CCCI).<sup>90</sup> It does not include the Federal Supreme Court, military courts, the administrative court function of the Shura Council, or the Iraqi High Criminal Tribunal.<sup>91</sup>

CCCI was established by CPA Order No. 13 on 11 January 2003 and is attached to the criminal courts.<sup>92</sup> The Court has sweeping, nation-wide criminal jurisdiction<sup>93</sup> and a specific mandate to focus on terrorism, organised crime, corruption, and other serious cases.<sup>94</sup> CCCI is configured and

<sup>86</sup> *The Law of Administration for the State of Iraq for the Transitional Period* (also called the 'Transitional Administrative Law' or 'TAL'). It was signed on 8 March 2004 by the Iraqi Governing Council (IGC). It came into effect on 28 June 2004 following the official transfer of power from the CPA to the Interim Iraqi government. The law remained in effect until it was superseded by the permanent constitution that had been approved by referendum on 15 October 2005.

<sup>87</sup> See USJ Quinney College of Law, University of Utah, *Global Justice Project Iraq* <<http://gjpi.org/wp-content/uploads/cpa-order-100.pdf>>.

<sup>88</sup> The High Judicial Council Law was finally passed in January 2013. □

<sup>89</sup> Under art 91 of the Iraqi Constitution the HJC is mandated: firstly, to manage the affairs of the judiciary and supervise the federal judiciary and prosecution system. Secondly, to nominate the Chief Justice and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the Chief Justice of the Judiciary Oversight Commission, and to present those nominations to the Council of Representatives to approve their appointment. Thirdly, to propose the draft of the annual budget of the federal judicial authority, and to present it to the Council of Representatives for approval.

<sup>90</sup> According to the HJC's report published in April 2009, there are 1207 serving members of the federal judiciary in Iraq of whom 881 are judges (301 of those being investigative judges) and 326 are prosecutors. 62 of the 1207 are women – 12 judges and 50 prosecutors.

<sup>91</sup> In December 2003, the Iraqi Special Tribunal was established as a domestic court within the national judicial structure by a statute passed by the Interim Governing Council (IGC), which had been appointed by the CPA. Following national elections in 2005, it was ratified and renamed as the Iraq High Criminal Tribunal by the Iraqi Transitional National Assembly. The Tribunal Statute provides jurisdiction for certain international crimes committed by Iraqis during the Ba'athist regime, which lasted from July 1968 to May 2003. The Statute includes crimes of genocide, crimes against humanity and war crimes that were previously unknown to Iraqi law. The IHT was staffed by Iraqi judges and prosecutors and followed the Iraqi criminal procedure. For its constitution, see online <[http://law.case.edu/saddamtrial/documents/IST\\_statute\\_official\\_english.pdf](http://law.case.edu/saddamtrial/documents/IST_statute_official_english.pdf)>.

<sup>92</sup> See CPA Order No. 13, *The Central Criminal Court of Iraq* (22 April 2004), available at the defunct CPA website <<http://www.cpa-iraq.org/regulations/#Orders>>. Although, the Code translation available on the GJPI website advises at 3, that 'publication in [The Iraqi Gazette] would appear to be ... regarded as a de-facto requirement for legitimacy of any Iraqi legal decree', it is uncertain whether CPA, *Order No. 13* was properly published in The Iraqi Gazette. Regardless, the Iraqis seem to accept the legitimacy of the CCCI, as it has been in continuous operation since 2004.

<sup>93</sup> CPA, *Order No.13*, s. 18, para. 1: "The CCCI shall have nationwide discretionary investigative and trial jurisdiction over any and all criminal violations, regardless of where those offenses occurred. Its jurisdiction shall extend to all matters that could be heard by any local felony, [sic] or misdemeanour court." The traditional Iraqi courts, consisting of investigative courts, misdemeanour (trial) courts, and felony (trial) courts, have limited geographic jurisdiction. Appeals are lodged in regional courts of appeals, with final criminal appellate authority residing in the national Cassation Court.

<sup>94</sup> *Ibid.* s. 18, para. 2: "In exercising its discretionary jurisdiction, the CCCI should concentrate its resources on cases related to: a) terrorism, b) organized crime, c) governmental corruption, d) acts intended to destabilize democratic

runs in the same way as the regular provincial criminal (felony) courts in Iraq. Each branch of CCCI consists of an Investigative Court and a Felony (trial) Court.<sup>95</sup> The Court applies Iraqi substantive and procedural criminal law the same as other courts.<sup>96</sup> Appeals can be made from CCCI to the Court of Cassation.<sup>97</sup> CPC applies to all cases processed through CCCI, from arrest and detention through investigation, trial, and punishment.

Once a defendant is convicted of a capital offence and a death sentence is passed, article 98 of IPC operates to withdraw certain rights and privileges from the convict. These rights are specifically listed in arts 96 and 97 of IPC and include the right to hold public office, to vote in elections, to conduct any form of business or financial transaction, or to take civil actions or launch proceedings relating to personal status.

As noted, article 136 (1) of IPC permits the Criminal Courts to commute a sentence of life imprisonment to death where there were aggravating circumstances in the commission of the crime for which the individual is convicted.

#### **d) Appeal**

If the Criminal Court has passed a sentence of death in the presence of the defendant, it must send the case file to the Court of Cassation<sup>98</sup> within ten days of the judgment, so that it can be reviewed, even if an appeal has not been lodged by one of the parties.<sup>99</sup> Otherwise the Chief Prosecutor or the defendant (or her or his representative) can lodge an appeal to the Court of Cassation within 30 days of the issuance of the verdict by lodging the petition to the court that issued the initial verdict, or to the Court of Cassation or, if the defendant is in detention, to the authorities of the prison.<sup>100</sup> The petition must contain the name of the petitioner, a summary of the judgment and its date, the name of the court issuing the judgment, and the grounds of the appeal.<sup>101</sup> However, the petitioner can file a detailed statement at a later time before the case on appeal is concluded. It remains the responsibility of the parties to submit all statements and other evidence for the Court of Cassation to consider.<sup>102</sup> Where the petition for appeal is lodged to the court at first instance, it must forward the case file to the Court of Cassation immediately or when requested to do so by the Court of Cassation if the petition of appeal has been lodged with it.<sup>103</sup>

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institutions or processes, e) violence based on race, nationality, ethnicity or religion; and f) instances in which a criminal defendant may not be able to obtain a fair trial in a local court.”

<sup>95</sup> Ibid. s. 1, para. 2.

<sup>96</sup> Ibid. s. 4: The CCCI shall apply Iraqi law as modified by applicable CPA Orders and this Order.

<sup>97</sup> CPA, *Order No. 13*, s21: All appeals arising from CCCI proceedings shall be heard in accordance with applicable Iraqi law as modified by CPA orders but the Court of Cassation shall hear all appeals from the Felony Court.

<sup>98</sup> Please provide further information on the Court of Cassation

<sup>99</sup> CPC, art. 254/A. If it appears to the Court of Cassation that an appeal against a judgment or decision issued by the criminal court has not been presented by the Prosecutor or Defendant within the period specified in law, it will be formally rejected. Cases with death sentences are reviewed by the General Board of the Court of Cassation (art. 257/B). Entitled parties can submit a request for a revision of a decision of the Court of Cassation on the grounds that it contained an error of law, CPC, arts 266-269.

<sup>100</sup> CPC, art. 252/A and 252/B.

<sup>101</sup> CPC, art. 252/C.

<sup>102</sup> CPC, art. 252/D.

<sup>103</sup> CPC, art.253.

Within 20 days of receipt of the case file, the Court of Cassation is required to forward it to the Chief Prosecutor's Office along with the appeal, petitions and statements received from the parties relating to the case, and any demands or queries about the judgment or decision.<sup>104</sup>

All cases involving the death penalty are reviewed by the General Board of the Court of Cassation,<sup>105</sup> which is to consider the appeal according to the facts and law. The Court of Cassation can summon the relevant parties to hear their statements or for any purpose it requires in order to obtain the truth.<sup>106</sup> The Court can summon the accused, witnesses, or the representative of the Public Prosecution to hear their statements, order technical or other expert evidence, or order any documentation or evidence that it may require to establish the facts.<sup>107</sup> Upon completing its review of the case the Court of Cassation can make one of the following orders:

1. Confirm the verdict and sentence of the Court at first instance;
2. Confirm a ruling of not guilty or make a finding of diminished responsibility;
3. Quash the conviction and discharging the defendant;
4. Confirm the conviction with a reduced penalty;
5. Confirm the conviction and return the case to the court at first instance for review of the penalty, with a view to increasing its severity;
6. Return the case to the Court at first instance to review the verdict of not guilty with a view to passing a sentence;
7. Order a retrial *de novo* or a partial retrial according to its directions.
8. Reverse the verdict of not guilty or defences mitigating the charges such as diminished responsibility, or the decision to discharge the defendant, or any other ruling or decision in the case, and order the court of first instance to retry the case or order a repeat judicial investigation.

The Court of Cassation issues its decision in writing setting out the grounds on which it was based.<sup>108</sup>

If the case is returned to the Court at first instance for review of the sentence, it must be reviewed by the same judge or judicial body that issued the verdict, unless there are valid reasons to the contrary.<sup>109</sup> If the Court at first instance issues a verdict and sentence following the review, the case is then re-submitted to the Court of Cassation, which must ratify the decision if it finds it to be in accordance with the law, or can reduce the severity of the sentence. If the Court at first instance reaches a guilty verdict against the accused or rules that the penalty must be imposed, the case is once again transferred to the General Board of the Court of Cassation which must confirm the guilty ruling and the penalty to be imposed, or it must approve the judgment previously issued by the court. If the trial court insists on its previous verdict and sentence then the full board of the

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<sup>104</sup> CPC, art. 255.

<sup>105</sup> CPC, art. 257/B. Entitled parties can submit a request for a revision of a decision of the Court of Cassation on the grounds that it contained an error of law, CPC, arts 266-269.

<sup>106</sup> CPC, art. 258.

