



IRAQ

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 20TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2014

FOLLOW UP TO THE PREVIOUS REVIEW

In its first Universal Periodic Review (UPR) in 2010, Iraq accepted 135 recommendations, rejected 27 and gave no clear position on 14.¹

Although Iraq accepted UPR recommendations to take steps to eliminate torture and ill-treatment of detainees,² to adhere to international standards regarding fair trials,³ to combat the culture of impunity,⁴ and to respect international standards relating to the death penalty,⁵ the death penalty continues to be used in contravention of international standards, and torture and other ill-treatment of detainees remain rife. The culture of impunity is deeply rooted in Iraq and trials continue to be grossly unfair, with a reliance on “confessions” obtained under torture or coercion.

Despite requesting to visit Iraq’s detention facilities since 2005, the request by the UN Special Rapporteur on torture remains without clear commitment from the authorities, with one mission scheduled in October 2011 having to be cancelled due to the government not formally confirming the dates or agenda just days before the Special Rapporteur was scheduled to travel.⁶ The visit was rescheduled to take place in April 2012, but the Special Rapporteur was unable to make that date. In March, Iraq invited the Special Rapporteur to visit the country.

Amnesty International regrets the rejection by Iraq of recommendations to establish a moratorium on the death penalty and to reduce the scope of crimes subject to the death penalty.⁷

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Since 2010, Iraq has made some progress with regard to strengthening its human rights framework.

Torture and ill-treatment

Iraq ratified the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in July 2011. Despite this positive step, Amnesty International is deeply concerned that torture and ill-treatment remain rife in Iraq and key provisions to safeguard detainees against torture have yet to be introduced in law and implemented in practice. By ratifying the Convention against Torture, Iraq is obliged to “ensure that all acts of torture are offences under its criminal law” (Article 4).⁸ Indeed, torture is prohibited by Iraq’s Constitution (Article 37, 1.c)⁹ and under Iraqi Law, notably Articles 218 and 127 of the Criminal Procedure Code,¹⁰ the latter of which states: “the use of any illegal method to influence the accused and extract an admission (confession) is not permitted.” In practice, however, the use of torture and ill-treatment to coerce “confessions” from detainees remains widespread.

Under the Convention against Torture, Iraq is also obliged to conduct a “prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed” (Article 12). However, in practice, allegations of torture are seldom investigated and those responsible for torture or ill-treatment of detainees are very

rarely brought to justice. Amnesty International is also concerned that there is no clear indication in the Penal Code of the length of imprisonment for those convicted of torture. Indeed, Article 333 stipulates that “any public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offence or to make a statement or provide information about such offence [...] is punishable by imprisonment or detention.”¹¹

Defendants who allege that they were coerced to “confess” to a crime while in pre-trial detention face numerous obstacles in proving it. For example, medical examinations, if carried out at all, are usually undertaken only months later, when most physical evidence of torture is likely to have disappeared.

The death penalty

Since Iraq’s first UPR in 2010, at least 367 detainees have been executed, with the highest number of known executions taking place in 2013. During the 23rd session of the UN Human Rights Council in June 2013, Iraq stated that it would look at abolishing the death penalty once it has dealt with terrorism. However, on 21 November 2013, in response to media enquiries about this statement, the Human Rights Minister stated that the government has a firm and transparent stance on the death penalty, which is the penalty that must be paid by criminals and terrorists. He further noted that it is the state’s ethical and legal responsibility to implement this preventative punishment and that Iraq is not bound by the opinions of international organizations due to its current unstable security situation.¹² With the recent clashes between government forces and armed groups belonging to Islamic State of Iraq and the Levant (ISIL) in al-Anbar governorate, as well as reports of 38 prisoners being executed in one week in January 2014, Amnesty International is concerned that the authorities will use the continuing violence as a reason to accelerate executions to demonstrate their efforts to protect civilians against terrorism and attacks by armed groups.