<sup>107</sup> CPC, art. 258/B

<sup>108</sup> CPC, art. 259

<sup>109</sup> CPC, art. 263/A

Court of Cassation shall review the decision again under article 259 of CPC, and its decision is final.<sup>110</sup>

The Public Prosecutor and the defendant can lodge an appeal on errors of law from the decision of the Court of Cassation within 30 days from the date the defendant is notified of the decision of the Court of Cassation or, otherwise, from the date the court dealing with the case receives the case documentation from the Court of Cassation. The appeal is submitted directly by the Public Prosecutor or the defendant (or her or his representative) to the Court of Cassation, or to the prison administration if the convicted person is in detention. This appeal is heard by the General Board of the Court of Cassation in death penalty cases.<sup>111</sup>

### e) Implementation of death sentences

ICPC sets out in detail the steps to implement the death sentence.<sup>112</sup> After confirmation of the death sentence, the Court of Cassation sends the file to the Prime Minister who must pass the sentence to the President of the Republic for ratification<sup>113</sup> by issuing the decree (Republic Decree). The President of the Republic can commute the sentence or grant a special pardon, except for some crimes, including terrorism crimes, for which no pardon can be granted.<sup>114</sup> Once the President issues the Republic Decree ratifying the sentence, the Prime Minister will then issue an order to implement it.<sup>115</sup>

Executions are carried out by hanging<sup>116</sup> and are witnessed by the Implementation Board comprising a Misdemeanour Court judge, a member of the Public Prosecution, if available, a representative of the Ministry of the Interior, the director of the prison and the prison doctor, or any other doctor delegated by the Ministry of Health. The legal representative of the accused is excused from attendance if she or he so requests.<sup>117</sup> The person awaiting execution can make a statement before it is carried out, if he or she so wishes.<sup>118</sup>

The death penalty cannot be carried out on official holidays and special festivals of the religion of the person to be executed;<sup>119</sup> he or she can make a confession, if foreseen by his or her religion.<sup>120</sup> The person awaiting execution can be visited by his or her relatives the day before the sentence is to be carried out and the prison administration has the obligation to inform them about the date.<sup>121</sup>

Most prisoners awaiting execution are kept in a special wing within the Al Adalah prison complex in Baghdad, although some executions are also carried out in Nassiriya Prison (Al Hut) in Thi Qar governorate. On the day the sentence is to be implemented, the convict is led to a special holding cell in a building within the Al Adalah Prison complex to a room where a judge reads the charges

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<sup>110</sup> CPC, art. 263/B and 263/C.

<sup>111</sup> CPC, art. 266.

<sup>112</sup> Arts. 285-293 (Section 2: *The Execution*).

<sup>113</sup> Iraqi Constitution, art. 73, para 8.

<sup>114</sup> Iraqi Constitution, art. 73, para. 1

<sup>115</sup> CPC, art. 286.

<sup>116</sup> CPC, art. 288. Law 30 of 2007, Military Trials Procedure Code, provides for the firing squad as method of execution (art. 91 (first)).

<sup>117</sup> CPC, art. 288.

<sup>118</sup> CPC, art. 289/B.

<sup>119</sup> CPC, art. 290.

<sup>120</sup> CPC, art. 292.

<sup>121</sup> CPC, art. 291.



on which she or he has been convicted, the results of any appeals, and the Republic Decree from the President of the Republic ratifying the sentence and ordering its implementation.

There is a shower room in the building where the convict can take ablutions before the implementation of the sentence if she or he so wishes. The convict is also weighed and measured so that the appropriate length of rope can be determined for the execution. The convict is then placed in the special holding cell where she or he remains until led to the gallows for execution. The sentence and decree ordering execution are read before the sentence is implemented. Witnesses gather inside a viewing room with a one-way glass window to observe the execution.

After the execution, the body is handed over to relatives, upon their request; if not, the person will be buried by the authorities without a funeral ceremony.<sup>122</sup>

#### **f) Sentenced to death in absentia**

Where the accused is convicted and sentenced to death in absentia, she or he will be notified of the judgment according to legal procedures. If she or he does not object to the verdict or present herself or himself to the court that issued the verdict or to a police station within six months of the date of notification of the judgment, the verdict will be considered as the final verdict of the Court.<sup>123</sup> However, if the defendant is later arrested, or surrenders to the court or to the police, a new trial will be conducted and any previous verdict will be set aside. The verdict and sentence will then be subject to appeal according to the procedures as set down by IPC and ICPC.<sup>124</sup>

### **5. Use of the death penalty in Iraq since 2004**

After the re-introduction of the death penalty in 2004, executions were implemented for the first time in 2005. Only one year (2008) passed without executions being carried out.

| <b>Year</b>         | <b>Males</b> | <b>Females</b> | <b>Total</b> |
|---------------------|--------------|----------------|--------------|
| 2005                | 11           | -              | 11           |
| 2006                | 52           | 2              | 54           |
| 2007                | 41           | -              | 41           |
| 2008                | 0            | 0              | 0            |
| 2009                | 120          | 4              | 124          |
| 2010                | 18           | 0              | 18           |
| 2011                | 64           | 3              | 67           |
| 2012                | 118          | 5              | 123          |
| 2013                | 174          | 3              | 177          |
| 2014 <sup>125</sup> | 60           | -              | 60           |

**Table. Use of the death penalty since its reintroduction in 2004.**<sup>126</sup>

<sup>122</sup> CPC, art. 293.

<sup>123</sup> CPC, art. 243.

<sup>124</sup> CPC, art. 247.

<sup>125</sup> Figure for 2014 is current as at 31 August 2014.

The vast majority of death sentences carried out since the re-introduction of the death penalty and the resumption of executions relate to conviction for crimes under the Anti-Terrorism Law of 2005, with some others concerning conviction for crimes under IPC.<sup>127</sup>

Some of those executed, including former President Saddam Hussein, were convicted and sentenced to death by the (now defunct) IHCT.

There were no reports of executions in 2008. Otherwise the numbers of death sentences implemented rose rapidly between 2005 and 2009, reaching a peak that year of 124 (including 4 women). In 2010 there was a drop in the numbers executed only to rise significantly between 2011 and 2013, in which year 177 were executed (including 3 women).

The overwhelming majority of those executed have been men. The total number of women executed since the reintroduction of the death penalty in 2004 is 17. The highest number of women executed in one year was in 2012, when five were hanged. A number of foreign nationals have been hanged; all of who were male and convicted under the Anti-Terrorism Law of 2005.<sup>128</sup>

Executions often take place in ‘batches’ over one or two days. For instance, 21 people were executed on 16 April 2013, 42 on 8-9 October 2013, and 26 on 19 January 2014. Since President Talabani has long been an opponent of the death penalty, ratification of death sentences had been

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<sup>126</sup> Figures are mainly from UNAMI HRO periodic human rights reports. For 2013, see UNAMI HRO/OHCHR, *Report on Human Rights in Iraq: July-December 2013*, May 2014, p.12; for 2012, 2011 and 2010 see UNAMI HRO/OHCHR, *Report on Human Rights in Iraq: July-December 2012*, June 2013, p.17; for 2009, see UNAMI, *Human Rights Report 1 July – 31 December 2009*, p. 21; for the absence of executions between August 2007 and May 2009, see UNAMI, *Human Rights Report, 1 January - 30 June 2009*, para. 66; for 2007, see UNAMI, *Human Rights Report: 1 July - 31 December 2007*, para. 83 (no gender breakdown available). According to Amnesty International and media sources quoted by it, executions might have taken place in 2008, see Amnesty International, *A thousand people face the death penalty in Iraq*, August 2009, p. 7, available online <<http://www.amnesty.org/en/library/asset/MDE14/020/2009/en/94eeaecc-67da-49b1-bf9b-5eae8d859756/mde140202009eng.pdf>>. See also UNAMI, *Human Rights Report, 1 July - 31 December 2008*, para. 73.

<sup>127</sup> UNAMI HRO /OHCHR, *Report on Human Rights in Iraq: July - December 2012*, June 2013, p. 18 (see also footnote 29). See, for instance, the crimes for which those were convicted in the statements (in Arabic) posted on the Ministry of Justice’s website for the 23 executions that took place on 22 and 26 September 2013, available online <<http://www.moj.gov.iq/view.697/>>; the 42 executions on 8-9 October 2013, available online <<http://www.moj.gov.iq/view.711/>>; the 19 executions on 7 and 17 November 2013, available online <<http://www.moj.gov.iq/view.782/>>; the 11 executions on 24 November 2013, available online <<http://www.moj.gov.iq/view.789/>>.

<sup>128</sup> The *Vienna Convention on Consular Relations* 1963 (entered into force on 19 March 1967; 596 UNTS 261) governs consular actions that may be taken in relation to a national of third State who is arrested, detained or imprisoned. Article 36 requires the responsible authorities to inform any detained, imprisoned or arrested foreign national of their right to have direct communication with consular officials from their country of nationality, to immediately inform the consular officials that a national has been arrested, detained or imprisoned, and to guarantee the right of consular officers to communicate with and to visit a national who is in prison, custody or detention, but only if the foreign national who is in prison, custody or detention does not expressly oppose such action. It is apparent from detention centre and prison monitoring conducted by UNAMI that some foreign nationals arrested and detained under the Anti Terrorism Law have consular access. However, some detainees in pre-trial detention and prisoners held in ‘death row’ have informed UNAMI HRO that they have not had such consular access. This is particularly the case with nationals of other Arab countries – although consular access may have been hampered by the fact that some Arab countries do not maintain embassies or consulates in Iraq and do not have presentation agreements with other States who are so represented.

delegated to one of his Vice-Presidents.<sup>129</sup> It seems that this is the reason why prisoners were executed in batches, as the Vice-President acts to ratify death sentences and issue Republic Decrees so the sentences can be carried out while the President was absent from the country.

As of August 2014, according to the Prison Reform Directorate of the MoJ, there are 1,724 prisoners were awaiting execution in Iraq (including 1699 men and 25 women), including those convicted and sentenced to death at first instance, those awaiting the outcome of appeals, those whose appeals have been denied and who were awaiting the issuance of the Republic Decree, and those awaiting for implementation of the sentence following the issuance of the Republic Decree.<sup>130</sup>

According to the KR-I Ministry of Justice there were 82 prisoners on death row in KR-I as of April 2014. However, the KR-I continues to practice a de facto moratorium and no executions have taken place since 2008.<sup>131</sup> On 14 June 2012, the KR-I passed an Amnesty Law, which provides for the commutation of death sentences to life imprisonment when reconciliation is reached in front of a specialized committee. However, nine crimes entailing the death penalty are excluded from its application.<sup>132</sup>

## 6. Position of the Government of Iraq on the use of the death penalty

The death penalty was re-introduced by the IIG in 2004 with the stated objectives of deterrence and retribution, particularly in light of the security situation the country was then facing from armed insurgent groups and terrorists.<sup>133</sup> Throughout the years, the Government of Iraq has justified the use of the death penalty on the basis of deterrence, prevailing security issues, and the necessity of justice and retribution. The Government particularly states<sup>134</sup> that the death penalty has a deterrent effect, is sanctioned by Islam, and is widely supported by the public.<sup>135</sup>

The Government further maintains that only individuals who have committed terrorist acts or other serious crimes against civilians<sup>136</sup> and have freely confessed their guilt are executed. It also states that executions are only carried out after the completion of all judicial proceedings, including appeals, and final ratification of the sentence by the President of the Republic.<sup>137</sup>

<sup>129</sup> Amnesty International, *A Decade of Abuses*, 2013, pp. 49-50, available online <<http://www.amnesty.org/en/library/info/MDE14/001/2013/en>>.