The Iraqi National High Commission for Human Rights

Amnesty International welcomes the appointment in April of 2012 of 11 Commissioners, including civil society representatives, to the Iraqi National High Commission for Human Rights (INHCHR).¹³ In February 2013, 13 priority areas were identified by the Commissioners; however, unfortunately these did not include any provisions for strengthening fair trial standards or the protection of detainees from torture and ill-treatment.¹⁴ The law establishing the INHCHR (Law 53 of 2008) does not fully guarantee the Commission’s independence and freedom from interference and control by the executive nor does it provide adequate protection against the politicization of the position of the Commissioner.¹⁵

Members of the INHCHR carried out a joint visit with representatives of the Interior Ministry to the al-Rusafa women’s prison in Baghdad on 23 May 2013 and reportedly made recommendations on site.¹⁶ No report or further information was published of the findings of the visit or of the recommendations made to the prison authorities.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Hundreds are being killed in Iraq every month due to the ongoing violent attacks by armed groups, including targeted assassinations, bomb explosions and suicide attacks in crowded areas chosen to maximize civilian casualties. According to United Nations Assistance Mission in Iraq (UNAMI) figures, 7,818 people, including police, were killed in 2013 - the highest death toll since 2008.¹⁷ In most cases, ISIL claims responsibility for specific atrocities, such as suicide attacks and car bomb explosions. In other cases, armed attacks are believed to be carried out by Shi’a militias groups. In addition, deadly clashes between ISIL groups and government forces in the al-Anbar governorate since the beginning of January 2014 have caused civilians casualties and severe destruction of property in Iraq, forcing thousands of families to flee their homes to seek protection in neighbouring regions.

Death penalty after unfair trial

Iraq is one of the world's most prolific executioners with hundreds of prisoners on death row. During the summer of 2013, the Minister of Justice announced that there were around 1,200 prisoners under sentence of death. At least 169 people were executed in Iraq in 2013; however, the true number could well be higher as the authorities have yet to publish the full figures. Since the death penalty was reinstated in Iraq in August 2004, at least 649 people have been executed. More recently, the number of executions has escalated. For example, at least 38 prisoners were executed in one week in

January 2014.¹⁸ The vast majority of death sentences in recent years are believed to have been imposed under the Anti-Terrorism Law (Law 13 of 2005). The law covers, in vague terms, acts such as provoking, planning, financing, committing or supporting others to commit terrorism. Among Amnesty International's concerns is the very broad definition of terrorism and the fear that the authorities may be using the recent violence in al-Anbar governorate to speed up executions in order to demonstrate they are taking measures to protect civilians against terrorist attacks and attacks by armed groups.

As of 2013, 185 detainees, including 14 women, were under the sentence of death in the Kurdistan Region of Iraq. However, the Kurdistan Regional Government is not known to have carried out executions since April 2008.

Amnesty International is seriously concerned that the authorities rely on capital punishment when dealing with attacks by armed groups. Of particular concern is the handing down of death sentences after grossly unfair trials and based on "confessions" obtained under torture or other ill-treatment, in breach of international human rights law and standards.

Iraqi law requires all death sentences to be reviewed by a higher judicial body; normally, they are referred automatically to the Court of Cassation. However, the Court of Cassation regularly fails to address the admission by trial courts of contested evidence, including withdrawn "confessions" and allegations of coercion and torture, when reviewing and approving death sentences. In addition, the Court of Cassation may reach its decision after only a paper-based review of the court verdict and dossiers; it is not required to re-examine the evidence, although it is entitled to do so if it determines that this is required.¹⁹ The paper-based examination of the case by the Court of Cassation therefore often fails to give defendants a genuine review and flouts international fair trial standards.²⁰

Many detainees make their first "confession" during interrogation at a police station or detention centre controlled by the Ministries of Interior and Defence, rather than in the presence of an investigating judge. Once they have "confessed", detainees are generally taken under guard to appear before an investigating judge, often under threat of further torture or ill-treatment if they refuse to confirm their "confession" or complain of torture or ill-treatment. Although the investigating judge is required to ensure that any incriminating statements have been given freely, without coercion or duress, cases continue to be reported where the judge appears to have "looked the other way" and accepted self-incriminating statements from detainees without question, despite their allegations or other evidence of abuse. This can have profoundly damaging consequences for the detainee and could even lead to the imposition of a death sentence.²¹

Torture and other ill-treatment, and death in custody, with impunity

Torture and other ill-treatment of detainees, including women, is widespread in Iraq and in the Kurdistan Region of Iraq. Thorough and impartial investigations into such allegations are generally not conducted and the security forces who commit these violations operate with total impunity.

Deaths in custody apparently caused by torture or other ill-treatment have been a persistent phenomenon in Iraq. According to official records disclosed by the Ministry of Human Rights, there were 269 cases of death in custody between 2010 and 2012, including 32 in which "suspicion of torture" was given as a possible cause of death.²² No official record is yet available for 2013.

Although some cases of death in detention get reported, in general, no action is taken to independently and impartially investigate such allegations and to bring those responsible to justice. Impunity therefore remains rife and there is no accountability for those who commit these crimes.