<sup>130</sup> The actual number is fluid given there are more persons convicted at first instance and has executions are implemented.

<sup>131</sup> UNAMI HRO/OHCHR, *Report on Human Rights in Iraq: 2010 Report on Human Rights in Iraq*, January 2011, p. 30.

<sup>132</sup> (KR-I) Amnesty Law No. 2 of 2012, arts. 2 and 6, respectively.

<sup>133</sup> Decree Number 3 - 2004, Section '*The Underlying Reasons*'. The death penalty is presented as a tool to protect the human rights of the Iraqi people, including their right to life.

<sup>134</sup> Official correspondence between the Ministry of Human Rights and UNAMI, see UNAMI, *Human Rights Report, 1 January - 30 June 2009*, para. 66.

<sup>135</sup> See for instance, the comments by the Minister of Justice after the execution of 21 prisoners on 16 April 2013, available online <[http://www.nytimes.com/2013/04/20/world/middleeast/Iraq-executions.html?\\_r=1&](http://www.nytimes.com/2013/04/20/world/middleeast/Iraq-executions.html?_r=1&)>. The original statement (in Arabic) is available online <<http://www.moj.gov.iq/view.472/> and <http://www.moj.gov.iq/view.459/>>.

<sup>136</sup> UNAMI HRO/OHCHR, *Report on Human Rights in Iraq: July - December 2012*, June 2013, p. 18 (see also fn. 29).

<sup>137</sup> UNAMI HRO/OHCHR, *Report on Human Rights in Iraq: July - December 2012, June 2013*, p. 17.

Iraq has so far consistently rejected calls to institute a moratorium on the death penalty,<sup>138</sup> despite the commitment expressed in the past by some Iraqi authorities, including the former Minister for Human Rights, Ms. Wijdan Michaels, to reduce its use to a minimum by applying it to only the most serious crimes, to prepare steps for its abolition, and to accede to the Second Optional Protocol to ICCPR.<sup>139</sup> Some Government officials, including the former Minister of Human Rights, Mohammed Shi'a Sudaani, on a visit to Geneva in October 2013 suggested that once the security situation improves and the threat of terrorism is reduced, Iraq will be in a position to apply a moratorium.

The Government's view according to which the death penalty is a deterrent to violence, including terrorism, appears not to be valid given the deteriorating security situation over the past years. Since the re-introduction of the death penalty in 2005, Iraq has faced a significant increase in armed insurgent and terrorist violence and a concomitant surge in civilian casualties.

UNAMI estimates that in 2006, over 16,000 Iraqi civilians were killed with countless others injured; while in 2007 it was not possible to maintain verifiable casualty figures owing to the extent of the violence and the numbers of casualties that resulted. Some sources estimate that possibly more than 30,000 Iraqi civilians died during that year from insurgent and terrorist violence.

Between 2009 and 2014, a period during which a significantly higher number of executions were carried out, the level of armed insurgent and terrorist violence has markedly increased. In 2013, the highest number of executions since 2005 was registered in parallel with the largest number of civilian casualties since 2008.<sup>140</sup> As many of those engaged in committing acts of terrorism in Iraq are motivated by an extremist ideology and are prepared to die to achieve their objectives, it may well be that they do not view the death penalty as a deterrent.

## **7. Allegation of human rights violations in the death penalty cases**

### **a) Lack of compliance with fair trial guarantees**

UNAMI and OHCHR have repeatedly voiced concerns about observed weaknesses of the Iraqi justice system, in particular underlining that criminal investigations and judicial proceedings in death penalty cases frequently fail to fully respect and protect international and constitutional guarantees of due process and fair trial standards.

UNAMI has received a number of alleged cases of corruption within the criminal justice system, which has at times resulted in charges being laid against individuals in the absence of evidence and limitations on defendants' right to legal assistance of their own choosing. A number of relatives of persons in detention informed UNAMI that officials in charge of detention centres (usually under MoI) told them that in order to ensure charges are dismissed (often charges under the Anti-Terrorism Law of 2005 or IPC that carry the death penalty) they should retain the

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<sup>138</sup> A/62/PV.76, 18 December 2007; A/63/PV.70, 18 December 2008; A/65/PV.71, 21 December 2010; A/67/PV.60, 20 December 2012.

<sup>139</sup> *Statement by H.E. Ms. Wijdan Salem, Minister of Human Rights - Iraq*, Human Rights Council, Fourth Session, 14 March 2007, Geneva, p.4, available online <<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session4/HLS/Iraq.pdf>>.

<sup>140</sup> *UN casualty figures for December, 2013 deadliest since 2008 in Iraq, 2 January 2014*, available online <[http://www.uniraq.org/index.php?option=com\\_k2&view=item&id=1499:un-casualty-figures-for-december-2013-deadliest-since-2008-in-iraq&Itemid=633&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&id=1499:un-casualty-figures-for-december-2013-deadliest-since-2008-in-iraq&Itemid=633&lang=en)>.

services of a specific lawyer and pay the fee required - sometimes as high as 100,000 USD. UNAMI has also received reports alleging that -in some cases- high-ranking officials request money to process judicial cases of accused persons.

UNAMI has expressed concerns at public broadcasting of suspects following their arrest but before formal charge or trial. On several occasions, senior officials have reportedly called for the execution of persons arrested in connection with serious crimes before they were tried and convicted. Such actions constitute violations of due process and fair trial guarantees and undermine the presumption of innocence, compromising any chance that accused persons have of receiving a fair trial according to the facts and law applicable to the case.

Article 123 of ICPC requires the investigating magistrate to question the accused within 24 hours of arrest, while CPA amendments to the law passed in 2003 require the investigating judge to inform the accused of his or her right to have an attorney present during questioning and of their right to remain silent.<sup>141</sup> However, testimony of detainees and prisoners and information obtained during trial monitoring by UNAMI indicates that CPA amendments to ICPC are not respected and that accused persons are rarely informed of their right to remain silent or of their right to have an attorney present during questioning. Questioning of accused persons nearly always takes place without the presence of attorneys, and is frequently conducted by the investigating magistrates in the presence of police officers, who many detainees and prisoners alleged had subjected them to torture in order to force confessions.

UNAMI also has concerns about the conduct of trials and the failure of the courts to adhere to fair trial standards. UNAMI's trial monitoring found that, in instances the courts convicted defendants on the sole evidence of the testimony of a secret informant, which remained untested, or a confession purportedly made by the accused, despite allegations that such confessions had been extracted under torture or ill-treatment. In almost 50 percent of criminal trials monitored by UNAMI, the defendants alleged that they had been subjected to torture or ill-treatment to extract confessions, but no action was taken by the courts in relation to these claims and the confessions were still admitted into evidence – often as the sole or significant evidence on which convictions were founded. Additionally, persons accused of serious crimes carrying the death penalty often only have lawyers representing them when the Court appoints one to act on their behalf, usually on the day of the trial and with no reasonable time granted by the Court to prepare a defence. UNAMI has observed that court appointed defence lawyers rarely intervene during the trial, their only intervention often being a plea for leniency after conviction and during the sentencing proceedings before the Court.

Cases observed by UNAMI mostly concerned trials of persons charged with offences under the Anti-Terrorism Law of 2005, but there were similar instances involving charges under IPC, most of which resulted in conviction and death sentences.

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<sup>141</sup> Art. 123 was amended by CPA, *Memorandum 3* section 4(c) signed 18 June 2003 published in the Official Gazette issue 3978 of 17 August 2003. This added subsections (b) and (c) to art. 123, which requires the investigating magistrate to inform the defendant prior to questioning that she or he has the right to remain silent and has the right to appoint an attorney or have a court appointed attorney to represent her/him; and that the questioning of the accused should not proceed whether he or she has indicated that she/he wants an attorney to be present during the questioning. Also note *Memorandum 3*, section 8, which expands the right of representation at trial beyond those accused of felonies to those accused of any crimes. Note also CPA *Memorandum 3*, section 5, which provides the right to be informed upon arrest of the right to remain silent and the right to an attorney.

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**b) Allegations of torture and ill-treatment**

Iraq is State Party to a number of international treaties that prohibit torture and ill-treatment, including ICCPR<sup>142</sup> and the Convention on the Rights of the Child (CRC).<sup>143</sup> Furthermore, common article 3 of the four Geneva Conventions of 1949 expressly prohibits cruel treatment and torture “at any time and in any place whatsoever” in the territory of a state during non-international armed conflict.<sup>144</sup> The most definitive set of obligations prohibiting torture are provided by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Iraq is a State party.<sup>145</sup>

Despite this, UNAMI frequently receives allegations of torture and other ill-treatment from detainees and prisoners, or through their families, friends, and representatives. Nearly all incidents were alleged to have occurred in detention facilities under the authority of MoI after initial arrest and during the investigation session before formal charges are laid.

In the vast majority of capital trials directly monitored by UNAMI (outside of the Kurdistan Region) judges regularly fail to take any action when defendants raised allegations before the court that they had been subjected to torture in order to force confessions in relation to the crimes for which they were standing trial. In rare cases judges would simply request the defendant to produce a medical report to support the allegation. In all cases the presiding judges consistently failed to order any investigation into the torture allegations and in nearly all cases did not question the defendant further about the torture he or she alleged to have suffered. In rare cases where judges questioned the defendant about the allegation, it was merely to ask why the defendant had not made the claim to the investigating judge or could not produce a medical certificate.<sup>146</sup>

In nearly all cases, the courts took no further action in relation to the torture allegation, but proceeded to convict the defendant based solely or in large part on the disputed confession evidence or based on a statement by a secret informant, which was untested in court. In some rare cases, UNAMI has observed that prosecutors had requested the court to dismiss charges against the defendant owing to lack of evidence other than a disputed confession; however, in most such instances, the response of the Court has been to convict the defendant nonetheless, but sentence her or him to life imprisonment, rather than hand down a death sentence. In some instances,

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<sup>142</sup> Iraq acceded to the International Convention on Civil and Political Rights on 25 January 1971.

<sup>143</sup> Iraq acceded to the Convention on the Rights of the Child on 15 June 1994.

<sup>144</sup> *Geneva Convention (I) for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field*, 12 August 1949, (1950) 75 UNTS 31 (hereinafter ‘GCI’); *Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, (1950) 75 UNTS 85 (hereinafter ‘GCII’); *Geneva Convention (III) Relative to the Treatment of Prisoners of War*, 12 August 1949, (1950) 75 UNTS 135 (hereinafter ‘GCIII’); *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, (1950) 75 UNTS 248 (hereinafter ‘GCIV’). All opened to signature on 12 August 1949 and entered into force on 21 October 1950. Iraq ratified the four Geneva Conventions of 1949 on 14 February 1956.

<sup>145</sup> Iraq acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 July 2011.

<sup>146</sup> UNAMI has observed that in response to this question, nearly all defendants claimed that they were afraid to make the allegation to the investigating judge because they remained in the custody of the police who they would be accusing of having tortured them; on some occasions the defendants responded that the police who had tortured them were present in the room where the interview with the investigating judge was taking place. In nearly all cases defendants stated that they were not able to produce a medical report to support their claim to have been tortured because they were not given access to a doctor at the time the torture was committed or thereafter.

UNAMI has witnessed presiding judges upgrade charges to capital offences, even at times relying on RCC orders that had supposedly been repealed.<sup>147</sup>

Female detainees and prisoners interviewed by UNAMI also claimed to have been subjected to torture, violence and threats while in the custody of MoI prior to their transfer to MoJ facilities. Many female detainees alleged that they had been detained in lieu of male family members, or had been arrested on charges of aiding and abetting or of withholding information related to crimes committed by male family members, particularly under the Anti-Terrorism Law of 2005.

### **c) Limited pardon and commutation process**

Of particular concern is the fact that crimes most frequently leading to death sentences under the Anti-Terrorism Law of 2005 are explicitly excluded by article 73.1 of the Iraqi Constitution from being granted special pardon by the President of the Republic on recommendation of the Prime Minister,<sup>148</sup> thus contravening international standards concerning the right to seek and receive pardons and commutations in death penalty cases.<sup>149</sup>

### **d) Death penalty against minors**

Protections for accused persons who may have been minors at the time of the committal of the crime for which they have been arrested are rarely respected.<sup>150</sup> UNAMI has evidence of two cases where individuals have been sentenced to death for crimes they allegedly committed while minors. In one case a juvenile foreign national produced his birth certificate proving that he was 16 years of age when the terrorism related offence for which he was standing trial had been committed. In the second case, an Iraqi juvenile was able to produce evidence to the court proving he, too was under 18 when the offence he was accused of committing had been perpetrated. In both cases the Courts proceeded to admit into evidence an age assessment carried out by an ordinary medical doctor and relied on this assessment in convicting both defendants and sentencing them to death.

### **e) Risk of wrongful convictions**

The use of the death penalty in such circumstances carries the risk of grievous and irreversible miscarriages of justice since innocent people may face execution for crimes they did not commit. Far from providing justice to the victims of acts of violence and terrorism and their families, miscarriages of justice merely compound the effects of the crime by potentially claiming the life of another innocent person and by undermining any real justice that the victims and families might have received. The significant risk of a miscarriage of justice also goes to the heart of the view of

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<sup>147</sup> In one such case observed in Basra Criminal court on 21 May 2014, the judge upgraded the charges laid against three women under article 3 of the Prostitution Law no. 9 of 1988, which carries a maximum seven year sentence, to a charge under RCC Order No. 234 of 2001, which provides for the death penalty for prostitution – despite the fact the CPA legislation had repealed all RCC orders made prior to 1988. The judge then proceeded to sentence the women to 15 years imprisonment based on confessions the women alleged to the court had been forced through torture.

<sup>148</sup> Iraqi Constitution, art. 73 (first).

<sup>149</sup> ICCPR, art. 6 para. 4.

<sup>150</sup> UNAMI HRO/OHCHR, *Report on Human Rights in Iraq: July – December 2013*, pp.12-13, 19; UNAMI HRO/OHCHR, *Report on Human Rights in Iraq: January – June 2013*, August 2013, pp. 3-8; UNAMI HRO/OHCHR, *Report on Human Rights in Iraq: July - December 2012*, June 2013, pp. 8-10; 12-18; UNAMI HRO, Human Rights Report: 1 July – 31 December 2007, paras. 61, 81; *UN rights chief condemns multiple executions in Iraq as 'obscene'*, 19 April 2013, available online <[http://www.un.org/apps/news/story.asp?NewsID=44706#.Uwyzk\\_15P-s](http://www.un.org/apps/news/story.asp?NewsID=44706#.Uwyzk_15P-s)>.

the Government that the death penalty is sanctioned by religious principles. The sacred tenets of Islam espouse justice and do not sanction the taking of innocent life.<sup>151</sup> Given the weaknesses of the criminal justice system and the risk that innocent people may well face the execution in Iraq as a result, undermines any claim that the death penalty is sanctioned or required by religion.

## **8. Conclusion**

Iraq retains the death penalty for a broad range of crimes – not all of which can be considered most serious crimes as required under international human rights law. Since 2005 to date according to UNAMI monitoring, 675 executions have been carried out; 60 up until 31 August in 2014. Most of those executed were convicted for acts of terrorism, which is of concern given the broad definition of terrorism in the relevant law. Furthermore, persistent and serious flaws remain in the administration of criminal justice system, notably evidenced by the number of violations of due process and fair trial rights as guaranteed by Iraq's obligations under international human rights law and the Constitution of Iraq.

The use of the death penalty in these circumstances present significant risks of grievous and irreversible miscarriages of justice whereby innocent people may be executed for crimes they did not commit. The use of the death penalty in these circumstances constitutes a violation of the right to life as guaranteed by international human rights law and the Constitution of Iraq, and may amount to cruel, inhuman or degrading treatment or punishment.

UNAMI recognizes the difficulties faced by the Government and people of Iraq, notably the security situation faced by the country and the ever increasing death, injury and destruction suffered by the Iraqi people on a daily basis from acts of armed violence and terrorism. However, in order to address this situation in the long term, it is necessary to ensure that human rights are respected and protected at all times as the cornerstones of a society and state based on rule of law.

UNAMI has strongly advocated that implementing the death penalty has no measurable deterrent effect on levels of insurgent and terrorist violence or on the levels of civilian casualties. A simple consideration of the numbers of civilian casualties each year since 2008 shows that, as the numbers of those executed have increased, so, too, has the number of civilian casualties who die from the actions of terrorist and armed groups. Far from having a deterrent effect, it would seem that the implementation of the death penalty is merely reactive to increasing violence. Given the weaknesses of the criminal justice system in Iraq, executing individuals whose guilt may be questionable merely compounds the sense of injustice and alienation among certain sectors of the population, which in turn serves as one of the contributing factors that is exploited by extremists to fuel the violence.

The Government of Iraq urgently needs to develop and implement policies that address the conditions conducive to armed violence and terrorism, but which reinforce the rule of law and that promote the respect and protection of human rights. These should include re-engaging affected communities in policies and decision-making related to their protection, ensuring actual protection by impartial State security forces from insurgent and terrorist activities, committing more resources to enhancing the forensic and investigatory capacities of police and security force members to investigate crimes, and reform of the criminal justice system, including amendment of the Anti-Terrorism Law no. 13 of 2005 to ensure its full compliance with due process and fair trial standards, and to promote access to justice by victims and accused alike.

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<sup>151</sup> *The Holy Qur'an*, Sura 5:32.



In addition, the Government needs to consider de-radicalization programmes for those swayed by radical religious and terrorist agendas, anti-poverty strategies, and to implement programmes aimed at ensuring equal and non-discriminatory access to basic services, education and economic opportunities for all people in Iraq to ensure that issues such as poverty cannot be exploited by terrorist and other armed groups as justification for violence. The Government must also engage in dialogue and other forms of dispute resolution to encourage the resolution of grievances in a peaceful, beneficial manner that promotes justice, rule of law, respect for human rights and community reconciliation.

In terms of the claim that the death penalty enjoys the support of the Iraqi people – UNAMI would remind the Government of Iraq that it has the duty to inform public opinion about the death penalty and its inherent risk and real potential for grievous and irreversible miscarriages of justice. Once informed of the facts, including that it has no deterrent effect whatsoever on levels of violence and the risks of serious and irreversible miscarriages of justice, it is unlikely that the death penalty would continue to enjoy the public support that it now allegedly receives.

With respect to KR-I, UNAMI continues advocacy with the Government of the Kurdistan Region on the formalisation of the moratorium and abolition of the death penalty.

To address these issues, UNAMI and OHCHR are of the view that the Government of Iraq should, as a matter of urgency, impose a moratorium on implementation of all pending death sentences with a view to the formal abolition of the death penalty, in accordance with relevant United Nations General Assembly resolutions.

## **9. Recommendations**

### To the Government of Iraq

#### *As a matter of urgency:*

- Establish a moratorium on the use of the death penalty, aiming at fully abolishing it, in accordance with General Assembly resolutions 62/149 (2007), 63/168 (2008), 65/206 (2010) and 67/176( 2012);
- Comprehensively review all relevant legislation, including the Penal Code, the Criminal Procedure Code, the Military Penal Code, the Internal Security Forces Penal Code and the Anti-Terrorism Law, with a view to repealing the death penalty and substituting it with life imprisonment or other appropriate penalties;
- Accede to the Second Optional Protocol to ICCPR aimed at abolishing the death penalty;
- Ensure that the public is fully informed about all relevant facts surrounding the death penalty including the its deterrent effect;

#### *Consider in the interim:*

- Pending full abolition, undertake an independent and comprehensive review of all relevant laws, rules and procedures, including the Penal Code, the Criminal Procedure Code, the Military Penal Code, the Internal Security Forces Penal Code, the Anti-Terrorism Law and other relevant laws and examine their compliance with international human rights standards including ensuring full respect for due process and fair trial standards, including appeal processes and right to seek commutation of the sentence or pardon following conviction, irrespective of the provision under which the individual was convicted.

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- Ensure respect of international standards that provide safeguards of the rights of those facing the death penalty, including those set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, until the death penalty is abolished; and ensure all members of the judiciary are informed for such standards.
  - Ensure that the death penalty is not imposed for offences committed by persons below 18 years of age. In cases, where the lack of birth registration and difficulties in determining the age of children leave unenforced the explicit prohibition of the death penalty for persons under 18 at the time of offence, the accused should be presumed to be below 18.
  - Ensure full application of the Vienna Convention on Consular Service in death penalty cases involving foreign nationals.
  - Establish an independent judicial oversight body with the mandate of reviewing all cases of persons on death row and of monitoring trials involving a possibility of imposing death sentences, and order retrials or overturn convictions based solely on disputed confession evidence or the testimony of secret informants.
  - Provide the necessary support for the implementation of the relevant plans of the Iraqi National Action Plan on Human Rights, adopted by the Council of Ministers on 27 September 2011 in particular the plan on '*Reducing the death penalty causes in various legislations*' and one on '*Amending Anti-Terrorism Law to Guarantee the Protection of basic Rights and Judicial Control*'.