The security authorities commonly hold suspects – and in particular, terrorism suspects – incommunicado following arrest and during the initial period of interrogation. Detainees are totally cut off from the outside world; they have no access to legal advice or to their families and no knowledge of how long they will be held in those conditions. Being held in incommunicado conditions is widely known to facilitate torture and other ill-treatment. Moreover, the detainees are regularly held in secret facilities that are not open to inspection by the Office of the Public Prosecution or to official regulation.

Detainees are also held incommunicado in the Kurdistan Region but on a much lesser scale than in other regions of Iraq.

Flawed criminal justice system

The criminal justice system operates under very difficult circumstances. Armed groups opposed to the government continue to attack and kill judges, lawyers and other court officials. The Supreme Judicial Council has recorded the names of 58 judges killed between 2003 and 2013.²³ Lawyers defending alleged members of armed groups charged with terrorist offences have also been murdered, intimidated or attacked by unidentified assailants. They frequently receive anonymous death threats communicated by phone or text message and some have been targeted for murder.²⁴ In August 2012, a gunman killed Khayrallah Shati, a lawyer, and his son, a judicial investigator, together with six other members of their family in Baiji, a town in Salah al-Din governorate.²⁵

The criminal justice system has also become riddled with corruption. In dozens of cases reported to Amnesty International, security officials have demanded money from detainees' families to release them or to reveal where they are being detained. UNAMI has reported receiving similar complaints.²⁶ Judges and lawyers who speak against corruption are being harassed by the government.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Iraq to:

National human rights framework

- Prohibit torture as stipulated in the Constitution and the Penal Code and to ban the use of torture to coerce "confessions" from detainees;
- Clearly indicate the length of imprisonment or detention for those convicted of torture in the Iraqi Penal Code;
- Ensure that prompt, thorough and impartial investigations are conducted into all allegations of torture, as stipulated under Article 12 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 333 of the Penal Code, and that those responsible are brought to justice;
- Set an early deadline for the ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to take steps, prior to ratification, to bring official policy, procedure and practices into conformity with the obligations contained in the Optional Protocol, including setting up a National Preventive Mechanism;
- Strengthen the political and financial independence of the Iraqi National High Commission for Human Rights, empower its members to carry out investigations into all abuses of human rights, including those committed by high-ranking security officers and government officials, and ensure the full independence of the Commissioners in law and practice.

Death penalty after unfair trial

Pending full abolition:

- Immediately halt all executions and establish a moratorium on executions with a view to abolishing the death penalty, as provided for by UN General Assembly Resolutions, including Resolution 67/176 of 20 December 2012;
- Review without delay all death penalty cases, including those ratified by the Presidency, with the aim of commuting them to prison terms, or granting a new and fair trial without resorting to the death penalty;
- Remove all provisions for the death penalty which are in breach of international human rights law from national law, in particular all capital crimes which do not involve intentional killing;
- Make public all information on death sentences imposed and executions carried out;
- Respect all international standards applying to the use of the death penalty, in particular Article 6 of the International Covenant on Civil and Political Rights and other international standards for fair trial, including the duty to ensure that defendants have access to qualified legal representation at all stages of the proceedings and that appellate proceedings provide a genuine review of death sentences;
- Ensure that no courts accept as evidence any alleged "confessions" or other self-incriminating statements which may have been coerced or which have subsequently been retracted.

Torture, death in custody and other ill-treatment of detainees with impunity

- Ensure that prompt, thorough, impartial and independent investigations are conducted into all allegations of torture and other ill-treatment and deaths in custody, and that those responsible are brought to justice;
- Clarify to all members of the police and security forces that it is a crime to subject detainees or other people in custody or under their control to torture or other ill-treatment, and that any police, security or other officials who order, perpetrate, acquiesce or tolerate such crimes will be held fully accountable and will be liable to prosecution and appropriate penalties;
- Ensure the mission to Iraq of the UN Special Rapporteur on torture takes place in a timely fashion, following the invitation in March 2014;
- Ensure that Constitutional provisions and laws prohibiting torture, and the inadmissibility of statements obtained under torture are implemented in practice.

Flawed criminal justice system

- Ensure the protection of judges, lawyers and court officials from being targeted and harassed by armed groups opposed to the government and that attacks against them are investigated promptly and thoroughly.
- Combat corruption within the criminal justice system and immediately end harassment by the government of those who speak out against corruption.

ENDNOTES

¹ Report of the Working Group on the Universal Periodic Review (A/HRC/14/14/I), 15 March 2010.