#### To the Judicial authorities in Iraq

- Issue practice directives and sentencing guidelines for judges on the use of the death penalty ensuring that international human rights standards are fully respected, including that disputed confession evidence or testimony of secret informants is not admitted into evidence or is not relied upon as the sole evidence to found convictions, especially in capital trials;
- Conduct full and effective investigations into all claims that confessions were obtained through torture, and bring to justice those responsible.
- Provide training to judges on human rights issues, including international standards that provide safeguards of the rights of those facing the death penalty,
- Ensure that all defendants are treated humanely and afforded a trial that provides for all the guarantees of a fair trial and due process.

#### To the Kurdistan Region Government

- Adopt a formal moratorium on the use of the death penalty, aiming to fully abolish it, in accordance with General Assembly resolutions 62/149 (2007), 63/168 (2008), 65/206 (2010) and 67/176( 2012).
- Comprehensively review all relevant legislation with a view to repealing the death penalty and substituting it with life imprisonment or other appropriate penalties;

#### To the international community

- Provide technical and financial support to civil society actors to undertake advocacy promoting a moratorium on the death penalty and legal reform relating thereto.
- Provide training courses to civil society actors, including lawyers on international human rights standards in relation to the use of the death penalty and support advocacy of civil society

organisations on the implementation of a moratorium on the use of the death penalty or its abolition.

➤ Continue to undertake direct advocacy with the Government of Iraq on a moratorium on implementation of the death penalty, and for its abolition by becoming a party to the Optional Protocol to ICCPR.

**END**



## **Appendix One**

### **Iraqi Laws on the Death Penalty**

#### **Iraqi Penal Code no. 111 of 1969**

**Article 135** - Without prejudice to the special conditions prescribed by law for an increase in the penalty, the following are 'considered to be aggravating circumstances:

- (1) The commission of an offence with a base motive.
- (2) The commission of an offence while taking advantage of a defect in the victim's reason or his inability to resist or in circumstances in which others are unable to come to his aid.
- (3) The use of brutal methods in the commission of an offence or the harsh treatment of the victim.
- (4) The use by the offender in the commission of an offence of his position of employment or the abuse of any authority or influence deriving from such position.
- (5) The abuse of public or trusted officer for private gain or the offering, granting or acceptance of some advantage in violation of the person's trusted or public official duties and the official abuse of the rights of others, or attempting to induce such abuse or violation.<sup>152</sup>
- (6) The commission of an offense in connection with, in furtherance of, or to impede detection of any of the offenses described in sections 2 (4) (a) through (d) of the organic law establishing the Commission of Integrity.<sup>153</sup>
- (7) Violation of financial disclosure regulations promulgated by the Commission of Integrity.<sup>154</sup>

**Article 136** - If there exists any aggravating circumstances in the commission of an offence, the court may rule as follows:

- (1) If the penalty prescribed for the offence is life imprisonment, the death penalty may be imposed.

#### **Part Two: Crimes against the public welfare**

##### **Chapter One: Crimes affecting the external security of the State<sup>155</sup>**

**Article 156** - Any person who wilfully commits an act with intent to violate the independence of the country or its unity or the security of its territory and that act, by its nature, leads to such violation is punishable by death.

**Article 157** (1): Any Iraq citizen who associates himself in any way with an enemy or the armed forces of any country at war with Iraq is punishable by death. Any Iraqi citizen who takes up arms against Iraq from outside the country is punishable by the same penalty.

Any Iraqi citizen who associates himself with a group opposed to the Republic of Iraq but which is not described as being at war with Iraq is punishable by death or by life imprisonment.

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<sup>152</sup> sub-paragraphs (5), (6) and (7) were added by the Annex to CPA Order 55, s. 6.

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<sup>155</sup> The death penalty was suspended by operation of CPA, *Order No. 7*, s. 3(1) and substituted with life imprisonment. It was re-introduced by IIG, *Order No. 3* of 2004 for a limited number of crimes not including these crimes.

**Article 158** - Any person who, in a foreign country or in association with it or with a person who is working on its behalf, attempts to commit hostile acts against Iraq that may lead to the outbreak of war or the severing of diplomatic relations or who provides it with the means to that end is punishable by death or life imprisonment.

**Article 159** - Any person who, in a hostile foreign country or in association with it or with a person who is working on its behalf, attempts to assist it in its hostile operations against Iraq or impede the military operations of the Republic of Iraq and any person who provides that country with the means to that end or assists it in any way to succeed in its hostile operations is punishable by death.

**Article 160** - Any person who assists an enemy to enter the country or stir up sedition among the people or lower the morale of the armed forces or induce members of the armed forces to join the enemy or surrender to it or who undermines their loyalty to the country or their confidence in their ability to defend it and any person who delivers a member of the armed forces into the hands of the enemy is punishable by death.

...

**Article 162** - Any person who assists an enemy to enter the country or who surrenders to it any part of Iraqi territory or port or stronghold or military position or ship or aircraft or weapon or ammunition or equipment or supplies or foodstuffs or war materiel or means of communication or factory or establishment or anything else set aside for the defence of the country or that is used for such purpose or anything that provides the country with troops, personnel, funds or manpower or that supplies the country with intelligence or that gives it a sense of purpose is punishable by death.

**Article 163** (3): Any person who endangers military plans or plans for the defence of the country. The penalty will be death if the offence occurs during time of war.

**Article 164** - The following persons are punishable by death:

(1) Any person who, with a foreign power or a person who works on its behalf or by negotiation with either of them, attempts to damage Iraq's military, political or economic administration.

(2) Any person who wilfully destroys, conceals, steals or forges banknotes or documents knowing them to be instrumental in upholding the rights of Iraq in the face of a foreign country or knowing them to relate to the external security of the state or to some other national interest.

...

**Article 174** (1) Any person who, in time of war or during military manoeuvres in the field, wilfully fails to fulfil all or some of the obligations imposed on him by the conclusion of a contract or agreement with the government to transfer or supply goods to it or to fulfil or carry out any obligation or public works for the government or any of its general establishments for the requirements of the armed forces or the civilian population is punishable by a term of imprisonment not exceeding 10 years.

(2) Any person who, in time of war, knowingly commits an act of fraud while fulfilling any contract mentioned in the preceding Sub-Paragraph is punishable by imprisonment.

(3) If such omission or act of fraud is committed with intent to disrupt the defence of the State or the operations of the armed forces then the penalty is death.

(4) The preceding provisions are, according to the circumstances, applicable to subcontractors, agents and intermediaries if the omission or act of fraud committed during the fulfilment of the contract can be attributed to them.

**Article 175** (1) Any person who participates in an illegal pact with intent to commit such offences as are stipulated in Paragraphs 156 to 174 or who exploits such a pact in order to achieve that end is punishable by life imprisonment or imprisonment for a term of years.

(2) Any person who attempts to set up such a pact or who plays a major part in it is punishable by death or life imprisonment.

...

**Article 177** - The following persons are punishable by life imprisonment:

(1) Any person who obtains by any means anything that is considered to be secret in respect of the defence of the State with intent to disrupt the defence of the State to the advantage of a foreign country or disclose such secret to that foreign country or to a person working on its behalf.

(2) Any person who hands over or discloses such secrets to a foreign country or to a person working on its behalf.

(3) Any person who, for the benefit of a foreign country, destroys a document or anything considered to be secret in respect of the defence of the State or renders the defence of the State untenable.

The penalty will be death if the offender is a public official or if the offence is committed in time of war or if the foreign country is hostile.

## **Chapter Two: Offences against the internal security of the State**

**Article 190** - Any person who attempts to overthrow by force or with the use of violence the constitutionally appointed Republican regime or change the constitution of the State or the formation of the government is punishable by life imprisonment or imprisonment for a term of years. If the offence is committed by a group using bombs, dynamite or other explosives or firearms, the penalty will be death or life imprisonment. The penalty will be death if the offence results in any fatalities.

**Article 191** - Any person who, with criminal intent, takes command of part of the armed forces or a military post or port or town without authorisation from the government is punishable by death or life imprisonment. The same penalty applies to any person who remains in a position of military command in contravention of the orders given to him by the government and to any commander who maintains his units under arms or mobilised after the government has ordered their demobilisation or disbandment.

**Article 192** - (1) Any person who attempts to incite armed rebellion against the constitutionally appointed authorities or who is a member of a conspiracy or group aspiring to that end is punishable by imprisonment.

(2) If such rebellion actually occurs, then the penalty is life imprisonment.

(3) If such rebellion results in an armed confrontation with the armed forces of the State or in fatalities or if the offender is the commander in charge of an armed force, the penalty will be death.

**Article 193** - Any person who is entitled to command units of the armed forces and who asks or instructs those units to obstruct the execution of the government's orders is punishable by life imprisonment or imprisonment for a term of years if he has criminal intent. If such an act does result in the obstruction of the government's orders, he is punishable by death or life imprisonment and any commander who obeys that person's orders is punishable by life imprisonment or imprisonment for a term of years.

**Article 194** - Any person who organises, directs or assumes command of an armed group that attacks any sector of the population or has, as its objective, the prevention of the rule of law, the invasion of territory or the appropriation by force of property belonging to the State or a group of people or who resists with the use of arms members of the public authorities is punishable by death. However, any person who joins such a group without participating in its formation or assuming control of it is punishable by life imprisonment or imprisonment for a term of years.

**Article 195** - Any person who has as his objective incitement to civil war or sectarian fighting by arming the population or by encouraging one section of the population to arm itself against another or by urging them to fight is punishable by life imprisonment. The penalty will be death if the objective is realised.

**Article 196** - Any person who attempts to occupy with the use of force or menaces any public property or building or building belonging to a government agency or departments or public utility or general establishment or to take control in any way of such property or prevent it from being used for the purpose for which it was intended.

If the offence is committed by an armed group, the penalty will be life imprisonment or imprisonment for a term of years for its members or death or life imprisonment for the person who formed the group or assumed the leadership or command of that group.

**Article 197** (1) (in time of warfare) Any person who wilfully destroys, demolishes, spoils or seriously damages a public building or property or property belonging to a government agency or department or public utility or general establishment or property belonging to associations considered by law to be for the public welfare or oil installation or any other state industrial installation or hydroelectric power station or means of communication or bridge or dam or public waterway or place set aside for public use or recreation or any public property of significant importance to the national economy with intent to overthrow the constitutionally appointed regime is punishable by death or life imprisonment.

(2) The penalty is death if the offender uses explosives in the commission of the offence or if that offence leads to the death of any person found in such place.

...

**Article 201** - Any person who promotes or acclaims Zionist principles including freemasonry or who associates himself with, Zionist organisations or assists them by giving material or moral support or works in any way towards the realisation of Zionist objectives is punishable by death.

### **Chapter Three - Offences against the public authorities**

#### ***Section One - Offences affecting the constitution***

**Article 223**<sup>156</sup> (1) Any person who murders the President is punishable by death.

(2) Any person who assaults the President or attempts to do so but not to the extent of murdering him is punishable by imprisonment.

(3) The same penalties apply, according to the circumstances, if the offence is committed against a foreign Head of state while he is in Iraq or on an official visit.

### **Chapter Seven - Offences that endanger the public**

#### ***Section One - Fire and explosives***

**Article 342** (1) Any person who wilfully sets on fire moveable or immovable property even though he is the owner of such property is punishable by a term of imprisonment not exceeding 5 years if he thereby endangers the life or property of others.

(2) The penalty will be life imprisonment or imprisonment for a term of years if the following places

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<sup>156</sup> The death penalty was suspended by operation of CPA, *Order No. 7*, s. 3(1) and substituted with life imprisonment. It was re-introduced by IIG, *Order No. 3* of 2004 for a limited number of crimes not including this crime.



are set on fire:

- (a) An ordnance or weapons factory or depot or part thereof or military equipment store.
  - (b) An oilrig or well.
  - (c) A fuel dump or store of inflammable substances or explosives.
  - (d) An electricity, water or nuclear power station.
  - (e) A railway station or engine or vehicle or railway carriage that is occupied by others or airport or aircraft or shipyard or ship.
  - (f) A residential building or place inhabited by a group of people.
  - (g) A building used by an official or semi-official agency or general establishment or institution working in the public interest.
- (3) The penalty will be life imprisonment if the offence aims to facilitate the commission of a felony or misdemeanour or destroy the evidence of such offence or if the offender renders ineffective any fire fighting equipment or means of fighting fires or if the fire leads to permanent disability or is started with the use of explosives.
- (4) The penalty will be death or life imprisonment if the fire results in the death of others.<sup>157</sup>

### ***Section Two - Offences of flooding and those involving a public utility***

**Section 349** - Any person who wilfully causes or attempts to cause flooding which endangers the life or property of others is punishable by a term of imprisonment not exceeding 15 years. The penalty will be death or life imprisonment if such flooding results in the death of others or life imprisonment or imprisonment for a term of years if such flooding results in serious damage to property.

...

**Article 351** (1) Any person who wilfully endangers the life or safety of others by contaminating with substances, bacteria or other such material which cause death or serious harm to the public health, a well, water store, public storage depot or other such thing set aside for use by the public is punishable by life imprisonment or imprisonment for a term of years. The penalty will be death if such contamination results in the death of others.

### ***Section Three - Offences affecting the safety of transport and public conveyances***

**Article 354** - Any person who wilfully endangers in any way safety of navigation in the air or at sea or the safety of a train, ship, aircraft or other mode of public transport is punishable by imprisonment.

The penalty will be life imprisonment if such act results in a train disaster or accident involving any of the modes of transport mentioned above. The penalty will be death or life imprisonment if it results in the death of others. Crimes affecting the safety of transport and public conveyances

**Article 355** - (1) Any person who wilfully causes damage to or sabotages a public highway or airport or bridge or dam or railway or navigable channel or river is punishable by detention plus a fine or by one of those penalties.

(2) The penalty will be life imprisonment or imprisonment for a term of years if the offender uses

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<sup>157</sup> The death penalty was suspended by operation of CPA, *Order No. 7*, s. 3(1) and substituted with life imprisonment. It was re-introduced by IIG, *Order No. 3* of 2004 for a limited number of crimes not including this crime.

explosives in the commission of the offence.

(3) The penalty will be death or life imprisonment if the offence results in a disaster or the death of others.

## **Chapter Nine - Moral indecency – public etiquette**

### **Section One - Rape, buggery, indecent assault**

**Article 393** - (1) Any person who has sexual intercourse with a female without her consent or commits buggery with any person without their consent is punishable by a term of imprisonment not exceeding 15 years.

(2) The following are considered to be aggravating circumstances for this offense:

(a) If the victim at the time of the act was under 18 years old

(b) If the offender was a relative of the victim to the third generation, or if the offender is the guardian, protector, or custodian of the victim or has authority over the victim or the victim is the offender's servant.

(c) If the offender was a public official, religious leader, or doctor and used the power of his position or the trust in him.

(d) If the offense is committed by two or more people in order to prevail over the resistance of the victim or if they commit the offense multiple times.

(e) If the victim contracts venereal disease as a result of the offense.

(f) If the victim loses her virginity or loses her virginity as a result of the offense.

(3) If the offense leads to the death of the victim, the penalty will be life imprisonment.<sup>158</sup>

(4) If the victim was a virgin, the court must order that she receive appropriate compensation.

## **Part Three - Offences against the person**

### **Chapter One - Offences affecting the life and physical safety of others**

#### **Section One – Murder**

**Article 406** (1) Any person who wilfully kills another is punishable by death in the following circumstances:

(a) If such killing is premeditated.

(b) If such killing occurs as a result of the use of toxic substances or explosives.

(c) If the motive for such killing is base or such killing is in exchange for money or if the offender uses brutal methods in the commission of the offence.

(d) If the victim is a parent of the offender.

(e) If the victim is a public official or agent while in the course of executing his duty or employment or if he is killed as a consequence of such duty or employment.

(f) If the offender intends to kill two or more people and does so as a result of a single act.

(g) If the murder is related to one or more other murders or attempted murders.

(h) If the killing is committed as a prelude to the commission of a felony or misdemeanour

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<sup>158</sup> These crimes were punishable by life imprisonment or imprisonment for a term of years under the IPC. However the Revolutionary Command Council (RCC) increased the maximum penalty to death, which was suspended by CPA, *Order No. 7* of 2003. CPA, *Order No. 31* for 2003 set the maximum sentence for these crimes at life imprisonment.

punishable by a period of detention of not less than 1 year or in order to facilitate the commission of such offence or while carrying out such offence or in order to enable the offender or accessory to make his escape or avoid punishment.

(i) If the offender has been sentenced to life imprisonment for murder and he commits murder or attempts to do so during the term of his sentence.

(2) The penalty will be death or life imprisonment in the following circumstances:

(a) If the offender intends to kill one person but his action results in the death of two or more persons.

(b) If the offender mutilates the body of the victim.

(c) If the offender sentenced to life imprisonment in circumstances other than those described in Sub- Paragraphs (a)(i) of this Paragraph and he commits murder during the term of his sentence.

## **Chapter Two - Offences affecting the freedom of an individual and the deprivation of such freedom**

### **Section One - Unlawful seizure, kidnapping and detention**<sup>159</sup>

**Article 421** - Any person who seizes, detains or deprives a person of his liberty in any way without an order from a competent authority in circumstances other than those described in the laws and regulations to that effect is punishable by detention. The penalty will be a term of imprisonment not exceeding years in the following circumstances:

(1) If the offence is committed by a person who is wearing the uniform of a government employee without being entitled to do so or a distinctive official insignia belonging to such employee or assumes a false public identity or issues a false order for the arrest, imprisonment or detention of a person while claiming it to be issued by a competent authority.

(2) If the offence is accompanied by the threat of death or physical or mental torment.

(3) If the offence is committed by two or more persons or by a person openly carrying a weapon.

(4) If the period of seizure, detention or deprivation of freedom exceeds 15 days.

(5) If the motive for the offence is financial gain or the sexual assault of the victim or the taking of vengeance on the victim or on another.

(6) If the offence is committed against a public official or agent in the execution of his duty or employment or as a consequence of it.

**Article 422** - Any person who himself or through another kidnaps a person under the age of 18 without the use of force or deception is punishable by a term of imprisonment not exceeding 15 years if the victim is female or by a term of imprisonment not exceeding 10 years if the victim is male. If the kidnapping is carried out with the use of force or deception or there exists any aggravating circumstance described in Paragraph 421, the penalty will be imprisonment if the victim is female or a term of imprisonment not exceeding 15 years if the victim is male.

**Article 423** - Any person who himself or through another kidnaps a woman over the age of 18 with the use of force or deception is punishable by a term of imprisonment not exceeding 15 years. If the kidnapping is accompanied by any sexual intercourse with the victim or an attempt to have intercourse with her, the penalty will be death or life imprisonment.

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<sup>159</sup> These crimes had been punishable under the IPC by a term of imprisonment. The CPA, *Order No. 31* for 2003 increased the penalty for these crimes to life imprisonment. The IIG, *Order No. 3* of 2004 increased the sentence to include the death penalty.

**Article 424** - If the use of force described in Paragraph 422 and 423 or the torment described in Paragraph 421 results in the death of the victim, the penalty will be death or life imprisonment.<sup>160</sup>

**Chapter Three - Offences against property**

**Section One - Theft**

**Article 440** - The penalty will be death if theft is committed in the following circumstances:

- (1) If the offence is committed between dusk and dawn.
- (2) If the offence is committed by two or more persons.
- (3) If any of the offenders is openly carrying a weapon or carrying a concealed weapon.
- (4) If the offence is committed in a place of residence or place set aside for that purpose or part thereof and if entry is gained by climbing a wall, forcing a door or other such method or by the use of a counterfeit key or by assuming an official identity or claiming to be on public service or by conspiring with a resident of such place or by deception.

**Article 441** - The penalty will be death for an offence of theft committed against a person on a public highway away from a town or city or on a train or other conveyance on land or at sea at such times when it is remote from any populated area and in the following circumstances:

- (1) If the offence is committed by two or more persons and one of them is openly carrying a weapon or carrying a concealed weapon.
- (2) If the offence is committed with the use of force by two or more persons.
- (3) If the offence is committed by a person who is openly carrying a weapon or is carrying a concealed weapon between dusk and dawn with the use of force or by threatening with the use of a weapon or if he tortures the victim or uses extreme force.