² A/HRC/14/14 Recommendation 81.49 (Denmark).

³ A/HRC/14/14 Recommendation 81.77 (Ghana).

⁴ A/HRC/14/14 Recommendation 81.87 (United States),

⁵ A/HRC/14/14 Recommendations 81.47 (Canada) and 81.48 (Belgium).

⁶ Statement by Juan E. Mendez, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment, 19th Session of the UN Human Rights Council, Agenda Item 3, 5 March 2012, Geneva

⁷ A/HRC/14/14 Recommendation 83.1 (Norway), 83.2 (Belgium), 83.3 (Switzerland), 83.4 (Uruguay), 83.5 (Italy), 83.6 (Netherlands), 83.7 (Greece), 83.8 (Argentina), 83.9 (Denmark), 83.10 (Sweden), 83.11 (Australia), 83.12 (Chile), 83.13 (New Zealand), 83.14 (Slovakia), 83.15 (Canada), 83.16 (Slovenia), 83.17 (Hungary), 83.18 (Ukraine), 83.19 (United Kingdom), 83.20 (Austria), 83.21 (France), 83.22 (Germany).

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- ⁸ UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, New York, 10 December 1984.
- ⁹ UN/US/UK agreed translation, *The Constitution of Iraq of 2005*.
- ¹⁰ CJPI annotated and amended translation, *Criminal Procedure Code 23 of 1971 as amended to 14 March 2010*.
- ¹¹ CJPI annotated and amended translation, *Penal Code 111 of 1969 as amended to 29 January 2010*, 23 February 2010.
- ¹² Statement by His Excellency Mohamad Shayya' Al-Sudani, Human Rights Minister, Ministry of Human Rights, 21 November 2013.
- ¹³ The IHCHR's three objectives are to promote respect for human rights in Iraq, protect the rights and freedoms guaranteed by the Iraqi Constitution, international law, treaties and conventions ratified by Iraq and strengthen, promote and develop human rights principles and a culture of respect for human rights in Iraq.
- ¹⁴ The 13 priority areas of the IHCHR are: Minority rights, Family and child rights; Relationships with national and international institutions and organizations; Social security; Health and environment; Immigration and displacement; Education. UNAMI, *Report on Human Rights January – June 2013*, August 2013, Page 23.
- ¹⁵ Institute for International Law and Human Rights, *Iraq's High Commission for Human Rights: Bylaws, Regulations and Legal Framework*, June 2012, http://lawandhumanrights.org/documents/ihchr_EN.pdf
- ¹⁶ UNAMI, *Report on Human Rights January – June 2013*, August 2013, Page 24.
- ¹⁷ UNAMI casualty figures for December 2013, 2 January 2014.
- ¹⁸ Ministry of Justice statement, 21 January 2014 and Shafaq News, "Iraq announces execution of 11 convicted of terrorism," 23 January 2014.
- ¹⁹ Article 258, CJPI annotated and amended translation, *Criminal Procedure Code 23 of 1971 as amended to 14 March 2010*.
- ²⁰ Article 14 (3) (d) and (g) of the International Covenant on Civil and Political Rights, ratified by Iraq in 1971 states that everyone is entitled to be tried in their presence when determining any criminal charges against them and not to be compelled to testify against himself or to confess guilt (International Covenant on Civil and Political Rights, 19 December 1966).
- ²¹ The Ministry of Human Rights has gone some way towards acknowledging this reality, observing that detainees are "subjected in some instances to torture and ill-treatment in order to coerce them to confess or to obtain information" (Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, page 80).
- ²² The Iraqi Ministry of Human Rights' Annual Report on the Situation of Prisons and Detention Centres for the Year 2011 recorded 52 cases of death in custody in 2011 and 100 in 2010; in three of the 2011 deaths and nine of the 2010 deaths, the ministry reported that "suspicion of torture" was recorded under the cause of death (Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2013, page 48). The Annual Report for the Year 2012 recorded 117 cases of death in custody in 2012; in twenty of the 2012 deaths, the ministry reported that "suspicion of torture" was recorded under the cause of death (Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2012*, published in 2012, pages 52 and 53).
- ²³ Iraq Higher Judicial Council List of Martyrs-Judges, 30 May 2010.
- ²⁴ Reuters, "Iraq's lawyers risk death to take on sectarian cases," 13 August 2012.
- ²⁵ AFP, "Iraq attacks on Shiites and lawyers kill 21," 8 August 2012.
- ²⁶ UNAMI, *Report on Human Rights January – June 2013*, August 2013, Page 7.