**Article 442** - The penalty will be death for an offence of theft committed in any of the following circumstances:

- (1) If the offence is committed by two or more persons one of whom is openly carrying a weapon or is carrying a concealed weapon.
- (2) If the offence is committed between dusk and dawn by two or more persons with the use of force or by threatening another with the use of a weapon. Force or threats are considered to have been used even though the offender employs such tactics only after he has committed the theft with intent to retain the stolen goods or escape with them.
- (3) If the offence is committed with the use of force which results in a permanent disability or broken bone or harm or illness that prevents the victim from carrying out his normal business for more than 20 days or which results in the death of another.

**Article 443** - The penalty will be death if an offence of theft is committed in any of the following circumstances:

- (1) If the offence is committed with the use of force.
- (2) If the offence is committed between dusk and dawn by a person openly carrying a weapon or carrying a concealed weapon.
- (3) If the offence is committed between dusk and dawn by three or more persons.
- (4) If the offence is committed between dusk and dawn in a place of residence or a place set aside for

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<sup>160</sup> These crimes had been punishable under the IPC by a term of imprisonment. The CPA, *Order No. 31* for 2003 increased the penalty for these crimes to life imprisonment. The IIG, *Order No. 3* of 2004 increased the sentence to include the death penalty.

that purpose or part thereof.

(5) If the offence is committed between dusk and dawn in a bank, shop, store or depot to which the offender gains entry by climbing a wall, forcing a door, making an opening or by using some other such method or with the use of a counterfeit key or by assuming the identity of a public official or claiming to be on public service or by conspiring with a resident of such place or by deception.

### **Statute of the Iraqi High Tribunal (IHT), Law No. 10 of 2005 (promulgated on 18 October 2005)**

**Article 24** (1) The penalties that shall be imposed by the Court shall be those prescribed by the Iraqi Penal Code No (111) of 1969, except for sentences of life imprisonment that means the remaining natural life of the person. With considering the provisions of Article (17) of this Statute.

(2) It shall be applied against the crimes stipulated in article (14) of this Statute the sentences provided under the Iraqi Penal Code and other punishable laws

(3) The penalty for crimes under Articles 11, 12, 13 shall be determined by the Criminal Court, taking into account the provisions contained in paragraphs fourth and fifth.

(4) A person convicted of sentences stipulated under Iraqi Penal Code shall be punished if:

A. He committed an offence of murder or rape as defined under Iraqi Penal Code.

B. He participated in committing an offence of murder or rape.

(5) The penalty for any crimes under Articles 11, 12, 13 which do not have a counterpart under Iraqi law shall be determined by the Court taking into account such factors like the gravity of the crime, the individual circumstances of the convicted person, guided by judicial precedents and relevant sentences issued by the international criminal courts.

...

**Article 27** (1) Sentences shall be carried out in accordance with the Iraqi legal system and its laws.

(2) No authority, including the President of the Republic, may grant a pardon or mitigate the punishment issued by the Court. The punishment must be executed within 30 days of the date when the judgment becomes final and non-appealable

### **Anti-Terrorism Law No. 13 for 2005**

#### **Article 4 - Penalties**

1: Any one who committed, as a main perpetrator or a participant, any of the terrorist acts stated in the second & third articles of this law, shall be sentenced to death. A person who incites, plans, finances, or assists terrorists to commit the crimes stated in this law shall face the same penalty as the main perpetrator.

2: Any one, who intentionally covers up any terrorist act or harbours a terrorist with the purpose of concealment, shall be sentenced to life imprisonment.

*For the definition of terrorism and the acts that constitute acts of terrorism see articles 1-3:*

#### **Article 1 - Definition of Terrorism**

Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or

private properties, with the aim to disturb the peace, stability, and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals.

**Article 2** - The following acts are considered acts of terrorism

1. Violence or threats which aim to bring about fear among people or expose their lives, freedoms and security to danger and their money and properties to damage regardless of its motives and purposes which takes place in the execution of a terrorist act, individually or collectively organized.
2. Work with violence or threat to deliberately sabotage or wreck, ruin or damage buildings or public property, government interests, institutions, state departments, the private sector or public utilities and public places prepared for public use or public meetings for the public or public funds, and an attempt to occupy it or to seize it or expose it to danger or prevent its use for the purpose for which it was prepared with the aim of disrupting the security and stability.
3. Anyone who organized, chaired or participated in an armed terrorist gang that practices and plans for terrorism and also contributes and participates in this act.
4. Use violence or threat to stir up sectarian strife or civil war or sectarian infighting by arming citizens or by encouraging them to arm themselves and by incitement or funding.
5. Assault with firearms army and police offices, volunteer centers, security offices, and assault national military troops or their reinforcement, communication lines or their camps or bases, with a terrorist motive.
6. Assault with firearms, with a terrorist motive, embassies and diplomatic entities throughout Iraq as well as all Iraqi institutions, foreign and Arab companies and institutions and governmental and non-governmental and international organizations operating in Iraq in accordance with a valid agreement.
7. Use, with terrorist motives, explosive and incendiary devices designed to kill people, and possess the ability to do so, or to spread fear among the people, either through blowing up or releasing or spreading, or planting or bubby trapping equipment or human bodies, regardless of their forms or through the effect of poisonous chemicals or biological agents or similar radioactive materials or toxins.
8. Kidnap or impede the freedoms of individuals or detain them either for financial blackmailing for political, sectarian, national, religious or racially beneficial purposes that threaten security and national unity and promote terrorism.

**Article 3** - The following acts are specifically considered amongst the crimes against State security:

1. Any act with terrorist motives, that threatens the national unity and the safety of society and affects the State security and its stability or weakens the capacity of the security services in defending and protecting the security of citizens, their properties, State borders and its institutions either through armed confrontation with State forces or any other act that deviates from the freedom of expression which the law guarantees.
2. Any act that includes the attempt to use force or violence to overthrow the regime or the form of government as set forth in the Constitution.
3. Any one who led, for a criminal purpose, a branch of the armed forces, military checkpoint, a harbour, airport or any military site or city without being authorized by the government.
4. Any one who attempts to incite an armed rebellion against the authority established in accordance with the constitution or participates in a conspiracy or a gang formed for the same purpose.
5. Any act by a person who had authority over individuals in the military and asked or charged them with the task of impeding orders of the government.

### **Military Penal Code no. 19 of 2007**

**Article 28** - Any person who commits one of the following acts shall be sentenced to death:

(1): attempts to detach a part of Iraq from the government's administration or put Iraq or part of it under the control of a foreign state.

(2): leaves or surrenders to the enemy or uses means to force or entice a commander or another person to leave or surrender in a way that violates what is required in military situations, in a post, in a place, in a border post or a garrison, and he who surrenders or causes the surrender of a military ammunitions plants, war instruments, factories and stores of provisions, communication tools and burns or strikes military airports, airplanes or deliberately renders them out of order and who deliberately damages the country and give advantage to the enemy by destroying bridges, dams, railways and public roads and who causes or facilitates the enemy to control part of the military forces.

(3) obtains or photocopies things or documents or passed military information that must be kept secret for the safety or interest of the state, directly or by a means to a foreign state at times of peace or war.

(4) while a commander of post surrenders it to the enemy before exhausting all available means of defence or neglects using the said means.

(5) while a commander of units in open air and approaches the enemy to conclude an agreement to surrender these military units along with their weapons without carrying out what is required by the duties of his position.

(6) while a commander caused the surrender of a river, a naval, or an air force under his command or the surrender of their crew without carrying out what is required by the duties of his position.

**Article 29** - He, who commits one of the following crimes during general mobilization with the aim of assisting the enemy or with the intention to harm the army or one of the forces of the allied governments, or his act deliberately, causes the killing or death of one or a number of military or civilian persons shall be sentenced to death:

(1) Inciting those Iraqis who can carry arms or members of the forces of a state allied with the government of Iraq to go to the side of the enemy.

(2) Disseminating the spirit of disobedience among the Iraqi military forces or the forces of one of the allied States to instigate an armed insurrection against the authority, this is constitutionally elected.

(3) Disclosing a password, a watchword, a special signal, warnings or the secret commands of the guards, sentries, military posts and wireless ciphers.

(4) Distorting the news and recommendations of the service or neglecting their correct implementations while facing the enemy.

(5) Leading the enemy to Iraqi government forces or one of the forces allied with it or deliberately guiding the said forces to go in the wrong way.

(6) Caused panic among an Iraqi force or caused it to conduct wrong movements or acts by issuing a military signal or other or instigating desertion or impeding the gathering of scattered soldiers.

(7) Communicating or achieving communication with persons of the enemy's forces or those who reside in the enemy countries to disclose positions related to the administration of the war in writing or orally or by using any means of communications.

(8) Failing to implement all or some of his duty, changing an order by his own accord, or had the authority to order the armed forces wanting them to act to impede government's orders.

(9) Broadcasting or disseminating enemy leaflets or announcements among the army forces in bad faith.

- (10) Failing to provide rations for the units under his responsibility in bad faith.
- (11) Releasing the Prisoners of War or causing them to flee.
- (12) Informing the enemy of the list of signals used in war or its summary.
- (13) Ruining or destroying war instruments of aircrafts and ships and their engines or equipment, or making them loose their combat capability or reducing these capabilities or caused that in a way that reduces the capability of the security agencies in preserving security and properties of citizen and the state's borders.
- (14) Deliberately committing an act that endangers the security and safety of all types of telecommunication means by enabling the enemy to tap calls related to operations or war or to trace the communication device or the wireless network.

## **Internal Security Forces Penal Code No. 14 of 2008**

### **Part One - Crimes of Damage, Sabotage, and Incitement**

**Article 3 (1):** The death penalty applies to those who:

- A. Relinquish to or give an improper or hostile party a police station, building, location, or premises; or use means to force or tempt the person in charge of a police station, building, location, or premises to relinquish to give the aforementioned in a manner contradictory to security requirements.
- B. Obtain items or documents, or copies, or any information which should remain undisclosed for national security reasons and then pass this information directly or indirectly to another party with the intention of harming the national interest.
- C. Intentionally destroy, sabotage, or misuse buildings, headquarters, or equipment in a manner contradictory to their intended purposes, or against issued orders and instructions.
- D. Incite someone to take up arms and join an armed gang or assist the gang.
- E. Encourage disobedience and rebellion among members of the Internal Security Forces during disturbances or states of emergency.
- F. Disclose secrets, or reveal plans or instructions to an armed gang.
- G. Intentionally destroy communications or transportation methods, weapons, or ammunition.

...

**Article 14:** (1) Anyone who assaults those of higher rank, seniority, or position, or causes them a disability prison shall be imprisoned for a period not exceeding fifteen years.

(2) If the assault stated in the First section above leads to death a death sentence shall be imposed.

(3) Anyone who attempts to assault someone who is higher in rank, seniority, or position shall be jailed for a minimum of three years.

## **Narcotics Law No. 68 of 1965**

**Article 14** - where trafficking of narcotics was carried out to fund or abet activities using force or violence aimed at the overthrow of the State or terrorist acts where casualties result as provided for in article 190 of IPC. (IIG Order No. 3 of September 2004 - Second: "The provisions of paragraph 1 herein shall apply also to anyone who commits any of the crimes set forth in sections B, C and D of the first paragraph of Article 14 of the Narcotics Act Number 68 for 1965, relating to trafficking of



narcotics, with the aim of funding or abetting any of the activities and acts mentioned in the Penal Code, Article 190.”)

### **Trafficking in Persons Law No. 28 of 2012**

**Article 8** - If the act of Human Trafficking leads to death of the victim, the punishment shall be capital punishment.

## **Appendix Two**

### **Implementation of the Death Penalty**

#### **Iraqi Penal Code no. 111 of 1969**

**Article 86** - The death penalty is the hanging of the condemned person by the neck until he is dead.

...

**Article 95** - Incidental penalties are those imposed on a convicted person in accordance with the law without the need for them to be specifically stated in the sentence.

#### **1. The withdrawal of certain rights and privileges**

**Article 96**<sup>161</sup> - A sentence to life imprisonment or to imprisonment for a term of years means that, in accordance with the law, the convicted person is deprived of the following rights and privileges from the day he is sentenced until such time as he is released from prison:

- (1) All offices or positions held by him
- (2) He may neither vote for nor be elected to any representative council.
- (3) He may not be a member of an administrative or municipal council nor a member or director of a company'.
- (4) He may not act as guardian, executor or trustee.
- (5) He may not own or publish a newspaper nor be its editor in chief.

**Article 97** - A sentence to life imprisonment or imprisonment for a term of years imposed on the convicted person means that, from the day it is imposed to the date of completion of the penalty or its termination for any other reason, he is, in accordance with the law, deprived of his right to administer or dispose of his assets without the appointment of an executor or to make endowments except, according to the circumstances, by permission of a canonical or personal status court, which has jurisdiction in the area where he is resident. The Court may, on the application of the convicted person or the public prosecutor or anyone else who has an interest, appoint an executor to administer his assets and may require such executor to give a guarantee. The court may also stipulate a fee for him and that he be subject to the authority and supervision of the court in everything that relates to his executorship.

Any transaction, administration or disposal in respect of the convicted person's assets carried out without regard to the above is subject to the permission of the court mentioned in the preceding Sub-Article.

The assets of the convicted person are returned to him on completion of the term of the penalty or following its termination for any other reason and the executor may charge him for his administrative duties.

**Article 98** - Any death sentence imposed on the condemned person means that, from the day it is imposed until the sentence is carried out, the condemned person is, in accordance with the law, deprived of the rights and privileges prescribed in the preceding 2 Articles. Any disposal or administrative transaction undertaken by him during the above period, other than making a will or endowment, are void. The Court may, on the application of the public prosecutor or anyone else who

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<sup>161</sup> As amended by RCC Order No. 997 published in Al-Waqai' Al-Iraqiya No 2667 on 7.8.78

has an interest, appoint an executor to administer the assets of the condemned person assets and may require such executor to give a guarantee.

### **Iraqi Criminal Procedure Code no. 23 of 1971**

**Article 285 - A.** The person condemned to death is placed in prison until steps have been taken for carrying out the sentence.

B. The death sentence is only carried out on a decree of the Republic in accordance with the provisions of the following articles.

**Article 286 -** If the Court of Cassation confirms the death sentence as issued, it will send the case file to the Prime Minister<sup>162</sup>, who is responsible for passing it on to the President of the Republic to seek the necessary decree for carrying out the sentence.

The President of the Republic issues the decree for carrying out the sentence, or for commuting it, or for pardoning the condemned person. If he issues the decree for implementation, the Prime Minister<sup>163</sup> issues an order to that effect, including the decree of the Republic, in accordance with legal provisions.

**Article 287 - A.** If the condemned person is pregnant when the order for implementation arrives, it is the responsibility of the prison administration to inform the Chief Prosecutor to present a notification to the Minister of Justice to delay execution of the sentence, or to reduce it. The Minister of Justice then submits this notification to the President of the Republic. Implementation of the sentence is delayed until another order is issued by the Minister of Justice in accordance with the decision of the President of the Republic. If the renewed order rules for implementation of the death sentence, it is not carried out until four months after the date of delivery of the child, whether the delivery is before or after the arrival of the order.

B. The judgment in sub-paragraph A is applicable to a condemned person whose child is delivered before the arrival of the order for implementation if the period of four months from the date of her confinement has not expired. The sentence is not carried out until four months have elapsed from the date of her confinement, even if the renewed order for implementation arrives.

**Article 288 -** The sentence of death is carried out by hanging within the prison, or any other place in accordance with the law after the issue of the decree of the President of the Republic for the sentence to be carried out in accordance with Article 286<sup>164</sup>. The execution is witnessed by the Implementation Board, comprising a Misdemeanour Court judge, a member of the Public Prosecution, if available, a representative of the Ministry of the Interior, the director of the prison and the prison doctor, or any other doctor delegated by the Ministry of Health. The accused's legal representative is excused from attendance if he so requests.

**Article 289 - A.** The director of the prison reads the Republic decree for the implementation of the sentence to the condemned person at the place of execution, so that the others present can hear.

B. If the condemned person wishes to make a statement, the judge notes down what is said and this is

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<sup>162</sup> Law 13 of 2006 provided that the Prime Minister replace the Minister of Justice in this role

<sup>163</sup> Law 13 of 2006 provided that the Prime Minister replace the Minister of Justice in this role

<sup>164</sup> The text “after the issue of the decree of the Republic for the sentence to be carried out in accordance with Article 286” was substituted for the original text which read “after passing a period not less than 30 days on the date of its issue by the competent Criminal Court in accordance with Law No. 65 of 1974 (Third amendment to the Criminal Procedure Code No. 23 of 1971), published in the Official Gazette, issue 2348 of 7 May 1974.

endorsed by the other members present.

C. Once the sentence has been carried out, the director of the prison signs a form, on which he doctor confirms death, and the time this took place, and the remainder of those resent sign the document accordingly.

**Article 290** - The death penalty cannot be carried out on official holidays and special festivals connected with the religion of the condemned person.

**Article 291** - It is the responsibility of the relatives of the condemned person to visit on the day before sentence is to be carried out. It is the duty of the prison administration to info them of the date accordingly.

**Article 292** - If the religion of the condemned person requires him to make confession before death, the necessary arrangements are to be made for him to meet a cleric of his religion.

**Article 293** - The corpse of the executed person is handed over to relatives if they so request. Otherwise the prison authorities will carry out the burial at government expense, but there will be no funeral ceremony.

**Appendix Three**  
**Iraq Interim Government Order No. 3 of September 2004**  
**Decree: The reintroduction of the death penalty**

**Decree Number 3 — 2004, published in the Official Gazette, issue 3987 of September 2004**

In the name of the people,

Pursuant to Article 26, paragraphs A and C of the Iraqi Transitional Administrative Law and the provisions of Part II of the attachment thereof, and the approval of the Presidential Council, the Council of Ministers decided to issue the following Decree:

**First:**

As an exception to Order 7, Part 3, Paragraph 1, of 10 June 2003 issued by the Coalition Interim Authority, it is hereby resolved to restore the death penalty provided for in the Penal Code No 111 of 1969 as a punishment for anyone found guilty of any of the following crimes:

- 1- Any crime compromising the internal security of the State as provided in Articles 190, 191, 192 (iii), 193, 194, 195, 196 and Article 197, paragraphs i and ii. And for the purpose of implementing this Decree, the term « the Provisional Iraqi Government », « the Interim Iraqi Government » or the succeeding government after the adoption of the Constitution will replace « the Governing Regime » or « the Government » wherever these terms appear in any of these Articles.
- 2- Any crime that constitutes a public danger or the use of bacteriological materials set forth in Articles 349 and 351 (i) of the Penal Code.
- 3- Crimes relating to attacking transport and telecommunication systems as stipulated by Articles 354 and 355 of the Penal Code.
- 4- Premeditated murder as provided for in Article 406.

**Second:**

The provisions of paragraph 1 herein shall apply also to anyone who commits any of the crimes set forth in sections B, C and D of the first paragraph of Article 14 of the Narcotics Act Number 68 for 1965, relating to trafficking of narcotics, with the aim of funding or abetting any of the activities and acts mentioned in the Penal Code, Article 190.

**Third:**

Any one who commits the crime of abduction as specified in articles 421, 422 and 423 of the penal code will be subject to the death penalty.

**Fourth:**

The provisions of the Penal Code No 111 for 1969 (third edition (as amended)) for 1985 shall apply to all articles mentioned herein.

**Fifth:**

Paragraph 2 of Section 2 of Order 7 issued by the Coalition Interim Authority on 10 June 2003 shall be repealed.

**Sixth:**

As an exception from the provision of Article 285 (b) of the Criminal Procedure Code No 23 of 1971 and Article 286 thereof, the death penalty will be implemented only after being approved by the Prime Minister and confirmed by the Presidential Council.

**Seventh:**

The death penalty set forth in the peremptory provisions applicable before the entering into force of this Decree will be reduced to life imprisonment.

**Eighth:**

The provisions of this Decree shall prevail over any provision to the contrary.

**Ninth:**

This Decree will come into force as of its date of issue and shall be published in the Official Gazette.

Executed in Baghdad on the twenty-first of Jumada el-Aakhirah 1425 hijra, corresponding to August 8th 2004 AD.

Dr. Ayad Allawi  
The Prime Minister

**The Underlying Reasons**

Given the current situation in Iraq, and in order to protect Iraq's internal security, ensure the safety of its people and to observe their human rights and their right to life, it has become necessary to restore the death penalty against those who commit serious crimes that threaten the security and economy of Iraq, the lives of its people and the future of its next generations;

And for the purpose of preventing such crimes and imposing on those who commit them the punishment that would match the gravity of such crimes on one hand, and giving a chance to those who have been sentenced to death before this Decree took effect and giving them the chance to stay alive by reducing this punishment to life imprisonment, so that they can become good citizens again, after completing their sentence on the other hand

***The Decree will hereby come into effect***



# Report on the Death Penalty in Iraq

UNAMI/OHCHR  
Baghdad Iraq

[www.uniraq.org/www.ohchr.org](http://www.uniraq.org/www.ohchr.org)